

CONTRACT #1
RFS # 329.44-00006
Edison # 37644

Correction

VENDOR:
Corrections Corporation of
America (CCA)



March 28, 2016

Ms. Krista Lee, Executive Director
Fiscal Review Committee
Eighth Floor, Rachel Jackson Building
Nashville, TN 37243

Dear Ms. Lee:

The Department of Correction has performed a comparative analysis for South Central Correctional Facility, Northeast Correctional Complex, and Northwest Correctional Complex pursuant to TCA §41-24-100. The comparison was conducted as required by statute to serve as supporting documentation to TDOC's request to amend the current contract with Corrections Corporation of America (CCA) for the operation of the South Central Correctional Facility for the additional two years permitted by the original RFP and resulting awarded contract.

There are numerous inmate lawsuits which have been filed against CCA just as there are numerous inmate lawsuits filed against TDOC. TDOC has found nothing that indicates any significant problems.

TDOC does extensive monitoring of the CCA/SCCF operation and is confident that the operation meets standards and there is no fraudulent activity.

Sincerely,



Derrick D. Schofield

DDS:WL

Supplemental Documentation Required for
Fiscal Review Committee

| | | | | | |
|--|---|------------------------------------|--|-----------------|----|
| *Contact Name: | Priscilla Wainwright | *Contact Phone: | 615.253.5571 | | |
| *Presenter's name(s): | Wes Landers, Chief Financial Officer; Chuck Taylor, Chief of Staff | | | | |
| Edison Contract Number: <i>(if applicable)</i> | 37644 | RFS Number: <i>(if applicable)</i> | 32944-00006 | | |
| *Original or Proposed Contract Begin Date: | July 1, 2013 | *Current or Proposed End Date: | June 30, 2018 | | |
| Current Request Amendment Number: <i>(if applicable)</i> | 1 | | | | |
| Proposed Amendment Effective Date: <i>(if applicable)</i> | July 1, 2016 | | | | |
| *Department Submitting: | Correction | | | | |
| *Division: | Fiscal | | | | |
| *Date Submitted: | March 4, 2016 | | | | |
| *Submitted Within Sixty (60) days: | Yes | | | | |
| <i>If not, explain:</i> | | | | | |
| *Contract Vendor Name: | Corrections Corporation of America | | | | |
| *Current or Proposed Maximum Liability: | \$143,168,410.00 | | | | |
| *Estimated Total Spend for Commodities: | \$0 | | | | |
| *Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet) | | | | | |
| FY:2014 | FY:2015 | FY:2016 | FY:2017 | FY2018 | FY |
| \$27,383,388.00 | \$27,988,711.00 | \$28,684,394.00 | \$29,235,317.00 | \$29,876,600.00 | \$ |
| *Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison) | | | | | |
| FY: 2014 | FY:2015 | FY:2016 | FY: | FY | FY |
| \$25,335,485.44 | \$27,732,988.97 | \$19,224,672.74 | \$ | \$ | \$ |
| IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: | | | No surplus funds have been spent. | | |
| IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision: | | | No surplus funds have been carried forward. | | |
| IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: | | | Contract expenditures have not exceeded contract allocation. | | |

Supplemental Documentation Required for
Fiscal Review Committee

| | | | |
|--|------------------|---|--|
| *Contract Funding Source/Amount: | | | |
| State: | \$143,168,410.00 | Federal: | |
| <i>Interdepartmental:</i> | | <i>Other:</i> | |
| If “ <i>other</i> ” please define: | | | |
| If “ <i>interdepartmental</i> ” please define: | | | |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i> | | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i> | |
| | | | |
| | | | |
| Method of Original Award: <i>(if applicable)</i> | | RFP | |
| *What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined? | | \$143,168,410.00 | |
| *List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State. | | <p>Although CCA is the largest private prison operator in the United States, there are at least five other private prison operators who could provide the service.</p> <p>Bringing in another vendor three years into the current contract despite all best efforts for a seamless transition could cause a disruption in operations that would not be in the best interest of the State.</p> | |

CCA-SCCF
 Contract# 37644

| Month | Amount | Pay Date | LD Damages |
|--------------|----------------------|----------|------------|
| Jul-13 | 2,324,250.30 | 09/05/13 | no |
| Aug-13 | 2,323,290.81 | 09/26/13 | no |
| Sep-13 | 2,239,129.83 | 10/30/13 | no |
| Oct-13 | 2,319,818.37 | 11/22/13 | no |
| Nov-13 | 2,248,907.49 | 12/18/13 | no |
| Dec-13 | 2,313,330.39 | 02/04/14 | no |
| Jan-14 | 2,210,189.81 | 02/21/14 | no |
| Feb-14 | 2,081,985.41 | 04/10/14 | no |
| Mar-14 | 2,728,400.56 | 04/15/14 | no |
| Apr-14 | 2,240,881.47 | 05/29/14 | no |
| May-14 | 2,305,301.00 | 06/17/14 | no |
| Total | 25,335,485.44 | | |

| | | |
|-------------|----|----------------------|
| FY14 | \$ | 25,335,485.44 |
| FY15 | \$ | 27,732,988.97 |
| FY16 | \$ | 19,224,672.74 |
| | \$ | 72,293,147.15 |

| | | | |
|--------------|----------------------|------------|----|
| Jun-14 | 2,239,011.80 | 7/22/2014 | no |
| Jul-14 | 2,363,411.82 | 9/11/2014 | no |
| Aug-14 | 2,365,186.52 | 10/10/2014 | no |
| Sep-14 | 2,253,599.69 | 11/5/2014 | no |
| Oct-14 | 2,357,226.48 | 12/2/2014 | no |
| Nov-14 | 2,282,833.38 | 1/9/2015 | no |
| Dec-14 | 2,361,621.82 | 12/10/2015 | no |
| Jan-15 | 2,354,897.02 | 3/13/2015 | no |
| Feb-15 | 2,131,063.92 | 3/23/2015 | no |
| Mar-15 | 2,351,947.61 | 5/7/2015 | no |
| Apr-15 | 2,309,340.70 | 6/9/2015 | no |
| May-15 | 2,362,848.21 | 6/26/2015 | no |
| Total | 27,732,988.97 | | |

| | | | |
|--------------|----------------------|----------|----|
| Jun-15 | 2,303,300.00 | 8/4/15 | no |
| Jun-15 | 2,808.29 | 8/4/15 | no |
| Jul-15 | 2,427,530.04 | 9/10/15 | no |
| Aug-15 | 2,442,713.17 | 10/19/15 | no |
| Sep-15 | 2,354,473.17 | 10/23/15 | no |
| Oct-15 | 2,456,376.72 | 12/3/15 | no |
| Nov-15 | 2,377,574.49 | 12/28/15 | no |
| Dec-15 | 2,435,114.55 | 2/16/16 | no |
| Jan-16 | 2,424,782.31 | 3/1/16 | no |
| Total | 19,224,672.74 | | |

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@tn.gov

| | |
|----------------------------------|-------------|
| APPROVED | |
| CHIEF PROCUREMENT OFFICER | DATE |

| | | |
|--|--|--|
| Agency request tracking # | 32944-00006 | |
| 1. Procuring Agency | Department of Correction | |
| 2. Contractor | Corrections Corporation of America | |
| 3. Edison contract ID # | 37644 | |
| 4. Proposed amendment # | 1 | |
| 5. Contract's Effective Date | July 1, 2016 | |
| 6. Current end date | June 30, 2016 | |
| 7. Proposed end date | June 30, 2018 | |
| 8. Current Maximum Liability or Estimated Liability | \$143,168,410.00 | |
| 9. Proposed Maximum Liability or Estimated Liability | \$ \$143,168,410.00 | |
| 10. Office for Information Resources Pre-Approval Endorsement Request <i>– information technology service (N/A to THDA)</i> | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached | |
| 11. eHealth Pre-Approval Endorsement Request <i>– health-related professional, pharmaceutical, laboratory, or imaging</i> | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached | |
| 12. Human Resources Pre-Approval Endorsement Request <i>– state employee training service</i> | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached | |
| 13. Explain why the proposed amendment is needed | | |
| | To exercise the two-year term extension option permitted by the RFP and the resulting current contract. A replacement RFP will be conducted during the contract term extension. | |
| | | |
| | | |
| 14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract. | | |

| | |
|--|--------------------|
| Agency request tracking # | 32944-00006 |
| No change in the scope is anticipated. | |
| Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document) | |



CONTRACT AMENDMENT COVER SHEET

| | | | | | |
|---|---------------------------|--------------------------------|----------------------------------|--------------|------------------------------|
| Agency Tracking # 32944-00006 | Edison ID 37644 | Contract # | Amendment # 1 | | |
| Contractor Legal Entity Name Corrections Corporation of America | | | Edison Vendor ID 83597 | | |
| Amendment Purpose & Effect(s) To exercise the two-year term extension option permitted by the RFP and the resulting current contract. | | | | | |
| Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO | | End Date: 6/30/2018 | | | |
| TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): | | | \$ 0 | | |
| Funding — | | | | | |
| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
| 2014 | \$27,383,388.00 | | | | \$27,383,388.00 |
| 2015 | \$27,988,711.00 | | | | \$27,988,711.00 |
| 2016 | \$28,684,394.00 | | | | \$28,684,394.00 |
| 2017 | \$29,235,317.00 | | | | \$29,235,317.00 |
| 2018 | \$29,876,600.00 | | | | \$29,876,600.00 |
| TOTAL: | \$143,168,410.00 | | | | \$143,168,410.00 |
| American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input type="checkbox"/> NO | | | | | |
| Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. | | | <i>CPO USE</i> | | |
| Speed Chart (optional) | | Account Code (optional) | | | |

**AMENDMENT 1
OF CONTRACT 37644**

This Amendment is made and entered by and between the State of Tennessee, Department of Correction, hereinafter referred to as the "State" and Corrections Corporation of America, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The following is added as Contract section A.7.
A.7. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

2. The following is added as Contract section A.8.
A.8. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.
3. Contract section B is deleted in its entirety and replaced with the following:
B.1. The Contract shall be effective for the period beginning July 1, 2014 and ending on June 30, 2018. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
4. The following is added as Contract section E.57.
E.57. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations

(depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective **July 1, 2016**. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

Corrections Corporation of America:

| | |
|------------------|-------------|
| SIGNATURE | DATE |
|------------------|-------------|

PRINTED NAME AND TITLE OF SIGNATORY (above)

Tennessee Department of Correction:

| | |
|---|-------------|
| Derrick D. Schofield, Commissioner | DATE |
|---|-------------|



America's Leader in Partnership Corrections

Ann Parker
Sr. Director
Litigation & Risk Management

May 5, 2015

Ms. Debra K. Inglis
General Counsel
Tennessee Department of Correction
6th Floor, Rachel Jackson Building
320 6th Ave. N.
Nashville, TN 37243-0465

RE: South Central Correctional Center
Continuation Certificate for Performance Bond

Dear Ms. Inglis:

Enclosed is the continuation certificate for the performance bond in the amount of \$5,000,000 that is required by our contract with the Tennessee Department of Corrections for the operation of the South Central Correctional Center.

Should you have any questions or need any additional information, please do not hesitate to contact me at 615-263-3133.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ann Parker', is written over a light blue horizontal line.

Ann Parker
Senior Director,
Litigation & Risk Management

Enclosure

CONTINUATION CERTIFICATE

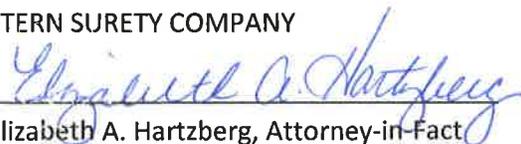
The Western Surety Company (hereinafter called the Surety) hereby continues in force its Bond Number 929401434 in the sum of FIVE MILLION AND 00/100-----(\$5,000,000.00) Dollars, on behalf of CORRECTIONS CORPORATION OF AMERICA in favor STATE OF TENNESSEE, DEPARTMENT OF CORRECTIONS subject to all the conditions and terms thereof through JUNE 30, 2016 at location of risk.

This condition is executed upon the express condition that the Surety's liability shall not be cumulative and shall be limited at all times by the amount of the penalty stated in the bond.

IN WITNESS WHEREOF, the Surety has caused this instrument to be signed by its duly authorized Attorney-in-Fact and its corporate seal to be hereto affixed this 31st day of March, 2015.

WESTERN SURETY COMPANY

BY:


Elizabeth A. Hartzberg, Attorney-in-Fact

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

E J Pennisi Jr, Elizabeth A Hartzberg, Deborah S Hudgins, Jimmy M Evans Jr, Individually

of Nashville, TN, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 9th day of July, 2014.



WESTERN SURETY COMPANY

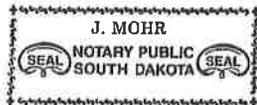
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 9th day of July, 2014, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2015



J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 31ST day of MARCH, 2015.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

| | | | |
|-----------------------------------|----------------------------------|---|----------------------------------|
| Begin Date JULY 1, 2013 | End Date JUNE 30, 2016 | Agency Tracking # 32944-00006 | Edison Record ID 37644 |
|-----------------------------------|----------------------------------|---|----------------------------------|

| | |
|---|----------------------------------|
| Contractor Legal Entity Name CORRECTIONS CORPORATION OF AMERICA | Edison Vendor ID 83597 |
|---|----------------------------------|

Service Caption (one line only)
MANAGEMENT AND OPERATION OF A PRISON

| | |
|---|---------------|
| Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor | CFDA # |
|---|---------------|

| Funding FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
|---------------|-----------------------|---------|-------------------|-------|-----------------------|
| 2014 | 27,383,388.00 | | | | 27,383,388.00 |
| 2015 | 27,988,711.00 | | | | 27,988,711.00 |
| 2016 | 28,684,394.00 | | | | 28,684,394.00 |
| 2017 | 29,235,317.00 | | | | 29,235,317.00 |
| 2018 | 29,876,600.00 | | | | 29,876,600.00 |
| TOTAL: | 143,168,410.00 | | | | 143,168,410.00 |

American Recovery and Reinvestment Act (ARRA) Funding: YES NO

Ownership/Control

African American
 Asian
 Hispanic
 Native American
 Female
 Person w/Disability
 Small Business
 Government
 NOT Minority/Disadvantaged
 Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

| | |
|---|--|
| <input checked="" type="checkbox"/> RFP | The procurement process was completed in accordance with the approved RFP document and associated regulations. |
| <input type="checkbox"/> Competitive Negotiation | The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria |
| <input type="checkbox"/> Alternative Competitive Method | The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria. |
| <input type="checkbox"/> Non-Competitive Negotiation | The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price. |
| <input type="checkbox"/> Other | The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class." |

| | |
|---|---------------------|
| Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. | OCR USE - FA |
| | |

| | |
|-------------------------------|--|
| Speed Chart (optional) | Account Code (optional) 70803000 |
|-------------------------------|--|



**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CORRECTION
AND
CORRECTIONS CORPORATION OF AMERICA**

This Contract, by and between the State of Tennessee, DEPARTMENT OF CORRECTION, hereinafter referred to as the "State" and **CORRECTIONS CORPORATION OF AMERICA**, hereinafter referred to as the "Contractor," is for the provision of **MANAGEMENT AND OPERATION OF A PRISON**, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-Profit Corporation.

Contractor Place of Incorporation or Organization: Maryland

Contractor Edison Registration ID # 83597

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. DEFINITIONS

- a. ACA - means the American Correctional Association.
- b. ACA Standards - means the Standards for Adults Correctional Institutions, Fourth Edition, as the same may be modified, amended, or supplemented now or in the future) published by ACA.
- c. Commissioner - means the Commissioner of the Tennessee Department of Correction.
- d. Contract - means this Document, together with all written attachments, appendices, exhibits, amendments and modifications and incorporating by reference herein, (1) the Request for Proposals, including exhibits and amendments; and (2) the proposal, including amendments and/or written clarifications.
- e. Contract Liaison - means a person or persons appointed and paid by the State to monitor the implementation of this Contract and/or to act as the Commissioner's designee. The Contract Liaison will also be the official liaison between the State and Contractor on matters pertaining to the proper operation, maintenance and management services of the Facility and may perform other functions described in Department policies, or otherwise provided by the Commissioner, in writing.
- f. Court Orders - means any orders, judgments or opinions issued by a court of competent jurisdiction or any stipulations, agreements or plans entered into in connection with litigation that are applicable to the proper operation, maintenance and management services of the Facility or relate to the care and custody of inmates of the Facility, whether currently existing or as may be rendered in the future.
- g. Department - means the Tennessee Department of Correction (TDOC).
- h. Document - means this document with attached appendices, excluding the RFP and Proposal.
- i. Effective Date of Contract - means the date the Contract is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- j. Facility - means the medium security correctional institution in Wayne County, Tennessee, including adjacent real property described in Section A.3., for the incarceration of male felony offenders sentenced to the care, custody and control of the Department, known as the South Central Correctional Center.



- k. Indigent Inmates - means Inmates who are deemed indigent as defined by Department Policy found in Appendix C..
- l. Inpatient Hospital Costs - means any expenses incurred as a result of an Inmate's admission to a medical care facility, and expenses incurred as a result of out-patient treatment for emergency medical services.
- m. Inmate - means any male felony offender sentenced to the Department and assigned to the Facility by the Department.
- n. Inmate Day - means each calendar day or part thereof that an Inmate is located at the Facility, including the first, but not the last day of incarceration at the Facility.
- o. Local Area - means Wayne, Hardin, Lawrence, Giles, Lincoln, Marshall, Maury, Lewis, Williamson, Hickman, Dickson, Humphreys, Perry, Houston, Benton, Henry, Weakley, Carroll, Henderson, Decatur, Gibson, Crockett, Madison Haywood, Chester, Fayette, Hardeman, and McNairy counties in Tennessee.
- p. Per Diem Rate - means cost per Inmate, per Inmate Day.
- q. Partial Default - means default of a portion of the services to be rendered by the Contractor under this Contract due to Contractor's failure to perform.
- r. Partial Takeover. - means the State's discretionary assumption of a portion of the services to be rendered by the Contractor under this Contract not resulting from Contractor's failure to perform.
- s. Policy Directive (aka Policy/Policies) - means formal statement of the State's correctional policy on a given subject. All Policy Directives shall not conflict with administrative rules or statutes or applicable American Correctional Association Standards.
- t. PREA – Federal Prison Rape Elimination Act
- u. RFP - means the Request for Proposals issued by the Department and identified as RFP-32944-00006, together and all amendments.
- v. Service Commencement Date - means July 1, 2013.
- w. Standards - means the standards to which Contractor's performance under this Contract must conform pursuant to Section A.5.a of the Contract.
- x. State - means the State of Tennessee, including but not limited to the Department.
- y. TOMIS (eTOMIS) - means the Tennessee Offender Management Information System, a mainframe computer system that automates the management of information about offenders under the supervision of the Tennessee Department of Correction. TOMIS captures all offender related information at the point of origin to provide accurate and timely information to those who use it.
- z. TRICOR - means the Tennessee Rehabilitation Initiative in Correction.

A.3. FACILITY AND PROPERTY

- a. Lease and Possession of Facility.
 - 1) The State leases to the Contractor the real property described in Appendix A together with all improvements thereon (the Facility), subject to the State's right to the following:
 - (a) to enter and inspect,
 - (b) to construct additional buildings or expand the capacity of existing buildings; and/or
 - (c) to perform Capital Maintenance and/or Major Maintenance Projects
 - 2) Contractor shall provide for maintenance, repair, and replacement for the Facility and shall keep said Facility in good repair, and insure that all buildings and all operational systems equipment are maintained in working order and condition,



subject to normal wear and tear. Contractor shall be responsible for all expenses incurred in said maintenance, repair and replacement, subject to Section A.3.i.

Quarterly or more frequent inspections of the facility and operational systems equipment shall be conducted by the staff of TDOC Facilities, Planning & Construction. Results of the inspections shall be submitted to the Director of Facilities, Planning & Construction for review and appropriate action.

- 3) The Contractor shall maintain the Facility in accordance with all applicable State and Federal fire, building, life safety, and handicapped accessibility codes.
- 4) The Contractor shall comply with any TDOC, vendor or manufacturer's operational and maintenance recommendations pertaining to operations and maintenance of the Facility and all operational equipment in the Facility which is provided to the Contractor.

Service and testing of critical equipment by qualified technicians, such as the emergency generator system, shall be documented within a Preventative Maintenance plan and compliant with applicable TDOC policies. Service and test reports, with results, will be routinely made available for review by TDOC liaisons.

- 5) The Contractor shall implement the program for vermin and pest control by qualified or certified technicians. Garbage disposal, hazardous waste, and recycle programs shall be managed in accordance with applicable local, State and Federal laws, and TDOC policies. Documentation generated by the program, and disposal procedures, will be routinely available for review by TDOC Liaisons/Facility Staff and/or regulating authorities.
- 6) Contractor agrees that the Facility will be used only for the purposes described in this Contract and shall not allow or suffer any waste at the Facility. Contractor shall not harvest any timber at the Facility or extract any other resource at the Facility unless agreed to in writing by the State.

b. No Warranty. The State leases the Facility to Contractor as is and with all faults and makes no express or implied warranties regarding the Facility, including but not limited to warranties regarding fitness for a particular purpose and hereby disclaims any and all express or implied warranties

c. State Property.

- 1) The State shall furnish the Facility with the property (whether real or personal, fixed or moveable), including telephone and related wiring, listed in Appendix B on or before Service Commencement Date.
- 2) All property (whether real or personal, fixed or moveable) furnished by the State shall remain at the Facility unless its location must be moved for maintenance, repair or replacement. Any removal of said property shall only be made with the prior written consent of the Liaison (See Liaison referenced in Section A.4.c.).
- 3) The State shall be responsible for the installation of the property described in A.3.c.1).
- 4) Effective on the Service Commencement Date, the State hereby leases to the Contractor said property described on Appendix B.
- 5) The State leases the property described in Appendix B to Contractor as is and with all faults and makes no express or implied warranties regarding said property including but not limited to warranties regarding fitness for a particular purpose and hereby disclaims any and all express or implied warranties.

d. Additional Property.

- 1) Contractor shall provide and install in the Facility any additional equipment as well as all necessary perishables and other items necessary for Contractor to



comply with its obligations under this Contract including but not limited to cleaning/housekeeping equipment, building system(s) spare parts, and routine supplies and replacement parts.

- 2) Without a Contract amendment and by written agreement of the parties, the parties may agree to revise the State equipment list on Appendix B provided that any such revision of the State equipment list shall comply with all applicable State regulations pertaining to the disposition of State property. Said agreement must be in writing signed by the Commissioner and the Contractor.
- e. Insurance. The Contractor shall obtain and keep in force insurance on all property to be located at the Facility, whether said property is supplied by the Contractor or State. Refer to Appendix D for insurance requirements.
- f. Ownership of Property at Termination.
- 1) At the conclusion of the Contract, whether by expiration or termination, all equipment, perishables, supplies, routine supplies and replacement parts, and any other property, whether real or personal, including but not limited to Inmate files, fiscal records and any other records used at the Facility or purchased with state funds shall become the property of the State, whether initially acquired by the Contractor or the State.
 - 2) Property furnished by the State shall be returned to the State in good order and in the condition received including but not limited to cleaning/housekeeping equipment, building system(s) spare parts, and routine supplies and replacement parts, Inmate files, fiscal records and any other records used at the Facility or purchased with state funds shall become the property of the State, whether initially acquired by the Contractor or the State. The State's designee shall conduct an inspection of the Facility and property. Reasonable use and wear thereof excepted, provided that if any property provided by the State is destroyed, lost or stolen and has not been replaced, the Contractor shall be responsible to the State for the residual value of said property at the time of loss and said value may be withheld from any amounts owed Contractor
- The results of the inspection shall be provided to the Deputy Commissioner of Operations, and the Deputy Commissioner of Administrative Services.
- 3) Contractor agrees that no security interest will attach to any property used at the Facility whether purchased by State or Contractor. In the event a security interest is created on any of said property, Contractor agrees to immediately notify the Liaison in writing and cause said security interest to be extinguished within thirty (30) days.
- g. Manuals. The State will provide Contractor with a copy of all equipment manuals, in its possession, a set of as-built drawings, and any warranties affecting the property leased to Contractor under Section A.3.c and affecting the Facility. Upon termination of this Contract the aforementioned will be returned to the State.
- h. Maintenance.
- 1) The Contractor shall be responsible for the preventive, routine and emergency maintenance, repair, and replacement of all property of any nature whatsoever located at the Facility at Contractor's expense whether said property is furnished by the State or the Contractor, subject to Section A.3.i.
 - 2) The Contractor shall implement a plan for routine, preventative, and emergency, maintenance that are all inclusive to the facility, equipment, and property. Maintenance operational contingencies identifying critical services, such as fence detection, security electronics, fire/life safety devices, emergency services equipment and physical plant, and associated operational risks shall be part of the plan.



- 3) Contractor shall comply with TDOC Policy series 108, as it may be amended during the term of the contract.
- 4) The Contractor shall comply with the vendor's, manufacturer's, and state's recommendations for operation and maintenance of any property leased to the Contractor under Section A.3.c.

i. Exceptions to Contractor Maintenance. The only exceptions to the Contractor's obligation to effect repairs or provide replacements to the Facility and property contained therein at its expense are as follows:

- 1) where repairs or replacements are covered by a warranty made by a third party to the State, provided, however;
 - (a) if Contractor has caused or contributed to the invalidity of any warranty or failed to comply with Section A.3.j, the Contractor shall bear the full expense to effect any repair or replacement; and
 - (b) for purposes of this Section, the decision regarding whether and to what extent the Contractor has invalidated a warranty, whether the Contractor has failed to comply with Section A.3.j or whether a defect is included in a warranty shall be within the sole judgment of the State;
- 2) replacement of entire systems including but not limited to chiller/boiler plant, heating, air conditioning, security electronics, communications and utility services, and costs to replace major components thereof which exceed \$10,000; provided, however,
 - (a) decisions regarding whether and to what extent the entire system or a major component thereof should be replaced shall be within the sole judgment of the State; and
 - (b) The Contractor shall be responsible for all costs if in the sole judgment of the State the replacement is necessary due to any of the following causes:
 - (i) Contractor's negligence,
 - (ii) Contractor's failure to adequately maintain the systems, or portions thereof, or
 - (iii) Contractor's failure to comply with the provisions of the Contract; and
- 3) where repairs or replacements are necessary due to design error or omission or improper construction of the Facility and not covered by a warranty. The decision regarding whether and to what extent the repair or replacement is due to design error or omission or improper construction shall be within the sole judgment of the State.

j. Warranties.

- 1) The State shall promptly provide Contractor a copy of any warranty made by a third party to the State covering property provided by the State or on the Facility; provided, however, the State is not obligated to acquire or purchase any such Warranties.
- 2) With respect to said warranties, Contractor agrees as follows:
 - a. to maintain the Facility and property located thereon in compliance with said warranties; and
 - b. to promptly notify the Liaison in writing of any defects of whatever nature which are covered by said warranty allowing the State sufficient time under the warranty to notify the entity providing said warranty.

k. Contractor Failure to Repair. If the State acquires notice of Contractor's failure to comply with its obligations regarding building system(s) operation, maintenance, repair or



replacement with the Facility or property thereon, it may so notify the Contractor in writing but is not obligated to do so. Failure of the State to notify Contractor shall not relieve Contractor of its obligations hereunder. In the event the State is required to provide written notice of said failure pursuant to Section E.21., the Contractor shall promptly comply with its obligation within the time specified by the State in the notice. If Contractor fails to effect said building system(s) operation, maintenance, repair or replacement within the time specified in said notice, the State may, but is not obligated, to do the following:

- 1) the state may effect the maintenance, repair, or replacement and withhold the expense of such maintenance, repair or replacement from amounts due the Contractor; and/or
- 2) avail itself of any or all of the remedies described in Section E.21.

l. Construction and Renovation.

- 1) Contractor shall not modify, renovate, construct new buildings, add to existing buildings, or modify any of the systems contained therein including but not limited to the HVAC systems (boilers, water storage vessels, chillers, cooling towers, piping, exhaust systems, ductwork, etc.); building envelope and interior construction (walls, roof, foundations, structure, etc.); fire alarm, exit and life safety systems, security electronic equipment and security fencing systems, domestic water systems, kitchen and laundry systems and equipment; waste water/sewer systems; and utility services without the prior written approval of the State. Said approval shall include approval of the proposed modification by the State Building Commission where required by law, regulation or policy. All modification, construction, and renovation requested by Contractor and approved by State shall be at Contractor's expense, unless otherwise specified.
- 2) The State reserves the right to construct additional buildings at the Facility and/or to expand the capacity of existing buildings at the Facility. In the event the State exercises this right, Contractor agrees:
 - a. To cooperate with the State to the fullest extent possible;
 - b. That this Contract shall remain in full force and effect; and
 - c. That Contractor shall accept, even without new construction or expansion of the existing facility, an increase in the Inmate population under the terms of this Contract with additional compensation to the Contractor being described in Section C.10.

m. Utilities and Taxes. Contractor shall pay all taxes associated with this Contract and utility costs of the Facility including but not limited to water, natural gas, sewage and electric beginning on the Service Commencement Date. In the event ad valorem taxes are assessed against property at the Facility not owned by the Contractor, the Contractor may seek additional compensation pursuant to Section C.12.

n. Telecommunications.

- 1) Contractor will provide, at its expense, all necessary telecommunications equipment except the telephone system and radios. Such equipment must be capable of interfacing with the state existing communications and automated information systems and with any future department systems. Contractor shall enter all required data on TOMIS.
- 2) The Contractor may make additions to or rearrange features of the telephone system as it deems necessary, subject to written approval by the State. The Contractor must assure that the quality of workmanship and added components are of equal or greater quality to maintain system integrity.
- 3) All cost incurred in connection with the telephone operations, including additions, labor, maintenance, repair, moves and changes, local and long distance service, and training will be paid directly by the Contractor.



The Inmate telephone system Contract will operate as in State's other correctional facilities. All commissions will be paid to the State in conformance with the terms of the Inmate telephone system Contract.

o. Destruction of Facility.

- 1) If destruction of the Facility is caused in whole or part due to the Contractor's negligence or due to Contractor's failure to perform its obligations under this Contract, then the State shall seek reimbursement from Contractor for any damages or loss sustained by the State.
- 2) In the event the Facility is destroyed in part for any reason, then the Contractor remains obligated to fulfill its obligations under this Contract to the extent such is possible in the portion of the Facility that remains operational. The Contractor recognizes that the inability to perform its obligations due to the destruction may result in the State seeking a compensation adjustment pursuant to C.12.
- 3) In the event the Facility is destroyed such that the physical damage prevents the housing and programming of the appropriate number of Inmates as determined by the Commissioner in his sole judgment, then the State may terminate this Contract without penalty either immediately or within stages upon written notice to the Contractor.

A.4. **CONTRACT MONITORING**

a. Monitoring.

- 1) The State has the right and authority under this Contract to monitor Contractor's performance hereunder. Such monitoring shall include but not be limited to observing and reporting on the day-to-day operational performance of the Contractor regarding compliance with all terms and conditions of this Contract. Such monitoring or failure to monitor shall not relieve Contractor of its responsibility, obligation and liability under this Contract.
- 2) The State shall develop reporting requirements for the Contractor that shall include but not be limited to weekly, monthly, and/or quarterly reports on the following subjects: Inmate jobs and education, incident reports, disciplinary reports, Inmate grievances, staff turnover, staff training, employee grievances, employee discipline, health care access, reclassifications, transfers, furloughs, releases, media contacts, lawsuits, volunteers, drug audits, cell searches, visitation, and Facility maintenance. Also, an emergency reporting process shall be established that shall address, at a minimum, segregation of Inmates, use of force, and incidents which involve substantial risk to property, life, or institutional security.
- 3) Contractor agrees to cooperate with the State, including any representatives of the State, in the Contract monitoring effort of the State through such means as may be requested from time to time, including, but not limited to the reporting of information as requested. The State and Contractor agree that the information collecting and monitoring processes described in this Section A.4.a, will be defined in the policies and procedures of the Tennessee Department of Correction.

b. Comparative Evaluation.

- 1) The State has the right and authority under this Contract to compare the Contractor's performance with comparable State facilities. The State has the right and authority under this Contract to collect information to compare the cost and quality of services provided by the Contractor with the cost and quality of similar services provided by the State at its comparable facilities.
- 2) In accordance with TCA 41-24-105, after the first two years of operation, but before extending the initial contract, the performance and operating costs of the Contractor will be compared to the performance and operating costs of the State



using the Performance and Cost Evaluation Form which is included as Appendix G to the Contract.

- 3) The Contract may be renewed only if the Contractor is providing essentially the same quality of services as the State at a cost of five percent (5%) lower than the State as evaluated by the Fiscal Review Committee (see A.4.b.4), or if the Contractor is providing services superior in quality to those provided by the State at essentially the same cost as the State (see A.4.b.4). Refer to Appendix G for additional details.
- 4) As set out in TCA 41-24-105, a Committee designated by the Speakers of the Senate and the House of Representatives will compare the quality of services between the State and the Contractor, and the Fiscal Review Committee, or in the absence of that committee a committee designated by the Speakers of the Senate and House of Representatives, will compare the costs of operation. Each committee will prepare a report on its findings and present that report to the parties responsible for determining whether the Contract should be extended. The determination of the Fiscal Review Committee as to the comparative costs of operation shall be binding in determining whether the cost savings required in Section A.4.b.3. has been met.
- 5) The Comptroller of the Treasury shall audit the performance of the Department of Correction and the private Contractor to ensure that the State is receiving the quality and level of services as described in the Contract based upon the performance criteria, the monitoring process, and any applicable sanctions that might be incurred. The Comptroller shall report annually or as requested to the State and Local Government Committees of the House of Representatives and Senate. The Comptroller's audit authority shall include, but not be limited to, the authority to examine issues related to staff salaries, staff turnover rates and their impact, if any, on prison security and safety.
- 6) The Contractor agrees to cooperate with the State, including any representatives of the State, in any comparison of services undertaken by the State through such means as may be requested from time to time, including but not limited to, the provision of information.

c. Liaison.

- 1) The State shall provide Liaison(s) to be located at the Facility. The Liaison(s) will be an employee(s) of the Department and will be paid by the Department. The Contractor, however, shall reimburse the State for the cost incurred by the State, including salary and benefits, for up to two full-time on-site liaisons. The Contractor shall have no control over the activities of the Liaison(s), supervisory or otherwise.
- 2) The Liaison(s) shall be the representative of the State at the Facility to monitor the Contractor's compliance with the Contract. The Commissioner may also appoint the Liaison to act as his designee. The Liaison may also have functions described in Department policies. The Liaison may have other functions as provided by the Commissioner in writing.
- 3) Unless otherwise specified by the Commissioner, in writing, the Liaison shall be the designated recipient of all information required of the Contractor. The Contractor shall be notified of the identity of any Contract Liaison, in writing, signed by the Commissioner.
- 4) The individuals(s) acting as Liaison(s) may be changed during the term of the Contract, at the discretion of the Commissioner.
- 5) The State hereby expressly disclaims that the Liaison or any other state employee or official has any authority, apparent or otherwise, to bind the State under this Contract unless expressly stated herein; provided, however, that the Commissioner shall have the same authority granted any state employee under



this Contract and the Commissioner retains authority over the Inmates and Facility which may not be delegated at law.

- 6) In addition to the Liaison(s) employed by the Department, the State may monitor the Contract through other representatives of State as it deems appropriate. Such representative(s) shall have the same right of access to information, the Facility, Inmates, and Contractor's employees and agents as set out herein for Liaison(s).

d. Multiple Liaisons.

- 1) In the event that the Commissioner designates more than one (1) individual to act as Liaison, the State shall provide the Contractor with a description of the Liaisons' levels of authority in writing executed by the Commissioner.
- 2) In the event the Contractor believes it is receiving conflicting instructions from the Liaison(s) or that a Liaison is acting beyond his or her level of authority under the Contract or as provided in subsection 1), the Contractor shall notify the Commissioner in writing. The written response of the Commissioner shall be final.

e. Office Space.

- 1) Contractor shall provide adequate office space and local telephone service for the Liaison(s) and the staff of the Liaison(s), which may include a secretary, in close proximity to other administrative offices.
- 2) Contractor shall also provide the Liaison and staff with access to all major office equipment, at Contractor's expense.
- 3) Contractor shall not provide the Liaison(s) or Liaison staff with gifts or any form of compensation at any time.

f. Liaison Access.

- 1) The Liaison(s), shall have immediate, complete, and unrestricted access to all parts of the Facility at any and all times.
- 2) The Liaison(s), shall have immediate, complete, and unrestricted access to all documents in any way pertaining to the obligations of Contractor under this Contract, including but not limited to Facility records, Inmate files, personnel files, and financial records. In the event that any such document is not located on the Facility site, upon request Contractor agrees to provide the Liaison with a copy of the document within seventy-two (72) hours of the request.
- 3) The Liaison(s), shall have immediate, complete, and unrestricted access to all meetings and hearings which in any way pertain to the obligations of Contractor under this Contract. Contractor agrees to notify the Liaison of the time, place and agenda at least twenty-four (24) hours in advance of any such meeting or hearing, unless it is not reasonable to provide said notice in which case the Liaison shall be notified simultaneously with the other participants; provided, however, the Liaison may not have access to meetings between the Facility staff and legal counsel retained by Contractor unless permitted by Contractor, but Contractor shall provide the Liaison with written notice of said meeting identifying the participants within five (5) days after said meeting.
- 4) The Liaison(s) shall have immediate, complete, and unrestricted access to all Inmates and access at a reasonable time and place to all employees of Contractor, including but not limited to the Warden.

- g. Meetings with Liaison. The Contractor agrees that the Warden shall meet with the Liaison to report on/discuss the operations of the Facility and to respond to any questions raised by the Liaison.

h. Requests for Information.



- 1) The Contractor shall provide the Liaison with written responses to any information requested by the Liaison or Commissioner concerning any aspect of Contractor's performance under the Contract within the period prescribed in the State's request.
 - 2) The Contractor shall certify that said information is accurate and if Contractor is unable to so certify then Contractor shall state the reason therefore.
 - 3) Upon written request by the Liaison or Commissioner, the Contractor shall compile information in the requested form and provide documentation substantiating said information.
 - 4) Contractor shall not destroy any document related in any way to the Contractor's performance under the Contract without the prior written consent of the Liaison.
- i. Routine Documents. The Contractor shall provide the Liaison upon request with a copy of, or opportunity to review, all routine documents generated by the Contractor contemporaneously with the dissemination of the document. The Liaison shall notify the Contractor in writing of the requested routine documents.
- j. State Inspection. The Commissioner or his/her designee(s) shall have the same access as described in Section A.4.f, Liaison Access, which access shall include but not be limited to persons designated by the Commissioner to inspect the Facility and/or audit Facility and/or Contractor's performance under the Contract. Contractor is also obligated to provide appropriate access to authorized inspection and regulatory agencies. The Contractor shall exercise due diligence for the safety and welfare of the Liaison, any other State employee, and any visitor at the Facility.
- k. Immediate Compliance.
- 1) If the Commissioner determines that the Contractor is not operating in compliance with a term or condition of this Contract which in the opinion of the Commissioner may adversely affect the security or operation of the Facility or which may present a hazard to the safety or health of the Inmates or other individuals, or which may result in the adverse operation of the facility building systems (boilers, chillers, piping, electrical, security electronic, fire/life safety, etc.), and the Contractor shall be notified in writing (or verbally if it is believed an emergency situation exists). The notice shall direct the Contractor to immediately correct the noncompliance.
 - 2) The Contractor shall immediately notify the Commissioner of the proposed corrective action. If the Commissioner does not object to the proposed corrective action, the Contractor shall immediately implement said corrective action.
 - 3) If the Commissioner disagrees with the proposed corrective action or if the Contractor fails to notify the Commissioner immediately of its proposed corrective action, the Commissioner shall specify corrective action which the Contractor shall immediately implement.
 - 4) Notwithstanding any provision contained herein to the contrary, in such a circumstance, the Contractor shall immediately implement the corrective action specified by the Department before any appeal is taken.
 - 5) In the event the Contractor disagrees with the determination of noncompliance or designated corrective action, a request for reconsideration may be taken to the Commissioner. In no event shall the corrective action be delayed pending resolution of the request for consideration. Upon examination, if the Commissioner determines in his sole discretion that a noncompliance did not exist or that the corrective action required by the Department was excessive, the Commissioner shall authorize payment to the Contractor of the actual expense incurred in taking said corrective action or excessive corrective action upon receipt of appropriate documentation substantiating said expense from the Contractor. All directions and actions by the Commissioner and actions by the



Contractor shall be recorded and reported in writing as soon as practical and filed with the Contract Management Unit.

- I. Incident Reports. Contractor shall implement Department Policy 103.02 regarding the reporting of incidents.

A.5. **OPERATION OF FACILITY**

- a. Obligations of Contractor. Contractor agrees to perform all acts and services and comply with all duties and promises as described and in conformance with the following:
 - 1) all applicable constitutional standards, federal, state and local laws, court decisions, and Court Orders and consent agreements, whether currently existing or as may be enacted or rendered in the future;
 - 2) all State and Departmental policies specified in Appendix C, as same may be amended in writing by the Department during the term of this Contract, or in the discretion of the Commissioner, policies approved by the Department which may not be identical to State or Department policies;
 - 3) such other policies as the Department may make applicable to the Contractor in writing during the term of the Contract as same may be amended during the term of this Contract;
 - 4) ACA standards, as the same may be amended in the future;
 - 5) the terms of this Document;
 - 6) the terms of the RFP; and
 - 7) the terms of the Proposal.

The standards articulated in 1) through 7) shall hereinafter collectively be referred to as "Standards."

- b. Obligations of State. State agrees to perform its obligations as described in this Document and the RFP. Notwithstanding any provision contained herein to the contrary, the parties agree that the State incurs no obligations as may be contained in the Proposal.
- c. Conflicts.
 - 1) In the event of an irreconcilable conflict among the Standards, the Contractor is required to follow the Standard as determined by the Liaison.
 - 2) In the event of disagreement between the Contractor and the Liaison regarding which item provides the Standard of service, the Commissioner or his designee shall make the final decision.
 - 3) Approval by the State of any policy or procedure submitted by the Contractor which may deviate from the Standards shall not relieve Contractor of the obligation to follow the Standards.
 - 4) In the event of conflicts between the RFP and this Document regarding the State's obligations, the State shall comply with this Document.
- d. Policy and Procedures Manual. The Contractor, on or before June 11, 2013, shall provide the State with one (1) hard copy and one (1) electronic version (in Word if possible) of a written Policy and Procedures Manual which shall contain policies and procedures for all services to be rendered by Contractor in accordance with the Standards. Said manual shall establish the policies and procedures the Contractor shall follow in all areas covered by this Contract, including the areas covered by the Department policies listed in Appendix C. Said manual shall be subject to the written approval of the State and upon such approval said manual shall not be altered, amended, modified, revised or supplemented without the prior written approval by the State. The Contractor shall implement the provisions of said manual throughout the term of this Contract. The State may require the Contractor to revise these documents, including policies, procedures, post orders, job descriptions, staffing patterns, shift



rosters, etc., as required. A designee of the Commissioner shall review and approve any applicable policy or procedures annually.

e. Assignment and Transfer of Inmates.

- 1) Inmates will be assigned to the Facility in accordance with Department policies. Contractor may not refuse to accept any Inmate assigned to the Facility, but if the Contractor believes that an Inmate has been erroneously assigned to the Facility, it may request his transfer in writing, through the Liaison citing the appropriate sections of Department policy. Any decision by the Department on such request shall be final.
- 2) Contractor's requests for reassignment of Inmates from the Facility to another institution for medical, psychiatric, disciplinary or administrative reasons or for Inmate furloughs will be made in writing through the Contract Liaison and evaluated by the Department. Any decision by the Department on such request shall be final.
- 3) The State may transfer Inmates from the Facility with said decision to transfer being within the State's sole discretion.

f. Safety and Emergency Procedures

- 1) The Contractor, on or before June 11, 2013, shall develop and submit one (1) hard copy and one (1) electronic version (in Word if possible) of the following: (1) written riot and disturbance control contingency plans, and (2) disaster preparedness plans to the State. Contractor shall cooperate with State in preparing contingent Inmate relocation plans
- 2) At a minimum, the Contractor shall implement the written guidelines for the prevention of fire, safety inspections, maintenance of fire alarm and smoke detection systems, fire evacuation drills, evacuation plans, a procedure to report job-related injuries, and provisions for testing and maintenance of equipment to maintain essential lighting, power and communications contained in its Proposal. All such procedures will comply with National Fire Protection Association (NFPA) life safety codes and Department Policies 112.03, 112.04, 112.05, and 112.09.
- 3) The Contractor shall develop and submit to the State one (1) hard copy and one electronic version (in Word if possible) of plans for the search and apprehension of any escaped Inmate, on or before June 11, 2013. Said plans shall address the Contractor searching for any escapee off the grounds of the Facility and coordination with local and State authorities. Contractor shall implement said plans regarding any search off the grounds of the Facility only if so requested by the Commissioner.
- 4) During the term of the Contract, the Contractor shall develop and submit to the State in writing any other emergency and control plans as may be requested in writing by the Department within the time period set out in said request.
- 5) All plans under this Section must be submitted to the State and approved by the State in writing. Contractor agrees to make any revisions, deletions or additions requested by the Commissioner or his designee. Upon written approval by the State, Contractor shall begin immediate implementation of the plans or in the case of contingency plans, certify that Contractor has the ability and shall implement the plan if the contingency occurs. Said plans may not be revised, amended, altered, or supplemented without prior written consent of the State.
- 6) All plans must be in conformance with applicable Tennessee Occupational Safety & Health Administration/National Fire Protection Association TOSHA/NFPA and Life safety codes.

g. Medical and Mental Health Services.

- 1) The Contractor shall provide all physical health services, mental health services and dental services as specified in this Section and in the Standards. The



Contractor shall utilize the Department's health services medical records forms and mental health service forms, as said forms may be revised or supplemented during the term of this Contract.

All medical services provided must be deemed medically necessary and must be approved through the TDOC Utilization Management process.

- a. Physician Coverage. The Contractor shall provide on-site physician coverage as specified in the approved institutional staffing plans and provide supervision of mid-level providers and consultation to nursing staff. Physician coverage shall include primary care services for inmates in mental health units. The Contractor shall provide an on-call physician to ensure 24-hour, seven days per week, emergency coverage with telephone response being required within 30 minutes of a notification call from each facility. The institutional physician is responsible and is physician of record for all inmates assigned to that institution and retains that responsibility until the inmate care is officially transferred to another licensed clinician. A physician shall determine whether his/her presence is required, give verbal orders and a treatment plan to nursing staff. Physician assistants/Nurse practitioners will provide on-site treatments for medical problems or injuries requiring sutures and minor surgical procedures as required on a 24-hour basis. On-site procedures, such as suturing, must be performed within 6 hours.
 - b. Nursing Coverage. The Contractor shall provide on-site 24-hours per day/ seven days/ week (24/7) nursing coverage as specified in the approved institutional manual.
 - c. Nursing Protocols. The Contractor is required to submit nursing protocols to the State for written approval within the first 30 days of the contract start date and annually thereafter. Such nursing protocols shall be applicable for all nursing staff including state employees and contractors. Any changes to said protocols shall require written approval by the State.
 - d. Medication Administration. In accordance with the Contractor's staffing responsibilities, the Contractor's nurses shall administer all controlled, high abuse potential drugs and psychotropic medications to inmates.
 - e. Contractor will comply with TDOC policy 113.70, Management of Pharmaceuticals, which requires accountability of controlled substances consisting of medication reconciliation at the change of each shift with signature of outgoing and incoming clinical staff.
 - f. Prosthetics and Durable Medical Equipment. The Contractor shall be responsible for all prosthetics and durable medical equipment ordered by its physicians and specialists, including braces, special shoes, glasses, hearing aids, orthopedic devices, etc. Health care prosthetic devices and durable medical equipment shall be provided for inmates when deemed necessary by the attending health care provider to correct, assist, or improve a significant body impairment or debilitating condition, in accordance with TDOC policy.
 - g. Mid-level Supervision. The contractor's physician staff shall supervise all mid-level providers in accordance with the Tennessee Health Related Boards Rules and Regulations.
- 2) At a minimum, the institution will operate as a Mental Health Level III and V facility as defined in Policy 113.87, these services must meet the Standards, and will be monitored pursuant to Section A.4.
 - 3) The Contractor shall ensure that all physical, mental, and dental health care is provided by appropriately licensed and/or qualified health care professionals.



Candidates for the Medical Director, Physicians, and Nurse Practitioners positions shall be forwarded for the review of the TDOC Medical Director.

- 4) The physical, mental, and dental health services delivery shall include but not be limited to the following:
 - (a) 24 hour-a-day, 7 day-a-week emergency physical and mental health care;
 - (b) initial health screening;
 - (c) health appraisal examination;
 - (d) daily triaging of complaints;
 - (e) daily sick call per the Standards;
 - (f) infirmary operation with at least supervision by an RN twenty-four hours per day, seven days per week;
 - (g) use of the Department health and programmatic records;
 - (h) specialty care and/or mental health programs and services for, but not limited to, Inmates with chronic diseases, terminal illnesses or requiring convalescent care;
 - (i) psychology services (routine), psychiatry services (routine), sheltered living (ancillary), and substance abuse services;
 - (j) Specialty physician care; (The State may, in its sole discretion, allow the Contractor to use the health services at the Lois M. DeBerry Special Needs Facility (DSNF), provided, however, that the Contractor shall enter into an agreement for usage and payment for said services with the State's health services contractor.)
 - (k) ancillary services - radiology, laboratory, etc.;
 - (l) dental services;
 - (m) pharmaceutical services and supplies;
 - (n) optometry services (provided on site);
 - (o) health education;
 - (p) inpatient hospitalization services;
 - (q) outpatient services.
- 5) The Contractor shall be responsible for all medication costs.
 - (a) The Contractor shall submit to the State's medical director a monthly pharmaceutical utilization report denoting, but not limited to, the following: the prescriber, inmate number, type of medication, and associated cost.
 - (b) The Contractor shall be responsible for securing the services of a pharmaceutical company that provides a delivery system that assures that medications are properly stored, packaged, and administered and provides for accountability of controlled substances.
 - (c) The pharmaceutical company of choice shall possess the capability of producing drug information forms to be distributed on site by the prescribing psychiatrist or certified nurse specialist (CNS). The drug information form shall be drug specific and include a patient signature line and date.
 - (d) The Contractor shall have in place a non-formulary request process. The Contractor shall provide the State with a copy of the Contractor's formulary as requested.



Medications will be ordered in accordance with the Drug Formulary approved by the TDOC Medical Director and in accordance with TDOC policies. The vendors State Wide Medical Director will participate on the State wide Pharmacy and Therapeutics Committee and will communicate findings of the committee to contracted providers.

The contractor shall follow TDOC Clinical Guidelines for chronic disease management, nursing protocols, psychiatric disorders, vaccinations, and immunizations. Where applicable, medications specified in these guidelines shall be provided as formulary medications.

The contractor shall assist with the Quarterly TDOC pharmacy and Therapeutic Committee meetings in accordance to TDOC policy. The contractor's clinical pharmacologist should participate in the committee meetings and monitor pharmaceuticals outcome measures. The clinical pharmacologist is responsible for providing the requested statistical reports in preparation with the meetings.

The contractor shall develop with the State a medication error review process to include electronic-tracing, reporting and trending of the dispensing and administration errors. A monthly electronic report shall be provided to the state detailing the month-to-date and year-to-date medication errors by facility.

- 6) The Contractor shall furnish all durable medical equipment and prosthetics including but not limited to eyeglasses, hearing aids, and dentures.
- 7) Quality Improvement. The Contractor shall comply with the State's quality improvement initiatives in accordance with TDOC policy 113.09.
 - a. Committees. The Contractor shall attend all committee meeting as indicated below
 - (1) State Continuous Quality Improvement (CQI) Committee. The TDOC Statewide Director of Nursing and the TDOC Medical Director shall be responsible for co-chairing the State Continuous Quality Improvement (CQI) Committee. Statewide quality improvement meetings are to be held quarterly or more frequently if necessary. At a minimum the contractor's Statewide Administrator, Statewide Medical Director, Statewide Infectious Disease Management Coordinator, and Statewide CQI Coordinator shall attend this meeting.
 - (2) Infectious Disease Committee. The Contractor shall assist with maintaining an Infectious Disease Committee consisting of the TDOC Medical Director, Statewide Director of Nursing, Statewide Infectious Disease Management Coordinator, the Contractor's Statewide Medical Director, and others as designated. The purpose of this committee is to establish an effective infectious disease management program which will meet the needs of inmates with HIV/AIDS, TB, MRSA, Hepatitis, and other infectious diseases. The committee will also be responsible for establishing educational and training programs which are designed to enhance the knowledge of inmates and staff and thus prevent the spread of infectious diseases. These programs are to be consistent with acceptable medical standards and the State's policy for communicable and infectious disease.
 - (3) Pharmacy & Therapeutics Committee (P&T). The contractor will work in cooperation the TDOC Medical Director to coordinate a statewide P&T Committee. The TDOC Medical Director will chair this committee which will meet quarterly or more often if necessary. The purpose of the Committee is: the review of the formulary and any recommended additions or deletion as recommended by the Contractor or TDOC. In addition any information related to specific medications such as a change in indications, drug-drug interactions, or warnings will be discussed. The contractor will identify a clinical pharmacologist who will



attend meetings and be responsible for discussing reports related to inmates on prescriptions, listing the most costly medications, as well as comparisons to other states based on other contracts of the vendor or research on medication costs for other DOC's.

- (4) Peer Review Committee. The TDOC Medical Director will Chair the Physician Peer Review Committee for the purpose of reviewing the credentials and clinical performance of Physicians (to include Psychiatrists), Dentists and at the discretion of the Committee, Physician Assistants and Advance Practice Nurses. The contractor's membership on the Committee will consist of the Contract Medical Director and the Contractor's Chief Dental Officer. This Committee will meet bimonthly or more often if a situation may arise that indicates a need to meet. A meeting maybe requested through the Chair by any member.
- (5) Peer Review. Annually, the work of all physicians and dentists shall be reviewed jointly by the contractor and appropriate TDOC Medical Director. In an effort to assure clinical performance enhancement, the Contractor shall have a peer review program that is approved, in writing, by the TDOC Medical Director within sixty (60) days of contract execution and annually thereafter. The program must either meet or exceed the State's policy and CQI Charter for peer review. The State Medical Director shall be notified of all peer review actions and the results of the peer review process shall be shared with the State's Peer Review Chairperson. The State shall review the peer review reports and approve the Contractor's plan of corrective action for peer review deficiencies.
- (6) Morbidity and Mortality Committee: The TDOC Medical Director shall be responsible for chairing the State Morbidity and Mortality Review Committee. Statewide Morbidity and Mortality Committee meetings are to be held monthly or more frequently if necessary. At a minimum the contractor's Statewide Administrator, Statewide Medical Director, and attending physician shall attend this meeting.

- b. Reports. The Contractor shall be responsible for preparing minutes of all committee meetings as designated by the State. The Contractor shall also be responsible for ensuring that all necessary data and reports are completed and reported to the State within the designated timeframes in an effort to identify areas of opportunity for improvement in health care operations.

In accordance with the TDOC's policy, the Contractor shall submit a monthly CQI report to the TDOC CQI coordinator in a written or electronic form acceptable to the State, by the fifteenth (15th) day of each month.

At least annually, the Contractor shall provide the institutions with documentation that peer review has been completed for each physician, dentist and midlevel provider on staff at that institution

- 8) The Contractor shall be responsible for security services for inpatient care during the confinement period for which the Contractor is financially responsible, other than at a Departmental facility. Contractor shall provide security at an off-site medical facility after the Department assumes responsibility, if requested to do so by the Department. In such instances, the State shall reimburse the Contractor for the actual cost of providing such security services.

For the purpose of utilization management, the Contractor shall notify in writing the State's medical services contractor of all hospital admissions within 6 hours of the inpatient admission to the TDOC medical contractor, TDOC medical director and reported to the TDOC Clinical Ombudsman as a sentinel event. Failure to report will result in the contractor barring financial responsibility for the total cost of the hospitalization.

- 9) Mental Health. The Contractor shall provide routine and ancillary services as defined per Policy 113.80. Per policy services are defined as "Interventions



which provide for the detection, diagnosis, treatment and referral of inmates/patients with mental health problems and the provision of a supportive environment when deemed clinically necessary. All programming curriculum shall be annually approved in written form by the institutional psychologist. The Contractor shall develop and have in place program outcome measures that shall be reviewed by the State's Director of Behavioral Health Services and/or her designee. The State reserves the right to modify the curriculum and recommend reasonable program delivery change if it is determined that participants are not benefiting.

- 10) Sex Offender. The State shall, when applicable, provide specialized training for sexual offender treatment programs. The Contractor shall follow the program philosophy and design standards as presented by the State.
- 11) Substance Abuse. The Contractor shall provide substance abuse treatment services that emphasize an evidence-based program curriculum in a therapeutic community setting. All treatment services shall adhere to TDOC policy 513.07 (Substance Abuse Programming and Services Delivery). All program curriculum must be approved by TDOC before use.
- 12) Notwithstanding any provision contained herein to the contrary, the Contractor shall be responsible for the cost of providing all health, medical, mental health, and dental services, including but not limited to inpatient hospitalization, any surgery and specialty services, medications, specialty clinics, medically related transportation and the costs associated with the provision of services described in this section unless specifically excluded or limited below under Exclusions And Limitations.
- 13) Exclusions and Limitations.
 - (a) If the inmate is hospitalized, the Contractor shall not be responsible for Inpatient-Hospital Costs which exceed FOUR THOUSAND DOLLARS (\$4,000.00) per Inmate per admission. The Department's Medical Contractor shall be responsible for utilization management of all hospital cases. Accordingly, once the Inmate has been determined medically stable, the Department's Medical Contractor shall decide if a hospital transfer is appropriate to manage the remainder of the hospital admission. In accordance with the Standards, the Contractor may request that an Inmate be either temporarily or permanently transferred to DeBerry Special Needs Facility (DSNF). Upon written approval by the DSNF Medical Director, the Inmate will be transferred to DSNF for evaluation and/or treatment. If an Inmate is housed and treated at DSNF, the Department may assume financial responsibility for expenses incurred within its facility. Provided, however, notwithstanding any provision contained herein to the contrary, any Inmate medical expenses resulting from the negligence or willful wrongdoing of the Contractor, its officers, agents or employees, shall be fully paid for by the Contractor.
 - (b) Final decision regarding financial responsibility rests with the TDOC Commissioner.

h. Food Service.

- 1) Contractor will provide food service for the Inmates and volunteers in accordance with the Standards, including but not limited to the provision of special diets and three (3) meals for each Inmate served at regular times during each twenty-four (24) hour period with no more than fourteen (14) hours between the evening meal and breakfast.
- 2) The Contractor shall not be required to follow the Department's master menu, but the food service area must comply with State health regulations and the Standards. At a minimum the amount of daily calories must conform with the recommended dietary allowances published by the National Academy of



Sciences. Menus shall be approved by TDOC dietician annually. Menus and dietary allowances shall be filed with the Contract Management Unit.

- 3) The Contractor is strongly encouraged to purchase food products from Tennessee's Comprehensive Food Service Program production center. The Contractor is strongly encouraged to purchase milk and other beverage products offered by TRICOR.

i. Laundry, Inmate Clothing and Hygiene.

- 1) Contractor will provide complete Inmate laundry services, Inmate clothing and bed linen (including pillows, pillow cases, sheets, blankets), and towels in accordance with the Standards.
- 2) Contractor shall implement the procedures described in the Proposal to ensure the issue of clean, usable bed linen, towels, shoes and clothing to all Inmates.
- 3) Contractor shall provide Indigent Inmates with soap, toothbrush, toothpaste, comb, deodorant, and all other necessary hygiene supplies.
- 4) Pursuant to *Tennessee Code Annotated* § 41-21-234(a) all Inmates shall be clothed in the TDOC uniforms (shirts, pants and jackets) manufactured by TRICOR and the Contractor shall be responsible for providing the clothing. This is to be provided for in the per diem rate which the Contractor charges TDOC.
- 5) Inmates transferred from SCCF to another institution will be sent with the same amount of State uniform clothing required by policy. Receiving institutions who note insufficient clothing in the property of inmates received from SCCF will notify the TDOC Liaisons' office at SCCF of the shortage.

j. Recreation.

- 1) Consistent with the Standards, the Contractor shall provide facilities, equipment and supplies for indoor and outdoor recreational and leisure time programs for the Inmate population.
- 2) Contractor shall provide for a comprehensive recreational program supervised by a qualified person and shall set forth the number of hours of outdoor recreation available to each Inmate. On or before June 11, 2013, Contractor shall submit to the Department one (1) hard copy and one (1) electronic version (in Word if possible) of the written policy and procedure which shall provide the specifics of said program and shall be subject to the prior written approval of the State.

k. Transportation.

- 1) The Contractor will be responsible for the following Inmate transportation:
 - (a) All transportation between the Facility and the State's Turney Center Industrial Complex (TCIX) located in Only, Tennessee to connect with central transportation system vehicles, to include transportation of Inmates initially assigned to the Facility and other Inmates being transferred to and from the Facility for various reasons.
 - (b) All transportation within the Local Area; and
 - (c) Transportation outside the Local Area, as necessary, when the Department's central transportation is unavailable or time restricts inter-institutional transfer, including but not limited to administrative transfers initiated by the Warden and approved by the Commissioner's designee, and missed or late notification of court dates.
- 2) Contractor is responsible for all inmate transportation costs that are medical related.
- 3) The Contractor shall provide security in conformance with the Standards while transporting Inmates.



- 4) The Department will be responsible for all other inmate transportation via connection at Turney Center Industrial Complex for Department-mandated moves of prisoner groups for assignment purposes.

I. Inmate Commissary.

- 1) Contractor will provide a commissary for Inmates which shall supply only those non-consumable items approved by the Department in writing and such consumable items as the Contractor approves.
- 2) The Contractor may not have items in the Commissary that are prohibited by Departmental policy.
- 3) Commissary items shall be sold at a price determined by TDOC Policy 209.01 and subject to the prior written approval by the Commissioner or his designee. All profits derived from the Commissary operation shall be retained by Contractor. Contractor shall utilize the statewide Inmate Trust Fund system for all commissary transactions.

m. Mail. Contractor will provide pick up and delivery of Inmate mail in compliance with the Standards. Contractor will furnish first class postage to Indigent Inmates for the mailing of legal documents to courts or legal counsel and a reasonable amount of postage for other purposes as per TDOC policy 507.02. The Contractor shall follow the TDOC mail policy to include all special approved package programs.

n. Religious Services. Contractor will designate adequate staff, volunteers and space within the Facility for religious services and provide religious programs and/or religious services in compliance with the Departmental Policy.

o. Reentry and Counseling Services.

1. Contractor will designate space within the Facility to provide counseling, case management, and reentry services in compliance with Departmental policy. Counseling and reentry services shall include but not be limited to the following:
 - a. Administration of a risk-needs assessment according to TDOC policy.
 - b. Assistance with obtaining offender identification/driver's license, birth certificate, and other vital records.
 - c. Assistance with the development of a reentry plan for offenders expiring their sentences and/or transitioning to community supervision.
 - d. Career development planning.
2. Contractor shall provide adequate staff to provide counseling, case management, and reentry services and should include the following specialized counselor positions:
 - a. Chief Counselor
 - b. Reentry Specialist
 - c. Career Development Counselor

p. Inmate Grievance Procedure. Contractor will comply with Departmental policies and procedures regarding the Inmate grievance process and the Department's system for maintaining grievance-related records, as said policies and/or system may be revised during the term of this Contract.

q. Security.

- 1) Contractor shall provide security in accordance with, policy/policies, the Standards at all times in the Facility, and while Contractor is transporting Inmates and at all other times unless relieved of said obligation by the Commissioner in writing. All Contractor policies and procedures regarding security shall be provided to the State via one (1) hard copy and one (1) electronic version (in Word if possible) on or before June 11, 2013. Said policies and procedures shall



be in accordance with the Standards and subject to written approval by the State prior to implementation. Contractor shall comply with said policies and procedures during the term of this Contract. All Inmate program activities in accordance with the Standards shall take place within the Facility. No Inmate shall leave the Facility except under security escort unless provided for by Department policy.

- 2) At a minimum, the Contractor shall provide security, perimeter control, Facility control, control center function, post orders, security patrols, security inspections, counting procedures, key control, procedure for search and control of contraband, tool control, escape plan detection, appropriate use of security equipment, use of restraints, use of firearms and chemical agents, tactical unit procedure, inspections, housing unit assignment plans and internal and external movement control procedures and periodic shakedown. Security procedures will be in compliance with Departmental policy when applicable.
- r. Visitation. Contractor shall designate physical space and provide appropriate security and supervision for indoor and outdoor visitation in accordance with applicable Standards, no less frequently than at comparable Department facilities. Contractor shall furnish State with a written attorney visitation policy via one (1) hard copy and one (1) electronic version (in Word if possible) no later than June 11, 2013.
- s. Access to Courts. Contractor shall provide Inmates with constitutionally required access to the courts as required by the Standards.
- t. Inmate Discipline.
- 1) The Contractor shall implement Department Inmate disciplinary rules and procedures as they may be amended by the Department.
 - 2) All disciplinary processes and board activities must strictly adhere to Department Policies 502.01, 502.02, 502.04, and 502.05.
 - 3) Contractor agrees that no Inmate will be disciplined except in accordance with this Section and the Standards.
 - 4) The Contractor shall use the present or any future system established by the Department for recording disciplinary information.
- u. Use of Force.
- 1) The Contractor shall comply with Departmental Policies on the use of force. Any internal policies and procedures and revisions thereto shall be in accordance with the Standards and subject to written approval by the State.
 - 2) Notwithstanding any provision contained herein to the contrary, no use of force shall be allowed by Contractor except as in accordance with the Standards.
 - 3) Contractor's employees shall be allowed to use force only
 - (a) While on the grounds of the Facility;
 - (b) While transporting Inmates;
 - (c) During periods of community hospitalization;
 - (d) During court proceedings;
 - (e) While pursuing escapees from the Facility if the Commissioner requests said pursuit; and
 - (f) While supervising Inmates away from the Facility and then only in accordance with the policies and procedures described in (a) and (b) above.
 - 4) Contractor's employees shall be authorized to use such non-deadly force as the circumstances require only in the following situations:



- (a) To prevent the commission of a felony or misdemeanor, including escape;
 - (b) To defend themselves or others against physical assault;
 - (c) To prevent serious damage to property;
 - (d) To enforce institutional regulations and orders; and
 - (e) To prevent or quell a riot or disturbance.
- 5) Contractor's employees shall be authorized and trained to use deadly force in accordance with TDOC Policy 506.08 and the Standards. The Contractor's employees authorized to use firearms must at a minimum meet the qualifications set forth in T.C.A. 62-35-117. Deadly force may be used only as a last resort and then may be used only to prevent escape, to prevent the loss of life or serious bodily harm, or to quell a rebellion, riot, or disturbance in which loss of life or serious injury to an individual is imminent. Only those employees who are appropriately trained, and, if applicable, authorized by law shall be authorized to carry and use firearms.
- v. Sentence Reduction Credits.
- 1) Sentence credits shall be handled in accordance with TDOC Policy 505.01.
 - 2) The decision on award or forfeiture of sentence credits remains solely with the Department.
- w. Sentence Computation. Contractor shall provide the State with essential data and information relating to sentence computation. All sentence computations, including calculation of Inmate release and parole dates, shall be done by the Department and copies furnished to Contractor and Inmates. All other record keeping functions (e.g. posting of disciplinary reports, filing, updating Inmate assignments, custody levels, etc.) are the responsibility of the Contractor.
- x. Records and Reports.
- 1) Contractor shall provide for comprehensive operations and Inmate record and reporting systems for the Facility in compliance with the Standards and Department policy including the automated Inmate records and reporting system operated by the Department which shall include but not be limited to the following:
 - (a) Inmate institutional records on each Inmate including, but not limited to, personal data, personal inventory receipts, disciplinary action reports, incident reports, release information, classification and counseling records, dental, psychiatric and medical records.
 - (b) documentation regarding complaints against Contractor's staff, the number and nature of violent or other disruptive incidents among Inmates or against staff, the number and nature of disciplinary actions against staff, the rate at which Inmates complete programs successfully, the number of Inmates productively active and the level of production;
 - (c) identification of all Inmates at the Facility and their actual assigned physical location within the Facility;
 - (d) identification of Facility staff and other authorized persons who have direct access to Inmate records; and
 - (e) provision of all reports requested by the State in writing for monitoring or evaluation of the Contract or any court-ordered compliance.The system shall adhere to the Standards governing confidentiality.
 - 2) The Contractor shall maintain permanent logs in addition to shift reports that record routine and emergency situations. Each shift shall maintain records of



pertinent information regarding individual Inmates and groups of Inmates. These records shall be compiled daily and reviewed by appropriate supervisory staff.

- 3) All computer equipment and communication lines necessary to interface with the Department's Tennessee Offender Management Information System (TOMIS) will be provided by the Department at no cost to the Contractor.
- 4) Contractor will be required to incorporate into its operation all new systems developed to report and track Inmate record information designated by the Commissioner.
- 5) Upon request, all records, reports and documents will be made available immediately to the Contract Liaison for review. At the conclusion of the Contract, all records shall be turned over to the Department.
- 6) The Contractor shall prepare and submit to the Contract Liaison such reports as are required by the State. Unless otherwise notified in writing by the Contract Liaison, these reports include the following which must be submitted on a monthly basis:
 - (a) Unusual Occurrence Reports
 - (b) Incident Reports
 - (c) Disciplinary Reports
 - (d) Medical Summaries
 - (e) Program Activity Summaries
 - (f) Inmate Grievances
 - (g) Facilities Maintenance and Repair and Related Operations
- 7) Contractor shall promptly notify the Contract Liaison whenever an Inmate leaves the Facility on court order.

y. Escapes.

- 1) The Contractor shall exercise its best efforts to prevent escapes from the Facility. If the frequency of escapes or attempted escapes shall be in excess of the frequency of escapes or attempted escapes from comparable State facilities without good cause or shall exhibit a disregard for the safety of the general public, the State may declare the Contractor in Breach pursuant to Section E.21. Said determinations shall be within the sole judgment of the Commissioner.
- 2) In the event of an escape resulting in whole or part from Contractor's failure to perform pursuant to the provisions of this Contract, the State may seek damages in a court of competent jurisdiction.

z. Post Orders.

- 1) Contractor shall develop and submit to the State, as soon as each is available, one (1) hard copy and one (1) electronic version (in Word if possible), but no later than June 11, 2013, Post Orders required by this Contract in compliance with the Standards.
- 2) Post Orders shall be by post and shift and shall include Post Orders for all security positions.

- aa. Policy Audit. The Contractor shall be inspected or audited at least annually in accordance with TDOC Policy 103.07 with respect to the implementation of at least those policies and procedures listed in Appendix C. The Contractor may, in addition and at its own expense, elect to have a policy audit conducted using personnel independent from the Contractor. The implementation will be in compliance with Tennessee Department of Correction Policies 103.07 and the Contractor will respond as required. In the event an audit reveals a Breach, as defined in E.21, by the Contractor, the State shall have available the remedies set out in Section E.21.



bb. Inmate Work.

- 1) The Contractor shall establish work programs in accordance with the Standards.
- 2) Inmate work is subject to the written approval of the Commissioner pursuant to T.C.A. 41-24-110 or as the same may be modified or amended in the future.
- 3) Any minimum restricted or higher custody Inmate working outside the secured perimeter must be under armed supervision.
The specific location of inmates working outside the secured perimeter must be documented on the gate pass.
- 4) The Contractor will be allowed to use Inmate labor for Facility operations and maintenance to the same extent Inmate labor is utilized in other State facilities pursuant to State policy and not for the benefit of the Contractor. The Contractor shall submit Inmate job descriptions for the State's written approval via TOMIS before assigning jobs to Inmates. Job assignments and re-assignments shall be made by the Contractor only after the job description has been approved in writing by the State. No Inmate shall ever be placed in a position of authority or control over another.
- 5) In emergency situations, the Department, in its sole discretion, may require the Contractor to furnish Inmates and security for outside work crews. Labor costs of security services associated therewith shall be reimbursed at the Contractor's actual cost, plus expenses and cost of operation.
- 6) Inmates shall not perform services or produce goods for use outside the Facility except upon written consent of the Commissioner.
- 7) The Department shall provide Inmates with sentence reduction credits. The Contractor shall be responsible for establishing and administering a compensation program at its expense, which will include Inmate pay in compliance with the Standards.

cc. TRICOR.

- 1) TRICOR currently has in place at the Facility an industry program that provides Inmate jobs. The Contractor and TRICOR may negotiate for the continuation or expansion of the TRICOR industry program at the Facility and/or other issues related to the industry program deemed appropriate by both parties. In the event the Contractor chooses not to use the Inmate jobs provided through TRICOR industry program, the Contractor shall be responsible for all costs associated with the transfer of the program to another facility, including but not limited to costs of development of a relocation plan, physical relocation of equipment and raw materials, installation of equipment at new site(s), lost production, lost sales, relocation of staff, recruitment of staff, retraining of work force, renovation of new site(s), and vendor contract costs. Security for such industry program(s) shall be provided by the Contractor. Industry supervision and management for TRICOR programs shall be provided by TRICOR.
- 2) The Contractor is strongly encouraged to purchase consumable items used in the performance of this contract from TRICOR when costs and quality of products are similar to products otherwise purchased by the Contractor in performance of this contract.

dd. Vocational and Academic Education. Contractor shall furnish vocational and academic education as set forth in the Standards and according to TDOC policy at its expense.

ee. Classification.

- 1) Contractor shall comply with Departmental policies regarding classification and reclassification services.
- 2) Contractor shall be required to maintain classification information which conforms to the Department's system.



- ff. Inmate Trust Fund. The Contractor will be responsible for maintaining an inmate trust fund following Department procedures including those relating to withdrawals for payment of court costs, privilege taxes, and criminal Injuries Compensation Fund requirements, as well as other applicable fees and deductions. All commissions from trust fund deposits will be paid to the State in conformance with the terms of the inmate trust fund automation contract.
- gg. Sanitation and Hygiene. The Contractor shall provide for sanitation and hygiene in accordance with the Standards.
- hh. Computer Software. The State shall retain proprietary rights to all State provided software utilized in connection with this Contract.
- ii. Inmate Drug Testing. The Contractor will conduct drug tests in accordance with Departmental Policy 506.21 and 513.07. The Contractor will be responsible for all costs. All positive drug screens shall be confirmed through a second methodology. The selection of inmates to be tested at random will be the responsibility of TDOC (State).
- jj. Resumption of Control.
 - 1) Contractor shall review and comment on the Department's plan for resumption of control within 15 days following its receipt by the Contractor. The plan will provide for the orderly transfer of control of the Facility from the Contractor to the Department, both temporarily, and under any conditions of termination. Contractor agrees to implement said plan upon written notice from Commissioner.
 - 2) Said plan will also provide for emergency assumption of control by the Department of whole or part of the Facility under conditions of natural disaster, in the event of riot or insurrection or other emergency circumstances wherein the Commissioner deems it necessary for the State to assume temporary or permanent control of the Facility. The Commissioner shall determine whether and to what extent an emergency circumstance exists in his sole discretion. Contractor shall be responsible for any expense the State may incur in the event the Department assumes emergency control of the Facility and the Contractor's payment shall be reduced commensurate with the reduction in services provided by Contractor during the emergency period. The State may withhold these amounts from any other amounts which may otherwise be due Contractor. The plan shall address Contractor's resumption of control after the circumstances causing the emergency assumption has ended. The plan will provide for the transfer of all records to the Department.
- kk. Accreditation. The Contractor shall maintain, at its expense, ACA re-accreditation of the Facility.
- ll. Inmate and Staff Identification. Contractor shall comply with the procedures in the Standards for Inmate and staff identification including but not limited to, uniforms, fingerprinting and photographing.
- mm. Inmate Personal Property Space. Contractor shall follow Department policy on Inmate personal property.
- nn. Library. A general Inmate library will be provided and operated by Contractor in accordance with The Standards.
- oo. Volunteer Services. Contractor shall implement the plans provided for volunteer service programs described in the Proposal in accordance with the Standards and TDOC policy. At a minimum, the Contractor shall provide for supervision and monitoring of the program and security background checks for volunteer applicants. Contractor shall establish and maintain a Local Volunteer Advisory Board.
- pp. Release Payments for Inmates. The Contractor shall follow Departmental policy regarding transportation for discharged Inmates and discharge payments to said Inmates. The Contractor shall make such payments at its own expense without reimbursement from the State.



- qq. Space for Board of Paroles/Institutional Parole Officer. Contractor shall provide a hearing room for the Board of Paroles two (2) days per month or as otherwise requested by the Board. The hearing room shall be large enough to comfortably accommodate three (3) Board members and fifteen (15) visitors. The Contractor shall provide local telephone service and furniture for the hearing room. The Contractor shall also provide furnished office space five (5) days each month, or as otherwise requested by the Board, for the institutional parole officer.
- rr. Rehabilitative Services. The Contractor shall provide rehabilitative services in accordance with the Standards. Such services shall include, but not be limited to counseling, pre-release and transitional services.

A.6. **STAFFING/EMPLOYEES**

- a. Independent Contractor. Contractor is associated with the State only for the purposes and to the extent set forth in this Contract. With respect to the performance of the management services set out herein, Contractor is and shall be an independent Contractor. The Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles or any other benefit afforded to the employees of the State as a result of this Contract. Contractor, its agents and employees shall not be considered agents or employees of the State.
- b. Executive Officer. The Facility and its programs shall be managed by a single executive officer employed by the Contractor (sometimes referred to herein as "Warden"). The executive officer shall be subject to the prior written approval of the State.
- c. Organization. The Facility shall be managed according to the organizational chart submitted with the Proposal. Any modification or alteration to the management plan shown on said chart shall require the prior written approval of the State.
- d. Personnel. Notwithstanding any provision contained herein to the contrary, Contractor shall provide adequate staff to fulfill its obligations under this Contract, which shall be at a minimum the number of staff required by the State. All vacancies shall be filled in forty-five (45) days; provided, however, that during the period of any vacancy, the services associated with said position shall be provided by Contractor unless the Commissioner has agreed in writing to the contrary with a reduction in the per diem rate as defined in Section C.12. The Contractor may request a thirty (30) day extension of the forty-five (45) day time limit to fill a vacancy. The Commissioner may grant this request on a one time basis for each applicable position. The Contractor must specify the position number of each extension request. The Contractor staff turnover ratio for security personnel shall not exceed fifty percent (50%) annually as of each June 30.
- e. Staffing Pattern/Security Post Assignment.
 - 1) Contractor shall provide sufficient staff to ensure the appropriate supervision of Inmates and operation and maintenance of the Facility at all times and at a minimum shall abide by and fulfill the staffing pattern submitted with its Proposal or required by the State.
 - 2) At a minimum, Contractor shall abide by and fulfill the security post assignment schedule in its Proposal which details by day and shift the security positions and hours of work. Said security post assignment schedule shall include designation of critical posts. The Contractor shall submit Post Orders and a security post assignment roster for the prior written approval of the State.
 - 3) If the State determines at any time that the staffing pattern and/or security post assignment schedule is inadequate, the Contractor agrees to place additional employees at the Facility and/or revise and implement the revisions to its staffing pattern and security post assignment. If Contractor is required to increase staff, it may request an adjustment in the per diem pursuant to Section C.12.
 - 4) Any revisions to the staffing pattern and/or security post assignment require the prior written approval of the State. Contractor shall submit monthly staffing reports on or before the fifth (5th) of each month describing for the preceding



month whether and to what extent Contractor has complied with the staffing pattern, security post assignment, and monthly post assignment. Staffing patterns are determined by security and program requirements and associated workloads. If changed circumstances modify those requirements or workloads the Contractor and/or the State will review those changed circumstances and a formal review will determine any changes in staffing requirements at the sole discretion of the State.

- f. Job Descriptions.
 - 1) Contractor shall abide by the written job descriptions for each position in the staffing pattern as provided in the Proposal, including but not limited to job title, responsibility and required minimum experience and education.
 - 2) Any revisions or modifications of the job descriptions require the prior written approval of the State.
- g. Personnel Records. A personnel record shall be maintained for each employee at the Facility which at a minimum shall contain the following: application, background investigation, dates of employment, training, performance evaluations, and disciplinary actions. The Contractor shall obtain a signed statement from each employee authorizing the State to have access to the personnel record.
- h. Staffing Reports. On or before the fifth (5th) day of each month, Contractor shall submit a report to the Liaison providing the following information:
 - 1) the number of employees hired, indicating position, the date of termination and the date the position was vacated;
 - 2) the number of employees whose employment had been terminated for whatever reason whether voluntarily or involuntary, including reason for termination and position;
 - 3) whether any position on the staffing pattern was vacant and for how many days.
- i. Reduction in Staff.
 - 1) Contractor shall immediately notify the Liaison if any positions on the staffing pattern are vacant.
 - 2) If a position described in subsection 1) remains vacant in excess of the time allowed in A.6.d., then the State shall have the option of exercising the remedies available in Section E.21.
- j. Background Checks.
 - 1) Prior to employment with Contractor, applicants shall be subjected to a thorough background investigation, including criminal, employment, and medical histories. The background investigation for applicants for correctional officer positions shall also include psychological history, and such applicants shall be required to be certified by a qualified mental health professional as being free from any disorder as described in the current edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association that would, in the professional judgment of the examiner, impair the subject's ability to perform any essential function of the job or would cause the applicant to pose a direct threat to safety. Employment histories must go back a minimum of five (5) years. All criminal background checks shall be completed according to TDOC Guidelines for contract employee background checks. The cost of the background checks is the responsibility of the Contractor.
 - 2) A Security Addendum required by Title 28, Code of Federal Regulations Part 20, is appended hereto as Appendix F and incorporated by reference herein.
- k. Hiring Preference. Department employees who have been laid off shall also be given a hiring preference in the staffing of the Facility according to T.C.A. 41-24-101, *et seq.*, and shall comply with T.C.A. Sections 41-24-112 and 41-24-113 in all respects, as those



sections may be modified or amended in the future. Background checks (reference A.6.j.) provided by TDOC may be used for any former TDOC correctional officers with less than one year's lapse of service.

I. State Assistance.

- 1) During the term of the Contract, Contractor shall send a representative(s) to participate in periodic meetings regarding Departmental activities and shall send a representative(s) to sessions in which relevant policy modifications are being discussed or presented.
- 2) Contractor shall receive written notice of the time, place and agenda of the meetings or sessions described in subsection 1) at the same time Department employees are provided notice.
- 3) Said meetings or sessions shall be held within the State, and Contractor shall bear any and all expense associated with its representative(s) being present.
4. The Department shall supply Contractor with technical assistance, consultation and informational support consistent with that provided other comparable institutions in accordance with the Standards provided, however, said support shall consist solely of advice and consultation.

m. Training. Contractor shall provide training programs for all employees in accordance with the Standards. All costs incurred for said orientation and training programs shall be borne by Contractor. The Contractor's employees shall receive at least the same number of hours of orientation, pre-service, and in-service training as required by ACA Standards.

The Liaison shall be permitted to review training curricula and other training-related records and to audit training classes at any time.

n. Drug Free Work Force. Contractor shall at all times maintain a drug free work force and shall implement the plan contained in its Proposal for maintenance of a drug free work force and the employee assistance program described in its Proposal.

o. Compliance with T.C.A. § 4-6-143. The Contractor shall comply with T.C.A. § 4-6-143 including but not limited to compensation for teachers.

B. CONTRACT PERIOD:

B.1. This Contract shall be effective for the period beginning **JULY 1, 2013**, and ending on **JUNE 30, 2016**. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

B.2. Term Extension. The State reserves the right to extend this Contract for an additional two-year period, provided that the State notifies the Contractor in writing of its intention to do so on or before March 1, 2016. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **ONE HUNDRED FORTY THREE MILLION ONE HUNDRED SIXTY EIGHT THOUSAND FOUR HUNDRED TEN DOLLARS (\$143,168,410.00)**. The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.



The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
 - a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| Service Description | Amount (per compensable increment) | | | | |
|--|---|---|---|--|---|
| | 07/01/2013 – 06/30/2014 | 07/01/2014 – 06/30/2015 | 07/01/2015 – 06/30/2016 | *07/01/2016 – 06/30/2017 | *07/01/2017 – 06/30/2018 |
| Incarceration dollar charge per inmate per day (per diem**) at the facility for the year indicated | \$45.69 / per inmate per day | \$46.70 / per inmate per day | \$47.73 / per inmate per day | \$48.78/ per inmate per day | \$49.85 / per inmate per day |

* Rate would apply if this contract is extended by amendment

** The Per Diem payment will be made only for Inmates actually incarcerated at the Facility, except Per Diem payment shall be made for any Inmate hospitalized at a non departmental facility during the period when the Contractor is responsible for said hospitalization expense. No Per Diem shall be paid for any Inmate out on court order. See definition of court orders at section A.2.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

TENNESSEE DEPARTMENT OF CORRECTION
 6TH FLOOR RACHEL JACKSON BUILDING
 320 6TH AVENUE NORTH
 NASHVILLE, TENNESSEE 37243-0465

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
 - (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: TENNESSEE DEPARTMENT OF CORRECTION, ACCOUNTS PAYABLE



- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name & title as applicable) of each service invoiced
- ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
- iv. Amount Due by Service
- v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.



- C.10. Expansion. In the event the State exercises its right to construct additional buildings at the Facility and/or to expand the capacity of existing buildings at the Facility, the parties will negotiate a Per Diem Rate for such additional Inmates, it being the intent of the parties that the State will pay only the marginal costs for such additional Inmates. In no event shall negotiated marginal costs for additional Inmates exceed the rates in the Contractor's original proposal.
- C.11. Billing Disputes. If the amount to be paid to Contractor is disputed by the State, the State, on or before the date the invoice is payable, shall advise the Contractor of the basis for the dispute and, in the manner provided above, pay the amount of such invoice which is not in dispute.
- C.12. Compensation Adjustment for Change of Services.
- a. The parties recognize that each has entered into this Contract based upon the Standards in effect as of the Effective Date of the Contract. Contractor agrees to be bound by any applicable Standard change and said change shall not affect the validity of this Contract. If a change occurs in an applicable Standard other than as provided in subsection b) herein, either party may notify the other in writing if it is believed said change shall affect the services delivered by the Contractor. The Commissioner shall make the final, binding decision regarding whether a change has occurred in an applicable Standard and whether said change affects the services rendered by the Contractor. Any adjustment in compensation due the Contractor shall be determined in accordance with subsection d).
 - b. If Contractor desires to make minor revisions to its Proposal which will not affect its ability to comply with the other Standards, the Contractor shall notify the Commissioner of said proposed revision in writing. Said minor revisions to the Proposal may occur only upon the prior written consent of the Commissioner. It shall be within the Commissioner's sole discretion whether or not to agree to said minor revision and his decision shall be binding. Any adjustment in compensation resulting from said minor revision shall be determined in accordance with subsection d). This provision is an exception to Section D.2.
 - c. In the event Contractor may receive payments or compensation of any nature for services it is obligated to perform under this Contract from any source, including but not limited to federal, state or local authority, or any third party, other than the compensation described in this Contract, Contractor shall receive prior written consent and direction from the State prior to receiving any such additional compensation. The State may withhold a comparable amount from any payments due the Contractor. In the event said additional compensation is used to provide enhanced or innovative services at the Facility as compared to the services provided by the Department at comparable facilities, Contractor must still receive prior written consent from the State prior to receiving said compensation before the Contractor may retain those funds. The Commissioner shall decide whether the funds will be used to provide enhanced or innovative services at the Facility.
 - d. Within thirty (30) days of the notices required in subsections a) through c) above, Contractor shall provide State with the proposed adjustment in compensation and appropriate documentation in support thereof. The Commissioner shall decide whether and to what extent an adjustment in Per Diem Rate is appropriate. In the event Commissioner determines that an adjustment to the Operating Per Diem Rate is appropriate, the rate may be adjusted only by an appropriate amendment to this Contract as described in Section D.2.
- C.13. Failure to Agree on Billing Dispute or for Additional or Reduced Services.
- a. In the event Contractor disagrees with the State's failure to pay a disputed amount under Section C.11. disagrees with the adjustment in compensation determined by the Commissioner under Section C.12 or disagrees with any other aspect or amount of payment made by the State then the Contractor shall submit a claim and the grounds for said disagreement in writing to the Commissioner within thirty (30) days of the date the



State either makes partial payment of the disputed bill or refuses disputed bill in its entirety. Failure of the Contractor to submit said claim and grounds to the Commissioner in writing within the time period described herein shall be an absolute waiver of said claim. The State shall be afforded a sixty (60) day period in which to review the claim and effect a cure or take reasonable steps to effect a cure, if it deems a cure appropriate.

- b. In the event the Contractor timely provides the notice described in subsection a), then Contractor may file a claim against the State before the appropriate forum in Tennessee with jurisdiction to hear said claim. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear said claim within one (1) year of the notice described in subsection a) shall operate as a waiver of said claim in its entirety. It is agreed by the parties that this provision establishes a Contractual period of limitations for any claim brought by the Contractor. Neither this Section nor any other provision of this Contract creates or expands jurisdiction of any court or commission over the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract at any time after the first year of operation without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least **ninety (90) days** written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to



this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the foregoing paragraph is violated or if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an Individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment **ONE**, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.



- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*.
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings,



representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Derrick D. Schofield, Commissioner
Department of Correction
6th Floor, Rachel Jackson Building
320 Sixth Avenue North
Nashville, Tennessee 37243-0465
Derrick.Schofield@tn.gov
Telephone # (615) 741-1000 EXT. 8139
FAX # (615) 532-8281

The Contractor:

Damon T. Hininger, President and Chief Executive Officer
Corrections Corporation of America
10 Burton Hills Boulevard
Nashville, Tennessee 37215
Email Address
Telephone # (615) 263-3000
FAX # (615) 263-3090

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.



- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. Unless otherwise required by the State, all insurance provided by the Contractor shall be in conformance with the General Specifications for Insurance detailed in Appendix D. Upon written request by the State, Contractor shall revise or supplement the insurance listed on Appendix D and may seek a compensation adjustment pursuant to Section C.12.
 - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.
- The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.
- It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.
- E.7. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed pursuant to this contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.8. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have



royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.9. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Commissioner of the Tennessee Department of Correction, for such decision and non-competitive procurement.

E.10. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.11. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
- b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
- d. any technical specifications provided to proposers during the procurement process to award this Contract;
- e. the Contractor's proposal seeking this Contract.



- E.12. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.13. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.14. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:



- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.17. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-32944-00006 (Attachment 6.2) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

- E.18. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to Five Million Dollars (\$5,000,000.00). The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at RFP Attachment 6.7 hereto), and the bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for:

- a. the Contract term and all extensions thereof; or
- b. the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of Five Million Dollars (\$5,000,000.00) and, thereafter, a new performance bond in the amount of Five Million Dollars (\$5,000,000.00) covering each subsequent calendar year of the contract period. In which case, the Contractor shall provide such performance bonds to the State no later than each December 10th preceding the calendar year period covered beginning on January 1st of each year.

Failure to provide to the State the performance bond(s) as required herein prior to the Contract start date and, as applicable, no later than December 10th preceding each calendar year period covered beginning on January 1st of each year, shall result in contract termination. The Contractor understands that the stated amount of the performance bond required hereunder shall not be reduced during the contract period for any reason.

- E.19. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such



action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.21. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
 - (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Appendix E and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to



assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) **Partial Default**— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.



- E.22. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.23. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.24. State Interest in Equipment—Uniform Commercial Code Security Agreement. The Contractor shall take legal title to all equipment and to all motor vehicles, hereinafter referred to as "equipment," purchased totally or in part with funds provided under this Contract, subject to the State's equitable interest therein, to the extent of its *pro rata* share, based upon the State's contribution to the purchase price. "Equipment" shall be defined as an article of nonexpendable, tangible, personal property having a useful life of more than one year and an acquisition cost which equals or exceeds \$5,000.00.

As authorized by the provisions of the terms of the Tennessee Uniform Commercial Code—Secured Transaction, found at Title 47, Chapter 9 of the **Tennessee Code Annotated**, and the provisions of the Tennessee Motor Vehicle Title and Registration Law, found at Title 55, Chapter 1 of the **Tennessee Code Annotated**, an intent of this Contract document and the parties hereto is to create and acknowledge a security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this Contract document. A further intent of this Contract document is to acknowledge and continue the security interest in favor of the State in the equipment or motor vehicles acquired by the Contractor pursuant to the provisions of this program's prior year Contracts between the State and the Contractor.

The Contractor hereto grants the State a security interest in said equipment. This agreement is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the equipment herein specified which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and the Contractor hereby grants the State a security interest in said equipment. The Contractor agrees that the State may file this Contract or a reproduction thereof, in any appropriate office, as a financing statement for any of the equipment herein specified. Any reproduction of this or any other security agreement or financing statement shall be sufficient as a financing statement. In addition, the Contractor agrees to execute and deliver to the State, upon the State's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproduction of this Contract in such form as the State may require to perfect a security interest with respect to said equipment. The Contractor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements the State may reasonably require. Without the prior written consent of the State, the Contractor shall not create or suffer to be created pursuant to the Uniform Commercial



Code any other security interest in said equipment, including replacements and additions thereto. Upon the Contractor's breach of any covenant or agreement contained in this Contract, including the covenants to pay when due all sums secured by this Contract, the State shall have the remedies of a secured party under the Uniform Commercial Code and, at the State's option, may also invoke the remedies herein provided.

The Contractor agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report which must include, at a minimum, the following:

- a. Description of the equipment;
- b. Manufacturer's serial number or other identification number, when applicable;
- c. Consecutive inventory equipment tag identification;
- d. Acquisition date, cost, and check number;
- e. Percentage of state funds applied to the purchase;
- f. Location within the Contractor's operations where the equipment is used;
- g. Condition of the property or disposition date if Contractor no longer has possession;
- h. Depreciation method, if applicable; and
- i. Monthly depreciation amount, if applicable.

The Contractor shall tag equipment with an identification number which is cross referenced to the equipment item on the inventory control report. The Contractor shall inventory equipment annually. The Contractor must compare the results of the inventory with the inventory control report and investigate any differences. The Contractor must then adjust the inventory control report to reflect the results of the physical inventory and subsequent investigation.

The Contractor shall notify the State, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the *pro rata* amount of the residual value at the time of loss based upon the State's original contribution to the purchase price.

The Contractor shall submit its inventory control report of all equipment purchased with the final invoice submitted under this Contract. This inventory control report shall contain, at a minimum, the requirements specified above for inventory control.

Upon termination of the Contract, where a further contractual relationship is not entered into, or at another time during the term of the Contract, the Contractor shall request written approval from the State for any proposed disposition of equipment purchased pursuant to this Contract. All equipment shall be disposed of in such a manner as parties may agree from among alternatives approved by Tennessee Department of General Services and in accordance with any applicable federal laws or regulations.

E.25. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

E.26. Indemnification Regarding Policies.

- a. The indemnification of Section E.20. includes but is not limited to, any claims or losses arising from the promulgation or implementation of the Contractor's policies and procedures whether or not said policies and procedures have been approved by the State.
- b. The indemnification of Section E.20., includes, but is not limited to any claims of the Contractor's wrongdoing in implementing the Departmental policies listed in Appendix C.



- c. With regard to any claim that the Departmental policies listed on Appendix C are unlawful (i.e., the issue is that the policies and procedures are lawful on their face), if the State is named as a party, the Attorney General, his designee or an independent Contractor hired for that purpose will represent the State. The Contractor will be responsible for its own defense. The State will be liable for any judgment against it and the Contractor will be liable for any judgment against it. However, this subsection shall not apply if the claim in any way arises from Contractor's failure to appropriately implement policy.
 - d. The Contractor agrees to send copies of any and all documents which have been filed in any lawsuit naming the Contractor and/or its employees in which concern the operation of the Facility under this Contract to the State.
 - e. Contractor shall not waive, release, or otherwise forfeit any possible defense the State may have regarding claims arising from or made in connection with the operation of the Facility by Contractor without the consent of the State. Contractor shall preserve all such available defenses and cooperate with the State to make such defenses available to the maximum extent allowed by law.
- E.27. General Provisions. Unless otherwise required by the State, all insurance provided by the Contractor shall be in conformance with the General Specifications for Insurance detailed in Appendix D. Upon written request by the State, Contractor shall revise or supplement the insurance listed on Appendix D and may seek a compensation adjustment pursuant to Section C.11.
- E.28. Fire and Property Insurance. The State shall maintain all risk property insurance on the State's buildings which comprise the Facility. The Contractor shall obtain and keep in force insurance on all property to be located at the Facility.
- E.29. Defense/Immunity. Notwithstanding any provision contained herein to the contrary, the State does not waive any immunity defenses which may exist by operation of law, including, but not limited to, limitations on the amount of damages which may be awarded or paid.
- E.30. Financial Strength. The Contractor shall, prior to signing this Contract, file with the State audited financial statements showing a net stockholders equity, calculated according to generally accepted accounting principles consistently applied, of not less than five million dollars (\$5,000,000). Thereafter, the Contractor shall file annually, on or before April 1 of each year, the previous fiscal year end audited financial statements and if the net stockholders equity of the company shall ever be less than five million dollars (\$5,000,000), the State may declare the Contractor in default unless the Contractor provides alternative evidence of equivalent financial worth within thirty (30) days of demand by the State.
- E.31. Exception to General Indemnification. The indemnification provisions of this Section shall not apply to injury, death or damage to property arising solely out of the negligence or misconduct of the State, its officers, agents, servants or independent Contractors (other than Contractor) who are directly responsible to the State.
- E.32. Notwithstanding any other provision of this Contract to the contrary, nothing contained herein shall be interpreted to authorize, allow or imply authority of the Contractor to do the following:
- a. develop or implement procedures for calculating Inmate release and parole eligibility dates;
 - b. develop and implement procedures for calculating and awarding sentence credits;
 - c. approve Inmates for furlough and work release;
 - d. approve the type of work an Inmate may perform, and the wages or sentence credits which may be given to Inmates engaged in such work; and
 - e. grant, deny or revoke sentence credits; place an Inmate under less restrictive custody or more restrictive custody; or take any disciplinary actions; provided, however, that this Section shall not prevent Contractor from making recommendations to the State with respect to any of the above in conformance with Departmental policy. The



Commissioner shall determine whether any action or proposed action violates the provisions of this Section.

E.33. Contractor's Representations and Warranties.

- a. **Representations of Contractor.** Contractor represents and warrants to and for the benefit of State, with the intent that State will rely thereon for purposes of entering into this Contract, as follows:
- b. The Contractor's Proposal, incorporated herein by reference, contains no material misrepresentations by the Contractor. This Contract contains no factual changes from the Proposal submitted by the Contractor.
- c. **Organization and Qualification.** Contractor has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Maryland with power and authority to own its properties and conduct its business as presently conducted. Contractor is duly qualified to do business as a foreign corporation in good standing in Tennessee and shall so remain during the term of this Contract.
- d. **Authorization.** This Contract has been duly authorized, executed, and delivered by Contractor and, assuming due execution by the appropriate State officials as indicated on the signature page of this Contract and delivery by State, constitutes a legal, valid, and binding agreement enforceable against Contractor in accordance with its terms.
- e. **No Violation of Contract, Articles of Incorporation or Bylaws.** The consummation of the transactions contemplated by this Contract and its fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, Contract, governmental license or permit, or other agreement or instrument to which Contractor is a party or by which its properties are bound, or any order, rule, or regulation of any court or any regulatory body, administrative agency, or their governmental body applicable to Contractor or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect Contractor's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of Contractor.
- f. **No Defaults under Agreements.** Contractor is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by Contractor, under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, Contract, governmental license or permit, or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect Contractor's ability to perform its obligations under this Contract.
- g. **Compliance with Laws.** Contractor, its officers and directors purporting to act on behalf of Contractor or such officers and directors have been conducting business in compliance with all applicable laws, rules, and regulations of the jurisdictions in which Contractor is conducting business including all safety laws and laws with respect to worker's compensation, discrimination in hiring, promotion or pay of employees. Contractor warrants that Contractor, and its current and former officers and directors have no convictions regarding criminal activity;
 1. no pending charges regarding criminal activity, or
 2. to their knowledge, no investigations on-going by any state, local or federal authorities regarding any possible criminal activity, except as provided in writing.
- h. **No Litigation.** There is not now pending or, to the knowledge of Contractor, threatened, any action, suit, or proceeding to which Contractor is or may be a party, before or by any court or governmental agency or body, which might result in any material adverse change in Contractor's ability to perform its obligations under this Contract, or any such action, suit, or proceeding related to environmental or civil rights matters; and no labor



disturbance by the employees of Contractor exists or is imminent which might materially and adversely affect Contractor's ability to perform its obligations under this Contract.

- i. Financial Statements. Contractor has delivered to State copies of financial statements provided in its Proposal. Contractor represents such financial statements fairly present the financial position of Contractor at the dates shown and the results of the operations for the periods covered, and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as discussed in the notes to the financial statements.
 - j. No Adverse Change. Since the date of Contractor's financial statements described in Section E.30., provided to State, there has not been any material adverse change in Contractor's business or condition, nor has there been any change in the assets or liabilities or financial condition of Contractor from that reflected in such financial statements which is material to Contractor's ability to perform its obligations under this Contract.
 - k. Disclosure. There is no material fact which materially and adversely affects or in the future will (so far as Contractor can now reasonably foresee) materially and adversely affect Contractor's ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to State by Contractor prior to the date hereof.
 - l. Opinion of Contractor's Counsel. Contractor shall furnish to State an opinion of counsel in connection with this Contract dated as of the date of the Contract. Such opinion shall address the Contractor's compliance with applicable law, affirm its authority to enter into this Contract, indicate that the Contractor is not currently in litigation or have notice of litigation that could cause the Contractor not to perform the terms of this Contract, affirm the enforceability of this Contract in accordance with its terms, and affirm that the financial statements provided by the Contractor were prepared in accordance with generally accepted accounting principles.
- E.34. Binding Nature. This Contract shall not be binding until the State has received a Payment and Performance Bond as required by the RFP and evidence of insurance required by the RFP and it is approved as provided in Section D.1.
- E.35. Terminology and Definitions. All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and the plural shall include the singular.
- E.36. Change in Owners. Contractor shall notify the State in writing of any change of ownership of the Contractor, through sale or merger, which occurs during the term of the Contract. Contractor shall inform the State fully of the financial ability of the new ownership to fully comply with the terms and conditions of the Contract. The State reserves the right to terminate the Contract in the event of a change in ownership without penalty to the State or to consider the failure to comply with the notification or financial reporting provisions as a Breach by the Contractor.
- E.37. Approval of Bond Counsel.
- a. Because construction of the Facility was funded through the issuance of tax exempt, general obligations debt, the use and management of the Facility by the Contractor and any and all subcontractors in subject to and constrained by the Federal Tax laws and regulations governing tax exempt financing. Therefore, this Contract is subject to review by the State's bond counsel before approval.
 - b. In addition, any use of the Facility by Contractor and all subcontractors, including, but not limited to, the conduct of an industries program pursuant to Section A.5.bb of the Contract, which results in any payment to the State, either directly or indirectly, is subject to review by the State's bond counsel before approval.



- E.38. Release. Contractor, upon final payment of the amount due under this Contract, releases the State, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. Contractor agrees not to purport to bind the State to any obligation not expressly assumed herein by the State.
- E.39. Subcontracting and Assignment.
- a. The Contractor shall provide that all subcontractors are notified in writing prior to the execution of the subcontract that the Facility is being funded through the issuance of tax exempt, general obligation debt and that the use and management of the Facility by the Contractor and any and all subcontractors is therefore subject to and constrained by the federal tax laws and regulations governing tax exempted financing. The State may consult with its Bond Counsel to determine whether any assignment or subcontract complies with such laws and regulations.
 - b. The Contractor shall provide that all subcontracts may be assignable to the State at the State's sole discretion. Any subcontract shall also provide that the State shall not be responsible for any outstanding liability to the subcontractors incurred by the Contractor and that the State may terminate such subcontracts upon giving thirty days prior written notice with or without cause.
- Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- E.40. Research Projects. Contractor shall not publish or disseminate any findings based on data obtained from the operation of the Contract or engage in any research projects without the prior written consent of the Department.
- E.41. Sovereign Immunity. The sovereign immunity of the State shall not apply to the Contractor nor any subcontractor, agent, employee, or insurer of the Contractor. Neither the Contractor nor any subcontractor, agent, employee, or insurer of the Contractor may plead the defense of sovereign immunity in any action arising out of the performance of or failure to perform any responsibility or duty under this Contract.
- E.42. Waiver. No consent, waiver or excuse of any Breach of any of the terms or conditions of this Contract shall be held to be a consent, waiver, or excuse of any other or subsequent Breach; nor shall any such waiver or excuse be valid or binding unless the same shall be in writing and approved and executed by the party alleged to have granted the waiver as indicated on the signature page of the Contract.
- E.43. Third Party Beneficiary. Neither the Contractor nor the State intends to create rights for any third party by the Contract and no third party beneficiary rights are created hereby. Third parties shall mean all persons except the State and the Contractor, including but not limited to employees of Contractor, subcontractors of Contractor and Inmates located at the Facility.
- E.44. Laws. The Contractor shall comply with all applicable federal, state, and local constitutions, laws, and regulations, court decisions, Court Orders, and any applicable state and federal orders in the performance of the Contract including but not limited to the provisions of T.C.A. 41-24-101, et seq., which may be in effect during the term of this Contract.
- E.45. Attorney Fees. The Contractor agrees that in the event either party deems it necessary to take legal action to enforce any provision of the Contract and in the event the State prevails, the Contractor shall pay all expenses of such action, including but not limited to the State's attorney fees and costs of all stages of the litigation.
- E.46. Approvals. Any policies, procedures or other documents contained or referenced in this Contract subject to the State's approval under the terms this Contract shall remain subject to State prior written approval whenever they are revised, amended, replaced or supplemented.



- E.47. Fraud/Misrepresentation. If, in the course of any stage under the RFP, Proposal evaluation, Contract negotiation, Contract execution or term of the Contract, the Contractor commits fraud, misrepresentation or conspiracy to defraud the State, the State shall have the right to pursue any remedies described in Section E.21., and/or pursue any criminal sanctions allowed by law.
- E.48. Financial Termination. The State may terminate the Contract without penalty to the State in the event the Contractor:
- admits in writing its inability to pay its debts;
 - makes a general assignment for the benefit of creditors;
 - suffers a decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within 60 days;
 - suffers proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by Contractor, not to be dismissed or stayed within 60 days; or
 - suffers any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within 60 days after issue or levy.
- E.49. Set-Off. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the parties any amounts which are or shall become due and payable to the State by the Contractor. The State may withhold any amounts which may otherwise be due the Contractor without waiver of any other remedy or damages available to the State under this Contract at law or at equity.
- E.50. Construction. In the event of a dispute about the construction or interpretation of any provision of the Proposal, said Proposal shall be construed in favor of the State. The parties agree that should a dispute arise involving the construction or interpretation of the RFP or this Document, said documents shall not be construed or interpreted in favor of either party.
- E.51. Written Notices. The necessity of written notices herein shall be strictly construed.
- E.52. Implied Covenants or Agreements. The State shall be bound only by the express, written terms contained herein and shall not be bound by any implied covenants or agreements.
- E.53. Approvals. Contractor agrees to accept and implement any revisions, alterations or supplements suggested by the State to any document, plan, policy or procedure which requires State approval.
- E.54. Notices. Failure of the State to provide any notice to Contractor described in this Contract whether or not the State had knowledge of the appropriateness of said notice shall not relieve the Contractor of its obligation to perform in accordance with the Contract and shall not be a waiver or excuse of any failure to perform.
- E.55. No Contingent Fees. No person or entity shall be employed or retained or given anything of monetary value on a contingent fee basis to solicit or secure this Contract, except bona fide employees of Contractor (including proposed subcontractors) or bona fide established commercial or professional entities retained by Contractor for the purpose of securing business. For violation of this Section, in addition to the remedies available pursuant to Section E.21., the State shall have the right to deduct from any amount owed Contractor the amount of such commission, percentage, brokerage or contingent fee, and other benefit from the Contractor.
- E.56. Prison Rape Elimination Act (PREA): Contractor will comply with the Prison Rape Elimination Act of 2003, 42 U.S.C. 15601 et seq., [PREA] and with all applicable PREA Standards for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse in the performance of the Contract. Contractor acknowledges that, in addition to self-monitoring



requirements imposed by such laws and standards, the State will conduct announced or unannounced compliance monitoring to include on-site monitoring. Failure to comply with PREA and PREA Standards may result in termination of the contract.

IN WITNESS WHEREOF,

CORRECTIONS CORPORATION OF AMERICA:

Damon T. Hininger

DAMON T. HININGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER DATE

Damon T. Hininger, President + CEO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF CORRECTION:

D. D. Schofield

6-25-2013

DERRICK D. SCHOFIELD, COMMISSIONER

DATE

APPROVED:

DEPARTMENT OF GENERAL SERVICES:

Michael F. Perry

6/27/13

MIKE PERRY, CHIEF PROCUREMENT OFFICER

DATE

COMPTROLLER OF THE TREASURY:

Justin P. Wilson

6/27/13

JUSTIN P. WILSON, COMPTROLLER OF THE TREASURY

DATE

ATTORNEY GENERAL AND REPORTER:

Robert E. Cooper, Jr.

6-28-13

ROBERT E. COOPER, JR., ATTORNEY GENERAL AND REPORTER

DATE



ATTACHMENT ONE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|--|------------------------------------|
| SUBJECT CONTRACT NUMBER: | 32944-00006 |
| CONTRACTOR LEGAL ENTITY NAME: | CORRECTIONS CORPORATION OF AMERICA |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) | 621806755-01 |

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Damon T. Hinger, President + CEO

PRINTED NAME AND TITLE OF SIGNATORY

6-26-13

DATE OF ATTESTATION