

**SECOND AMENDED AND RESTATED INTERIM AGREEMENT
FOR CORRECTIONAL HEALTH CARE SERVICES
FOR FY 2012**

This Second Amended and Restated Interim Agreement for Correctional Health Care Services for FY 2012 ("Second Amended and Restated Interim Agreement for FY 2012") is made and entered into as of December 1, 2011 ("Effective Date") by and between THE UNIVERSITY OF TEXAS MEDICAL BRANCH ("UTMB") and TEXAS DEPARTMENT OF CRIMINAL JUSTICE ("TDCJ").

WHEREAS, the Correctional Managed Health Care Committee ("CMHCC") and UTMB were parties to that certain Agreement for Correctional Health Services FY 2010-2011 and Amendment #1 (collectively, "Prior Agreement") for the delivery of correctional health care services for the benefit of TDCJ executed in September 2009;

WHEREAS, CMHCC has assigned the Prior Agreement and its rights to contract with UTMB for the delivery of correctional health care services to TDCJ;

WHEREAS, TDCJ and UTMB have been attempting to negotiate an agreement for the provision of correctional health care services by UTMB to TDCJ for the FY 2012-2013 biennium since the expiration of the Prior Agreement;

WHEREAS, during the pendency of such negotiations, TDCJ and UTMB entered into an Interim Agreement for Correctional Health Care Services effective as of September 1, 2011 ("Interim Agreement") and an Amended and Restated Interim Agreement effective as of November 1, 2011 ("Amended and Restated Interim Agreement") to allow for the continued provision of correctional health care services by UTMB for the first quarter of FY 2012;

WHEREAS, TDCJ and UTMB have agreed to the terms of an agreement as described herein for the provision by UTMB of correctional health care services to TDCJ for the remainder of FY 2012, but TDCJ and UTMB have determined that the time required to develop an agreement for FY 2013 and/or a transition plan and agreement to limit or terminate the role of UTMB in the provision of correctional health care services on or before August 31, 2012 ("Transition Agreement") will continue beyond December 1, 2011; and

WHEREAS, TDCJ and UTMB desire to amend and restate the terms of the Amended and Restated Interim Agreement, including the expiration date, consistent with the applicable provisions of relevant legislation adopted by the 82nd Texas Legislature to include, but not limited to, Senate Bill 1, 82nd Legislature, 1st Called Session, Article 42 and House Bill 1, 82nd Legislature, Regular Session, Article III, Rider 7 and Article V, Rider 55, as interpreted by the parties in this Second Amended and Restated Interim Agreement for FY 2012.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, TDCJ and UTMB agree as follows:

- I. During the Term or until such time as specific correctional health care service(s) to be performed hereunder are transitioned to TDCJ or TDCJ's designees or otherwise adjusted in accordance with Article IV below, UTMB agrees to provide the services UTMB was obligated to provide, and comply with the requirements with which UTMB was obligated to comply, under the Prior Agreement, except:

(1) Article III, other than Sections L and N thereof, and V of the Prior Agreement shall be replaced by Article III below;

(2) Article XI.A of the Prior Agreement shall be replaced by Article IV below; and

(3) to the extent as otherwise provided in the FY 2012 Offender Health Services Plan ("Plan") (see Exhibit A, attached).

II. During the Term or until such time as specific correctional health care service(s) to be performed hereunder are transitioned to TDCJ or TDCJ's designees or otherwise adjusted in accordance with Article IV below, TDCJ agrees to provide the services TDCJ or CMHCC was obligated to provide, and comply with the requirements with which TDCJ or CMHCC was obligated to comply, under the Prior Agreement, except:

(1) Articles III, other than Sections L and N thereof, and V of the Prior Agreement shall be replaced by Article III below;

(2) Article XI.A of the Prior Agreement shall be replaced by Article IV below; and

(3) to the extent that CMHCC is still obligated to provide any specific services pursuant to Texas Government Code, Chapter 501 and House Bill 1, 82nd Legislature, Regular Session, Article V, Rider 55.

III. TDCJ acknowledges access to full FY 2012 appropriations and, as authorized by House Bill 1, 82nd Legislature, Regular Session, Article V, Rider 55, will have submitted by end of business on December 1, 2011, a written request to the Legislative Budget Board ("LBB") requesting approval by December 31, 2011 to spend-forward up to \$45 million of FY 2013 correctional health care appropriations in FY 2012 to fully fund UTMB's costs of providing correctional health care services during FY 2012. Based on the expectation that such LBB approval will be forthcoming on a timely basis, TDCJ and UTMB agree to the following financial arrangement during the Term:

3.1 Advance Payments.

3.1.1 In accordance with the Interim Agreement and Amended and Restated Interim Agreement, TDCJ made initial advance payments to UTMB in the amount of \$84,124,184 for the first quarter of FY 2012. TDCJ shall make three (3) additional advance payments to UTMB for the remaining three quarters of FY 2012 corresponding with the Term in the amount of \$254,221,436.00, as follows ("Advance Payments"):

Strategy	2 nd Quarter	3 rd Quarter	4 th Quarter
Strategy C.1.7	\$46,571,615	\$47,083,393	\$47,083,392
Strategy C.1.8	\$27,353,925	\$27,654,517	\$27,654,518
Strategy C.1.9	\$10,198,644	\$10,310,716	\$10,310,716
Total	\$84,124,184	\$85,048,626	\$85,048,626

TDCJ shall make the 2nd quarter Advance Payment to UTMB on or before December 10, 2011. TDCJ shall make the 3rd Quarter and 4th Quarter Advance Payments to UTMB on or before March 10, 2012 and June 10, 2012, respectively.

- 3.1.2 The remaining balance of \$6,264,924.00 from the payment made by TDCJ to UTMB from the FY 2010 - FY 2011 biennium supplemental appropriations for correctional managed health care services that was not expended by UTMB for FY 2010 - FY 2011 biennium services shall be retained by UTMB and applied to this Second Amended and Restated Interim Agreement for FY 2012 and considered as an additional Advance Payment paid by TDCJ to UTMB.¹

- 3.2 Reimbursement for Services. UTMB shall be reimbursed by TDCJ its actual costs for services provided under this Second Amended and Restated Interim pursuant to the following interim rate schedule, subject to year-end reconciliation procedures to UTMB's actual costs:

Service	Interim Rate Schedule	Rider 55 Strategy
Inpatient Hospital Services (Hospital Galveston)	TEFRA Rates (50% of UTMB's Billed Charges)	C.1.8 - Hospital and Clinical Care
Outpatient Hospital Services (UTMB Facilities)	TEFRA Rates (37% of UTMB's Billed Outpatient and 13.6% Billed Outpatient Lab Charges)	C.1.8 - Hospital and Clinical Care
Physician Services	Cost (49% of UTMB's Billed Charges)	C.1.8 - Hospital and Clinical Care
Autopsies	\$1,325 per Autopsy	C.1.7 - Unit and Psychiatric Care
Pharmacy Services	Cost	C.1.9 - Pharmacy
Unit Operations	Cost	C.1.7 - Unit and Psychiatric Care
Free-World Contract Providers	No Greater Than 100% Medicare Unless Prior Legislative Budget Board Approval	C.1.8 - Hospital and Clinical Care

- 3.3 Quarterly Reconciliation. On or before December 20, 2011, March 20, 2012, June 20, 2012, and September 20, 2012, UTMB shall submit to TDCJ a computation sheet indicating its initial computation of (a) the actual correctional health care services provided by UTMB and interim rates for such services for FY 2012 through the quarter then ended (including estimated free-world contract provider expenditures incurred by UTMB but not reported), (b) the Advance Payments paid by TDCJ to UTMB, and (c) any excess or deficit

¹ Section 3.1.2 amends and supersedes Article I of Amendment #1 of the Prior Agreement. Upon closeout of the 2011 fiscal year, UTMB provided TDCJ a final reconciliation and accounting of actual FY 2010-2011 expenses that included a statement reporting UTMB's retention of the remaining balance of \$6,264,924.00 from the fiscal year 2011 supplemental appropriations payment as an Advance Payment for application to services furnished by UTMB during the FY 2012 - FY 2013 biennium.

between the interim rates (including estimated free-world contract provider expenditures incurred by UTMB but not reported) and the Advance Payments (as applicable, "Excess" or "Deficit"). In the event there is an Excess determined during the December 20, 2011, March 20, 2012, or June 20, 2012 quarterly reconciliations, UTMB shall retain such Excess as additional Advance Payments. In the event there is an Excess determined during the September 20, 2012 quarterly reconciliation, UTMB shall return such Excess to TDCJ within fifteen (15) days of UTMB's submission of the initial reconciliation computation sheet for such quarter, unless otherwise instructed by TDCJ. In the event there is a Deficit, TDCJ shall pay the Deficit to UTMB within fifteen (15) days of TDCJ's receipt of the initial reconciliation computation sheet for each quarter.

3.4 Year-End Reconciliation. On or before the thirtieth (30th) day following UTMB's filing of UTMB's FY 2012 Medicaid cost report, UTMB shall submit to TDCJ a final computation sheet indicating its final computations of (a) the actual costs for the correctional health care services provided by UTMB during FY 2012 (including free-world contract provider actual expenditures incurred by UTMB)², (b) the Advance Payments paid by TDCJ to UTMB, and (c) any Excess or Deficit between the interim rates (including free-world contract provider expenditures incurred by UTMB) and the Advance Payments. In the event there is an Excess determined during the year-end reconciliation, UTMB shall retain such Excess as an Advance Payment for FY 2013 correctional health care services to be provided by UTMB pursuant to the FY 2013 agreement or Transition Agreement to be executed between UTMB and TDCJ or return such Excess to TDCJ within fifteen (15) days of UTMB's submission of the final reconciliation computation sheet. In the event there is a Deficit, TDCJ shall pay the Deficit to UTMB within fifteen (15) days of TDCJ's receipt of the final reconciliation computation sheet.

- IV. TDCJ and UTMB acknowledge and agree that either party may propose (1) the transition of specific correctional health care service(s) to be provided by UTMB to TDCJ or TDCJ designees, (2) an adjustment to the nature, scope, or level of correctional health care services to be provided by UTMB to TDCJ during the Term, or (3) TDCJ's assumption of UTMB's current obligations to provide prospective utilization review and management services and contracting with free-world provider (including contract administration, claims adjudication, and payment), by providing a minimum of sixty (60) days advance written notice ("Adjustment Notice") to the other party requesting such transition or adjustment of correctional health care services or related services. In the event that either TDCJ or UTMB provides an Adjustment Notice hereunder, the parties shall promptly meet to discuss whether the requested transition or adjustment of correctional health care services are appropriate and negotiate a mutually agreeable amendment to this Second Amended and Restated Agreement for FY 2012 to memorialize such transition or adjustment.
- V. Beginning on the Effective Date of this Agreement and continuing through the month of January, 2012, TDCJ and UTMB will work diligently (e.g., weekly meetings or

² The actual costs for UTMB inpatient and outpatient hospital services will be determined using the same rules, methodologies, and cost components as defined by CMS and HHSC for cost reporting/cost determination purposes. The costs for all other services will be based on UTMB's actual costs incurred as defined in House Bill 1, 82nd Legislature, Regular Session, Article V, Rider 55.

status calls) to negotiate on or before January 31, 2012 the terms of (1) a FY 2013 agreement for the provision of correctional health care services by UTMB or (2) a Transition Agreement to transition all correctional health services to TDCJ or TDCJ's designees on or before August 31, 2012. As part of such negotiations, the parties will work diligently with the CMHCC to update, if appropriate, the FY 2012 Plan to define the level and nature of correctional health care services to be provided by UTMB under the FY 2013 agreement or the Transition Agreement (including a roster of services to be available to the TDCJ offender population). In an attempt to address the projected shortfall in appropriations for FY 2013, TDCJ shall take the following actions to obtain sufficient funds to pay UTMB for UTMB's costs of providing correctional health care services in FY 2013:

- (1) By January 31, 2012, TDCJ will develop financial projections to determine if any cost savings can be achieved by transferring unit and psychiatric care (strategy C.1.7) to TDCJ;
- (2) TDCJ will request LBB approval to transfer any unused FY 2012 or projected excess FY 2013 appropriated correctional health care funds from strategies C.1.7 (Unit and Psychiatric) and C.1.9 (Pharmacy) or other appropriations available to TDCJ to strategy C.1.8 (Hospital and Clinical Care) within thirty (30) days of identification by TDCJ or UTMB of such unused or excess funds; and
- (3) work with legislative leadership and staff to obtain a commitment from legislative leadership to proactively pursue and support a supplemental appropriation as early as possible during the 2013 legislative session to fund TDCJ's projected shortfall for correctional health care services in an amount of up to \$100 million.

TDCJ and UTMB further acknowledge that if an acceptable FY 2013 correctional health care services provider agreement is not executed by TDCJ and UTMB on or before February 1, 2012, then TDCJ and UTMB will implement a Transition Agreement to transition all correctional health services to TDCJ or TDCJ's designees on or before August 31, 2012.

- VI. Regardless of the date of execution hereof, this Second Amended and Restated Interim Agreement for FY 2012 shall become effective on the Effective Date and shall continue in full force until August 31, 2012 ("Term"), without the need for transmittal of notice of intent to terminate between the parties; provided, however, this Second Amended and Restated Interim Agreement for FY 2012 may be terminated by UTMB in the event that TDCJ does not obtain LBB spend-forward approval by December 31, 2011, in accordance with Article III herein or by either party in accordance with the termination provisions contained in the Prior Agreement, not inconsistent with this Article VI.
- VII. The parties hereby acknowledge and agree that this Second Amended and Restated Interim Agreement for FY 2012 is subject to review and approval by The University of Texas System Board of Regents ("UT System Board") and the Texas Board of Criminal Justice ("TDCJ Board"). The continued validity and effectiveness of this Second Amended and Restated Interim Agreement for FY 2012 is contingent upon the approval of this Second Amended and Restated Agreement for FY 2012 by the UT System Board and TDCJ Board through the docketing requirements and approval process established under the Rules and Regulations of the UT System Board and TDCJ Board. Pending approval by the UT System Board and TDCJ

Board, beginning on the Effective Date, UTMB shall provide the correctional health care services described herein and TDCJ shall pay for such correctional health care services in accordance with the terms and conditions of this Second Amended and Restated Interim Agreement for FY 2012.

If the UT System Board or TDCJ Board disapproves this Second Amended and Restated Interim Agreement for FY 2012 or fails to approve this Second Amended and Restated Interim Agreement for FY 2012 within thirty (30) calendar days of receipt of the recommendation regarding the Second Amended and Restated Interim Agreement for FY 2012 prepared by the central administration of the UT System or TDCJ, then (a) this Second Amended and Restated Interim Agreement for FY 2012 shall immediately terminate, and (b) no later than thirty (30) days following such termination of this Second Amended and Restated Interim Agreement for FY 2012, UTMB shall submit an invoice in accordance with the terms of this Agreement to TDCJ for all correctional health care services provided under this Second Amended and Restated Interim Agreement for FY 2012 through the termination date that have not previously been invoiced by UTMB to TDCJ under this Second Amended and Restated Interim Agreement for FY 2012. TDCJ shall pay such invoices as provided above.

- VIII. In the event that there is an inconsistency or conflict between the provisions of this Second Amended and Restated Interim Agreement for FY 2012 and the Prior Agreement, Interim Agreement, or Amended and Restated Interim Agreement, the provisions of this Second Amended and Restated Agreement for FY 2012 shall control.
- IX. TDCJ and UTMB may execute this Second Amended and Restated Interim Agreement for FY 2012 in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Second Amended and Restated Interim Agreement for FY 2012. The signatures of TDCJ and UTMB need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile machine, electronic scanner, or similar device is effective as legally binding originals.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amended and Restated Interim Agreement for FY 2012 to be executed by their officers, all as of the date and year first above written.

**THE UNIVERSITY OF TEXAS MEDICAL
BRANCH**

**TEXAS DEPARTMENT OF CRIMINAL
JUSTICE**

By: _____


William R. Elger, CPA
Executive Vice President and
Chief Business and Finance Officer

By: _____

Jerry McGinty
Chief Financial Officer

Date: _____

11/30/11

Date: _____

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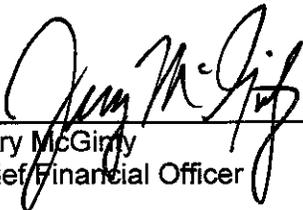
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THE UNIVERSITY OF TEXAS MEDICAL BRANCH

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

By: _____
William R. Elger, CPA
Executive Vice President and
Chief Business and Finance Officer

By: _____

Jerry McGinty
Chief Financial Officer

Date: _____

Date: 11/30/11