

**Comprehensive Pharmacy Management Services**  
**13-006-AFSD**

**1. PARTIES**

THIS CONTRACT is entered into by and between the State of Montana Department of Corrections, (hereinafter referred to as "the State", "Department", or "MDOC"), whose address and phone number are 5 S. Last Chance Gulch, Helena, MT 59601, (406) 444-3930 and **Diamond Pharmacy Services** (hereinafter referred to as the "Contractor"), whose address and phone number are 645 Kolter Drive, Indiana, PA 15701-3570, (800) 882-6337.

**THE PARTIES AGREE AS FOLLOWS:**

**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

**2.1 Contract Term.** This contract shall take effect on July 23, 2012 or upon final contract signature, whichever occurs later, and ending April 30, 2015, unless terminated earlier in accordance with the terms of this contract. (Section 18-4-313, MCA)

**2.2 Contract Renewal.** This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years, at the option of the State.

**3. COST/PRICE ADJUSTMENTS**

**Cost Increase by Mutual Agreement.** After the initial term of this contract, each renewal term may be subject to a cost increase by mutual agreement.

**4. SERVICES AND/OR SUPPLIES**

The Contractor agrees to provide to the State the following Comprehensive Pharmacy Management Services and Electronic Medication Record and Computerization System for offenders at MDOC operated facilities, other contracted facilities, and county jails as detailed in the Contractor's response to RFP12-2258P. It is the intent of MDOC that the Contractor will be the sole provider of these services to offenders under the care of MDOC.

Due to the nature of this service, and the needs of offenders, MDOC cannot guarantee that all prescriptions will be ordered through the Contractor. Purchases from other providers will generally only occur due to "special circumstances", such as an immediate need to fill an offender's medication.

**5. CONSIDERATION/PAYMENT**

**5.1 Payment Schedule.** In consideration for the Comprehensive Pharmacy Management Services and Electronic Medication Record and Computerization System to be provided, the State shall pay as detailed below and based on the prices quoted in the Contractor's response to RFP12-2258P.

- A. DEPARTMENT shall pay CONTRACTOR the “**Actual Acquisition Cost**” of the drugs dispensed and shall also pay a dispensing fee of **\$3.72** per prescription dispensed.
- B. On a monthly basis, CONTRACTOR will submit a detailed invoice to individual facilities identified in Attachment A and provide DEPARTMENT with a comprehensive invoice by facility, listing all prescriptions dispensed for the month. Invoices must accurately and separately represent the unit acquisition cost of drugs dispensed and the total number of prescriptions filled. Additional supporting data to determine appropriate pricing may be required by DEPARTMENT.
- C. CONTRACTOR will provide full credit (100% of the amount billed) for full and partial blister packs returned provided that the medications:
  - 1. Remain in their original sealed blister packs
  - 2. Have been stored under proper conditions
  - 3. Are not within three (3) months of expiration
  - 4. Have not been released to the inmate population or labeled/dispensed as “Keep on Person”
  - 5. Are not controlled substances
  - 6. Have not been billed to private insurance or Medicaid

CONTRACTOR is responsible for the shipping cost of all returned medications and will provide prepaid shipping labels.

- D. Price adjustments may be permitted at the time of contract renewal through a process of negotiation with CONTRACTOR and the State. Any price adjustments must be based on demonstrated industry-wide or regional adjustments in CONTRACTOR’S costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the appropriate adjustment.
- E. DEPARTMENT agrees to pay CONTRACTOR within 30 days following receipt of a correct invoice.
- F. DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Contract.
- G. The Contract number must be referenced on all invoices and correspondence pertaining to this Contract.

**5.2 Withholding of Payment.** The State may withhold disputed payments to the Contractor under the subject statement of work (or where no statement of work exists, the applicable contract) if the Contractor is in material breach of such statement of work (or applicable contract). Such withholding cannot be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. The Contractor is not relieved of its performance obligation in the event such payment is withheld.

## **6. ACCESS AND RETENTION OF RECORDS**

**6.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor, or their authorized agents access to any records required to be made available by 18-1-118 MCA, in order to determine contract compliance.

**6.2 Retention Period.** The Contractor agrees to create and retain records supporting the Comprehensive Pharmacy Management Services and Electronic Medication Record and Computerization System for a period of seven years after either the completion date of this contract or the conclusion of any claim, litigation, or exception relating to this contract taken by the State of Montana or a third party.

## **7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor shall not assign, transfer, or subcontract any portion of this contract without the express written consent of the State. (Section 18-4-141, MCA)

## **8. LIMITATION OF LIABILITY**

The Contractor's liability for contract damages is limited to direct damages and further to no more than twice the contract amount. The Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount of damages.

## **9. REQUIRED INSURANCE**

**9.1 General Requirements.** The Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**9.2 Primary Insurance.** The Contractor's insurance coverage with respect to the Contractor's negligence shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**9.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**9.4 Specific Requirements for Professional Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**9.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency, the Contractor will elect to either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**9.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than B++ indicating compliance with the required coverages, has been received by the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of this contract. A renewal document must be sent to the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135, upon expiration.

## **11. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

## **12. INTELLECTUAL PROPERTY/OWNERSHIP**

**12.1 Mutual Use.** All patent and other legal rights in or to inventions first conceived and reduced to practice, created in whole or in part under this contract, must be available to the State for royalty-free and nonexclusive licensing if necessary to receive the mutually agreed upon benefit under this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use and authorize others to use copyrightable property created under this contract including all deliverables and other materials, products, modifications developed or prepared for the State by the Contractor under this contract or any program code, including site related program code, created, developed, or prepared by the Contractor under or primarily in support of the performance of its specific obligations hereunder, including manuals, training materials, and documentation (the "Work Product").

**12.2 Title and Ownership Rights.** The State shall retain title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "content"), but grants the Contractor the right to access and use content for the purpose of complying with its obligations under this contract and any applicable statement of work.

**12.3 Ownership of Work Product.** The Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

**12.4 Copy of Work Product.** The Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term or at the expiration or termination of all or part of the Contractor's performance hereunder, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or as of such expiration or termination, as the case may be.

**12.5 Ownership of Contractor Pre-Existing Materials.** Literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or rights thereto and derivatives thereof owned by the Contractor at the time this contract is executed or otherwise developed or acquired independent of this contract and employed by the Contractor in connection with the services provided to the State (the "Contractor Pre-Existing Materials") shall be and remain the property of the Contractor and do not constitute Work Product. The Contractor must provide full disclosure of any Contractor Pre-Existing Materials to the State prior to its use and prove its ownership, provided, however, that if the Contractor fails to disclose to the State such Contractor Pre-Existing Materials, the Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 12.3 or as may be expressly agreed in any statement of work, the Contractor shall retain title to and ownership of any hardware provided by the Contractor.

### **13. PATENT AND COPYRIGHT PROTECTION**

**13.1 Third-Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify the Contractor. The Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at the Contractor's expense. The Contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim. Such indemnification will be conditional upon the following:

- a. the State will promptly notify the Contractor of the claim in writing; and
- b. the State will allow the Contractor to control, and will cooperate with the Contractor in the defense and any related settlement negotiations, provided that:
  - i. the Contractor will permit the State to participate in the defense and settlement of any such claim, at the State's own expense, with counsel of its choosing; and
  - ii. the Contractor shall not enter into or agree to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of the State, its elected and appointed officials, agents or employees without the State's prior written consent.

**13.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then the Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes noninfringing or replace it with one that is at least functionally equivalent. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State agrees to return the product to the Contractor on written request. The Contractor will then give the State a credit equal to the amount paid to the Contractor for the creation of the Work Product. This is the Contractor's entire obligation to the State regarding a claim of infringement. The State is not precluded from seeking other remedies available to it hereunder, including Section 8, and in equity or law for any damages it may sustain due to its inability to continue using such product.

**13.3 Claims for Which Contractor is Not Responsible.** The Contractor has no obligation regarding any claim based on any of the following except where the Contractor has agreed in writing, either separately or within this contract, to such use that is the basis of the claim:

- a. anything the State provided which is incorporated into a Work Product except:
  - i. where the Contractor knew (and the State did not know) such thing was infringing at the time of its incorporation into a Work Product but failed to advise the State; or
  - ii. where the claim would not have been brought except for such incorporation;
- b. the State's modification of a Work Product furnished under this contract;
- c. the use of a Work Product in a manner that could not be reasonably contemplated within the agreed upon scope of the applicable project; or
- d. infringement by a non-Contractor Work Product alone.

## **14. CONTRACT OVERSIGHT**

**14.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or the issuance of a stop work order.

**14.2 Right to Assurance.** If the State, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this contract, the State may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of days specified in the demand (in no event less than five (5) business days) may, at the State's option, be the basis for terminating this contract under the terms and conditions or other rights and remedies available by law or provided by this contract.

**14.3 Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop any or all parts of the work required by this contract for the period of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this contract shall be amended in writing accordingly.

## **15. CONTRACT TERMINATION**

**15.1 Termination for Cause.** The State or the Contractor may, by written notice to the other party, terminate this contract in whole or in part at any time the other party fails to perform this contract pursuant to Section 16, Event of Breach – Remedies.

**15.2 Bankruptcy or Receivership.** Voluntary or involuntary bankruptcy or receivership by the Contractor may be cause for termination.

**15.3 Noncompliance with Department of Administration Requirements.** The Department of Administration, pursuant to section 2-15-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, the State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, the State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this contract must be mutually agreed to by the parties.

**15.4 Reduction of Funding.** The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

**16. EVENT OF BREACH – REMEDIES**

**16.1 Event of Breach.** Any one or more of the following acts or omissions of the Contractor shall constitute an event of breach:

- a. products or services furnished by the Contractor fail to conform to any requirement of this contract; or
- b. failure to submit any report required by this contract; or
- c. failure to perform any of the other covenants and conditions of this contract, including beginning work under this contract without prior Department of Administration approval.

**16.2 Actions in Event of Breach.** Upon the occurrence of any material breach of this contract, either party may take either one, or both, of the following actions:

- a. give the breaching party a written notice specifying the event of breach and requiring it to be remedied within, in the absence of a greater specification of time, thirty (30) days from the date of the notice; and if the event of breach is not timely remedied, terminate this contract upon giving the breaching party notice of termination; or
- b. treat this contract as materially breached and pursue any of its remedies at law or in equity, or both.

**17. WAIVER OF BREACH**

No failure by either party to enforce any provisions hereof after any event of breach shall be deemed a waiver of its rights with regard to that event, or any subsequent event. No express failure of any event of breach shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of either party to enforce each and all of the provisions hereof upon any further or other breach on the part of the breaching party.

**18. STATE PERSONNEL**

**18.1 State Contract Manager.** The State Contract Manager identified below is the State's single point of contact and will perform all contract management pursuant to section 2-17-512, MCA, on behalf of the State. Written notices, requests, complaints, or any other issues regarding this contract should be directed to the State Contract Manager.

The State Contract Manager for this contract is:

Laura Janes, Health Services Bureau Chief  
Montana Department of Corrections  
500 Conley Lake Road  
Deer Lodge, MT 59722  
406-846-1320 ext. 2254  
[ljanes@mt.gov](mailto:ljanes@mt.gov)



**18.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:  
Laura Janes, Health Services Bureau Chief  
Montana Department of Corrections  
500 Conley Lake Road  
Deer Lodge, MT 59722  
406-846-1320 ext. 2254  
[ljanes@mt.gov](mailto:ljanes@mt.gov)

**19. CONTRACTOR PERSONNEL**

**19.1 Identification/Substitution of Personnel.** The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. The Contractor agrees that any personnel substituted during the term of this contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve the Contractor personnel assigned to work under this contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

**19.2 Contractor Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:  
Mark Zilner, R.Ph  
645 Kolter Drive  
Indiana, PA 15701-3570  
800-882-6337 ext. 1003

**19.3 Contractor Project Manager.** The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:  
Mark Zilner, R.Ph  
645 Kolter Drive  
Indiana, PA 15701-3570  
800-882-6337 ext. 1003

## **20. MEETINGS AND REPORTS**

**20.1 Technical or Contractual Problems.** The Contractor is required to meet with the State's personnel, or designated representatives, at no additional cost to the State, to resolve technical or contractual problems that may occur during the term of this contract. Meetings will occur as problems arise and will be coordinated by the State. Failure to participate in problem resolution meetings or failure to make a good faith effort to resolve problems may result in termination of this contract.

**20.2 Progress Meetings.** During the term of this contract, the State's Project Manager will plan and schedule progress meetings with the Contractor to discuss the progress made by the Contractor and the State in the performance of their respective obligations. These progress meetings will include the State Project Manager, the Contractor Project Manager, and any other additional personnel involved in the performance of this contract as required. At each such meeting, the Contractor shall provide the State with a written status report that identifies any problem or circumstance encountered by the Contractor, or of which the Contractor gained knowledge during the period since the last such status report, which may prevent the Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of the State to perform its obligation under this contract. The Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**20.3 Failure to Notify.** In the event the Contractor fails to specify in writing any problem or circumstance that materially impacts the costs of its delivery hereunder, including a material breach by the State, about which the Contractor knew or reasonably should have known with respect to the period during the term covered by the Contractor's status report, the Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope; provided, however, that the Contractor shall be relieved of its performance obligations to the extent the acts or omissions of the State prevent such performance.

**20.4 State's Failure or Delay.** For a problem or circumstance identified in the Contractor's status report in which the Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby, and provide for any additional charges by the Contractor. If the State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

## **21. CONTRACTOR PERFORMANCE ASSESSMENTS**

**21.1 Assessments.** The State may conduct assessments of the Contractor's performance. The Contractor will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**21.2 Record.** Completed assessments may be kept on record at the State's Information Technology Services Division and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## **22. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated for any reason, the Contractor must provide for a reasonable, mutually agreed period of time after the expiration or termination of this contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by this contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

## **23. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

## **24. SCOPE, AMENDMENT, AND INTERPRETATION**

**24.1 Contract.** This contract consists of 20 numbered pages, any Attachments as required, RFP12-2258P, as amended, and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is as follows: 1) amendments to this contract, 2) this contract, 3) the applicable statement of work, 4) RFP12-2258P, as amended, and 5) the Contractor's RFP response, as amended.

**24.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

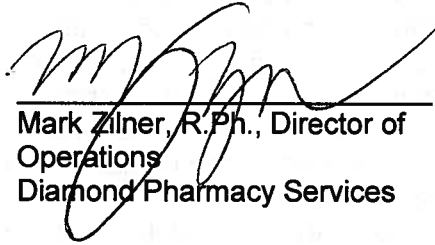
**25. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF CORRECTIONS  
5 S. LAST CHANCE GULCH  
HELENA, MT 59601**

**Diamond Pharmacy Services  
645 Kolter Drive  
Indiana, PA 15701-3570**

  
Rhonda Schaffer, Administrator  
Administrative and Financial  
Services Division

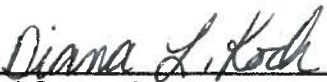
  
Mark Zilner, R.Ph., Director of  
Operations  
Diamond Pharmacy Services

8/14/12  
Date

9/24/2012  
Date

Approved for Legal Content by:

Approved as to Form:

  
Diana L. Kodz  
Legal Counsel  
Department of Corrections

  
Penny Moon, Senior Contracts Officer  
State Procurement Bureau

7/30/12  
Date

23 July 2012  
Date

Chief Information Officer Approval:

The Contractor is notified that pursuant to section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

  
Dick Clark, Chief Information Officer  
Department of Administration

7-24-12  
(Date)

## ATTACHMENT A

### SCOPE OF SERVICES – COMPREHENSIVE PHARMACY MANAGEMENT

CONTRACTOR will provide services as outlined in their response to RFP#12-2258P. This attachment details specific services, but is not intended to be all-inclusive.

#### 2.0 FACILITY INFORMATION

Listed below are all the facilities that will be participating in this contract. **EXCEPTION –** The Regional Prisons (Cascade County, Dawson County, and Missoula County Assessment and Sanction Center (MASC)) contract with Montana Department of Corrections (MDOC) to provide services to MDOC offenders, but are not required to purchase goods/services from the pharmacy provider selected by MDOC. They reserve the option to enter into a separate agreement with CONTRACTOR with the same prices, terms, and conditions as contained in this Contract. DEPARTMENT will not be a party to said Contracts.

**Montana State Prison (MSP)** is located at 500 Conley Lake Road, Deer Lodge MT 59722.

**Treasure State Correctional Training Center (TSCTC)** is located at 1100 Conley Lake Road, Deer Lodge MT 59722.

**Montana Women's Prison (MWP)** is located at 701 South 27<sup>th</sup> Street, Billings MT 59101.

**Pine Hills Youth Correctional Facility (PHYCF)** is located at 4 North Haynes, Miles City MT 59301.

**Riverside Youth Correctional Facility (RYCF)** is located at 3700 Highway 69, Building 13, Boulder MT 59632.

**Alternatives, Inc. (Billings PRC)** is located at 3109 1<sup>st</sup> Avenue North, Billings MT 59101.

**Community, Counseling, and Correctional Services, Inc. (Butte PRC)** is located at 81 West Park Street, Butte MT 59701.

**Great Falls Transition Center (Great Falls PRC)** is located at 1019 15<sup>th</sup> Street North, Great Falls MT 59401.

**Helena Pre-release Center (Helena PRC)** is located at 805 Colleen Street, Helena MT 59601.

**Missoula Correctional Services, Inc. (Missoula PRC)** is located at 2350 Mullan Road, Helena MT 59808..

**Connections Corrections East Program** is located at 111 West Broadway, Butte MT 59701.

**Connections Corrections West Program** is located at Box G, Warm Springs MT 59756.

**Cascade County Regional Adult Detention Center** is located at 3800 Ulm North Frontage Road, Great Falls MT 59404.

**Dawson County Adult Detention/Corrections Facility** is located at 440 Colorado Boulevard, Glendive MT 59330.

**Missoula County Detention Center (aka Missoula Assessment and Sanction Center (MASC))** is located at 2340 Mullan Road, Missoula MT 59808.

**WATCH WEST** is located at Box G, Warm Springs MT 59756.

**Watch East** is located 700 E. Little Street, Glendive, MT 59330.

**START** is located P.O. Box 1389, Anaconda MT 59711.

**Nexus Methamphetamine Treatment Center** is located P.O. Box 1200, Lewistown, MT 59457.

**Elkhorn Methamphetamine Treatment Center** is located 1 Riverside Road, Boulder MT 59632.

**Passages** is located 1001 S. 27<sup>th</sup> Street, Billings, MT 59101.

**County Jails** are located throughout Montana. There are 56 counties in Montana, but currently only 37 provide adult detention services to the Department. However, not all jails provide pharmacy services to State inmates. Generally, only 10 of these 37 County jails actively provide medications to State offenders.

### **3.0 SUBMISSION OF PHARMACY ORDERS**

CONTRACTOR shall:

- a. At no additional cost, provide each facility (except County jails, Connections Corrections, and Pre-release Centers), as necessary, with a facsimile machine for submission of pharmacy orders. Consumable supplies and maintenance of said machine shall be the responsibility of MDOC or the facility operator, as appropriate. These machines will be primarily used for transmission/reception between CONTRACTOR and the facility, but may also be used for other medical related purposes only.
- b. Provide DEPARTMENT with a toll-free number for ordering pharmaceuticals by fax and by telephone.
- c. On a daily basis, receive orders placed by staff from each facility.

- d. Provide appropriate medical staff at each facility with access to current medication information of any offender in the MDOC system. **In emergent situations, such access will require CONTRACTOR to provide offender medication profiles within 30 minutes of request.**
- e. Provide access to a pharmacist 24 hours a day, 365 days a year.

#### **4.0 PACKAGING OF MEDICATIONS/ORDERS**

The majority of all prescriptions will be written as one-year scripts with automatic monthly refills, unless otherwise stated herein.

##### **EXCEPTIONS –**

**MSP -** The majority of prescriptions at MSP are written as one-year scripts with automatic renewals at **28-days**. This may require CONTRACTOR to fill partial blister cards, as new orders are written. Upon implementation of the Electronic Medication Administration Record system (Sapphire) the automatic renewals system will be eliminated. Any change will be by mutual agreement.

**County Jails -** County jail inmates on “hold” status are those inmates awaiting transfer to a MDOC facility. They have been sentenced to MDOC. MDOC is responsible for their medications. When the inmate is transferred or sentenced with a valid prescription that they are currently taking, MDOC will continue that medication. When sentencing occurs, refills will be provided by MDOC upon review by the Managed Care Nurse in coordination with the Medical Director. Medications will be requested from CONTRACTOR by the County jails directly. The inmate will have an adult offender number (AO number) upon sentencing and this number will be his identification number while under the supervision of MDOC. Medications will be sent directly to the County jails and billed to MDOC.

CONTRACTOR shall immediately contact the MDOC Managed Care Registered Nurse via telephone or by e-mail when a prescription request is not being filled for any reason, including lack of compliance with the formulary. Any questions or verification will be directed to the MDOC Managed Care Registered Nurse.

**Pre-Release Inmate Workers –** Pre-release centers located throughout the State have inmate workers that are the responsibility of MDOC. Medications are sent directly to the centers by CONTRACTOR and billed to MDOC after the same verification process occurs. These inmates have an AO number as mentioned above and reside in the center for long time periods. All questions or verification will be directed to the Managed Care Nurse for MDOC.

#### **4.1 Packaging of Medications**

1. The majority of all medications shall be packaged in unit-dose blister cards that include a 2-part, peel off reorder label. Additional, specific packaging requests will be individually addressed by each facility – based upon the needs of the offender and the facility and the packaging ability of CONTRACTOR.
2. All packaging shall be labeled as a prescription and shall include, at a minimum: patient name, AO number, facility location (i.e., MSP – low side), date, medication name, strength, instructions, prescription number, dosage, lot number, directions (frequency of administration), expiration date, prescribing physician, quantity, pharmacist's initial, and appropriate warnings, dietary instructions, and/or other information as required by law.

#### **4.2 Emergency Orders**

1. Within 30 days after award, CONTRACTOR shall provide MDOC with the name, address, telephone number and contact person at a local pharmacy (near each facility) to act as a backup pharmacy for emergency prescriptions.
2. Refer to RFP #12-2258P for specific information related to emergency medications and backup pharmacy services.

#### **5.0 FORMULARY**

CONTRACTOR shall:

Immediately following award of the bid, assist MDOC personnel (Department Medical Director, Health Services Bureau Chief, Managed Care Coordinator, and designated physicians) in the comprehensive review of a formulary designed to control drugs and to reduce drug expenditures.

1. Monitor and review the drug prescription practices and recommend formulary changes, as appropriate.
2. Work with MDOC to limit non-formulary prescribing by its physicians and mid-level professionals. However, Contractor shall allow for the timely delivery of non-formulary medications when prescribed by a licensed professional for the individual care of a specific patient when medically necessary, and based on sound medical and scientific information.
3. Communicate and consult with the Health Services Bureau Chief and prescribing professionals at each facility on matters of non-formulary use and drug contraindications and suggest substitutions. CONTRACTOR will schedule and initiate formal discussions (P&T meetings) no less than quarterly and will make recommendations to medical staff regarding usage patterns and prescribing practices as needed. Refer to RFP#12-2258P page 10 and 18 for additional information.



4. Dispense cost effective, therapeutically equivalent, generic medications in order to reduce costs.

## **6.0 EDUCATION/TRAINING**

CONTRACTOR shall:

1. Work in conjunction with the MDOC Medical Director and facility clinical staff to develop and maintain a process for patient education and medication administration.
2. Organize and direct quarterly continuing education and information programs relating to new developments in the field of pharmacy and pharmaceuticals and make recommendations for drug products which are the most useful and cost-effective in patient care. (see 5.0 above)
3. Work with the MDOC Medical Director and physicians to develop drug therapy monitoring plans that provide clinically sound and cost effective patient care.
4. As requested by the MDOC Medical Director, participate on Pharmacy and Therapeutic Committees (P&T Committee) convened to evaluate medical information relating to the usefulness and cost of all available pharmaceuticals. Participation can be in-person or by teleconference.
5. Provide in-service training and consultation to health care personnel at each facility. Topics shall include: proper disposition of unused substances, as required by law; proper administration of medications; monitoring and documentation of drug administration and drug utilization in the correctional setting; and procedures for management of controlled drugs.
6. Provide access to a video library on various health-related topics, including drugs and disease states. Videos (DVD and VHS) will be viewed by offenders/staff at each facility and returned.
7. Provide an extensive policy and procedure manual to each facility and assist MDOC in developing, implementing and monitoring procedures for safe and effective ordering, distribution, control, and use of medications.

## **7.0 REPORTS**

**See RFP#12-2258P for specific information and requirements.**

CONTRACTOR shall:

1. Provide MDOC, as requested, with "facility specific" reporting, as well as statewide reporting inclusive of all MDOC operated/contracted facilities. Reports shall be delivered to the requestor within two working days (48 hours) of the request, unless otherwise agreed to by both parties.

2. Staff with facility specific reports to assist in the analysis and management of prescribing practices. Reports shall include, but not be limited to: Monthly Drug Usage Reports, Monthly Psychotropic Usage Reports, Patient Profiles, Prescriber Profiles, and Non-Formulary Versus Formulary Drug Use.
3. Provide data and reports necessary for medical staff peer reviews, quality improvement reviews, reports to aid MDOC in preparation and response to accreditation surveys, staff development and management training, medication use reviews, district or federal court cases, and cost containment strategies.
4. Maintain a complete patient drug profile for each offender and provide a monthly Medication Administration Report (MAR) for each offender, as appropriate. MAR shall contain the offender name, AO number, allergies, diagnosis and current medication list and dispensing instructions. Each MAR must, in all instances, accurately reflect how the drug was prescribed - strength, dosage, and available refills. **EXCEPTION – Contractor must provide MSP with up to four (4) separate monthly MAR's - by patient and by drug (i.e. Unit Dose/PRN, Controlled Substance, Imitrex, and Injectables and a quarterly MAR for Keep On Person (KOP). Each MAR shall be delivered to the respective facility seven (7) days prior to the beginning of next month.**
5. Notify the prescribing provider of problems with medications prescribed (i.e., dosage or conflicts with other prescribed medications).
6. Provide updated patient medication lists (hard copy) every 90 days for inclusion in patient charts.

## **8.0 DELIVERY OF MEDICATIONS**

CONTRACTOR shall:

1. Provide delivery of all pharmacy orders five days per week – Monday through Friday. Orders shall be delivered to the ordering facility the first business day following submission of the order. Refer to RFP#12-2258P page 13 for delivery schedule and order deadlines.
2. Deliver medications to each facility in an appropriate container, with medications sorted in "see thru" bags by unit (i.e. high side or low side) or by custody level (i.e., minimum/maximum), as requested by each facility.
3. Obtain a signature for all delivered orders at each facility in order to verify receipt.
4. Include a detailed packing slip with every order - sorted alphabetically, by offender. Refer to RFP#12-2258P page 17 for specific information related to order reconciliation and inventory management.

## 10.0 OTHER

CONTRACTOR shall:

1. Maintain compliance with all pharmaceutical standards and applicable State and Federal laws, rules, and regulations governing pharmacy operations.
2. Have a licensed pharmacist available (on-call) 24-hour per day, seven days per week to answer questions regarding medications.
3. Provide each facility with locking medication carts for the transportation, storage, and administration of all medications and supplies. The carts shall be durable and lightweight and appropriately sized to allow for ease of use in a correctional facility.
4. Provide starter packs of certain oral and injectable medications, as needed, for immediate administration.
5. Provide and maintain an Emergency Medication Kit (EDK) at MSP and MWP (i.e., Crash Cart).
6. Be responsible for all State, Federal and local licenses and permits necessary to perform the services required herein.
7. Be appropriately licensed to provide pharmacy services in Montana.
8. Provide a clinical pharmacist to review the medication room at each facility to verify compliance of all procedures and provide MDOC with all documentation of inspection.
9. Follow the applicable standards of care guidelines in effect at each facility. These standards may include: National Commission on Correctional Health Care (NCCHC); American Correctional Association (ACA); American Jail Association (AJA); and, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).
10. In accordance with NCCHC standards, and/or as required by applicable State or Federal pharmacy law/rule/regulation, provide a licensed pharmacist to conduct quarterly documented inspections of all institutional areas where medications are maintained, including "crash carts". Inspection shall include, but is not limited to: drug expiration dates, security, storage, and a periodic review of medication records. Inspection reports shall be provided to the MDOC Medical Director.
11. Upon termination of the Contract (for any reason), transfer all patient-prescribing records, by electronic media, to DEPARTMENT or their designated agent.
12. Provide over-the-counter (OTC) medications in accordance with the pricing formula/methodology **and shall not charge MDOC a dispensing fee.**
13. Provide a Certified Geriatric Pharmacist with considerable experience in psychiatric-geriatric pharmacy to assist MDOC with geriatric patient requirements and recommendations.

**14. Assign a single point of contact to be responsible for all aspects of prescription processing for MDOC. Immediately notify (via e-mail, telephone or fax) the appropriate contact person at the ordering facility if an order will not be shipped within 24-hours and the reason why.**