

PHARMACY SERVICES AGREEMENT

THIS AGREEMENT is effective the ____ day of _____ 20__ by and between _____, located at _____ (hereinafter referred to as "FACILITY") and Diamond Drugs, Inc., aka Diamond Pharmacy Services, and/or Diamond Medical Supply, RemedyRepack, SapphireHealth, and InnovaScript, a Pennsylvania Corporation having principal offices at 645 Kolter Drive, Indiana, PA 15701-3570 (hereinafter referred to as "DIAMOND").

WHEREAS, FACILITY is obligated to provide healthcare services for its correctional patients;

WHEREAS, DIAMOND contracts to provide services to correctional healthcare services companies and correctional facilities;

WHEREAS, FACILITY wishes to engage DIAMOND to provide services to their correctional patients;

WHEREAS, DIAMOND wishes to provide such services to FACILITY as agreed to between the Parties;

WHEREAS, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

2. DIAMOND RESPONSIBILITIES:

- a. DIAMOND agrees to provide prescription dispensing services, pharmacy benefit management services, software services, and medical supplies to FACILITY and to furnish all qualified personnel, equipment, materials and services that FACILITY requires to ensure compliance with state and federal law as well as the terms of this Agreement.
- b. DIAMOND shall provide Services in a prompt and timely manner, in accordance with the terms and conditions of this Agreement, in accordance with all applicable laws, rules and regulations, community standards of practice, and in accordance with all policies and procedures of FACILITY.
- c. DIAMOND shall dispense medications to the Residents with scheduled deliveries during normal business hours. Scheduled deliveries will be made at least once daily Monday thru Saturday.
- d. DIAMOND shall provide emergency deliveries 24 hours per days 7 days per week any time an emergency occurs. DIAMOND shall provide emergency deliveries within 4 hours of receipt of FACILITY's emergency request in all cases except: (i) if the emergency request is for a medication that is not in stock at DIAMOND and is not readily available from DIAMOND's back-up pharmacies or a proximate acute care provider, then DIAMOND shall deliver the medication no later than the end of the business day following the date it receives the emergency request as long as the medication is available from DIAMOND's primary wholesaler; and (ii) if the emergency request is for a compounded product, DIAMOND shall deliver the product as soon as practically possible but in any event no later than 72 hours from DIAMOND's receipt of FACILITY's request for the product.

DIAMOND shall immediately notify FACILITY if an emergency delivery will not be made within 4 hours of the emergency request as provided for by subsection (a) or (b) above. DIAMOND shall not charge FACILITY an additional fee for any emergency delivery except as follows: DIAMOND may charge FACILITY a \$75 fee when FACILITY has requested emergency delivery of a medication that is included in FACILITY's e-box or electronic emergency dispensing system

January 16, 2024
(Exhibit #4)

3. FACILITY RESPONSIBILITIES:

- a. To pay to DIAMOND all fees for services rendered as outlined in Attachment "A" to this Agreement.
- b. To furnish all legally required medication and product order information to DIAMOND on any Formulary and Non-Formulary Medications prescribed for inmates of the FACILITY.
- c. FACILITY acknowledges that some Pharmacy Services may be billable to separate agencies including but not limited to: Federal Bureau of Prison, U.S. Marshall Service, ICE, compensation, Medical Assistance, ADAP, other counties, or other "outside sources", depending on patient eligibility. If requested in writing by FACILITY, DIAMOND will submit eligible bills to such outside sources, and prescriptions will be billed at the Medicaid rate. In the event that any amounts billed to an outside source remain unpaid after sixty (60) days, FACILITY remains responsible for payment to DIAMOND. Such responsibility is independent of whether or not FACILITY has received payment from outside sources for any such charges.
- d. It is FACILITY's responsibility to provide DIAMOND all appropriate and accurate patient and billing information prior to submitting orders. Billing other agencies is provided by DIAMOND as a courtesy and DIAMOND will not be responsible for any third Party claims which are not invoiced accurately due to FACILITY's failure to provide the correct patient billing information.
- e. It is FACILITY's responsibility to verify its invoices monthly to assure claims were billed to the proper agency on a monthly basis and inform DIAMOND of any discrepancies within fifteen (15) days of receipt of invoices.
- f. FACILITY is responsible for all applicable sales, use, lease, ad valorem, and any other tax that may be levied or assessed by reason of this transaction, unless FACILITY provides a tax exemption certificate (blanket or transaction specific) to DIAMOND in a timely manner.
- g. Pay all invoices and other payments due to DIAMOND via EFT or to:

Diamond Drugs, Inc.
Diamond Pharmacy Services
P.O. Box 200796
Pittsburgh, PA 15251-0796

- 4. **EQUIPMENT** - In the event that a RFP or bid and bidding procedures require such, DIAMOND shall provide an adequate number of medication carts for each facility serviced to accommodate their respective needs, and one (1) fax machine that will be dedicated solely for use with operations related to DIAMOND's services. This equipment will remain the property of DIAMOND throughout performance of the terms of this Agreement. Upon termination or expiration of this Agreement, FACILITY agrees to return such equipment to DIAMOND within fifteen (15) days of service termination or expiration. FACILITY will be charged for any damages of said equipment while in FACILITY's possession up through DIAMOND's receipt of the returned equipment. If FACILITY fails to return the equipment within fifteen (15) days, FACILITY will be responsible for paying DIAMOND an amount equal the replacement cost for new equipment equivalent to the equipment retained by FACILITY. For Avoidance of doubt, DIAMOND shall be responsible for all costs and fees associated to the initial delivery of equipment to FACILITY. Similarly, FACILITY shall be responsible for all costs and fees associated to the returning such equipment to DIAMOND.
- 5. **INTELLECTUAL PROPERTY** - FACILITY agrees that DIAMOND and its affiliated company SapphireHealth, LLC retains all rights, title, interest in and ownership, and reserves the right to use and control the use of its intellectual property rights in its assets including, but not limited to, its software, reporting packages and user documentation; operations, procedures and strategies; formulary and clinical services; manufacturer, wholesaler, group purchase, vendor contracts and resultant data and information; patient, prescription claim and drug utilization submission; trademarks and service marks. This Agreement creates no express or implied license for FACILITY to use such intellectual property for any purpose other than carrying out its

- 6. TERM AND TERMINATION** - The initial term of this Agreement shall commence on _____, 20__ and continue for a period of five (5) years, at which point the contract shall automatically renew for consecutive five (5) year periods unless either Party provides notice of its intent not to renew this Agreement AT LEAST one hundred twenty (120) days prior to the automatic renewal date.

Either Party may terminate This Agreement for significant breach of the terms and conditions of this Agreement by the other party by using the following procedure provided that the non-breaching party shall deliver a detailed, written notice of such breach that allows the breaching Party forty-five (45) days to cure said breach. If the Breach is not cured to the reasonable satisfaction of the non-breaching Party within forty-five (45) days, this agreement shall terminate upon delivery, by the non-breaching Party, of a final written notice that the Breach has not been cured to the reasonable satisfaction of the non-breaching Party. DIAMOND has the right to terminate this Agreement immediately for payment delays of more than thirty (30) days past any invoice date. The Parties may, by mutual consent, terminate this Agreement at any time only under circumstances and terms mutually agreed upon. Terminations for convenience will not be permitted.

In the event that any subsequent State or Federal statute, regulation, or agency interpretation makes either party's right or obligations under this Agreement illegal or impractical, all other rights and obligations shall remain in force..

7. Medications Returned to DIAMOND for Credit:

In accordance with the terms outlined in Attachment "A", DIAMOND will provide FACILITY credit for "Eligible Drugs" returned to DIAMOND from FACILITY.

As used herein, the term "Eligible Drug" means, (i) a non-controlled oral solid medication; (ii) that was originally dispensed by DIAMOND to a patient/inmate at the FACILITY (iii) is sealed in unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging; (iv) has not been compounded; (v) does not require refrigeration; (vi) returned with more than 90 days until the expiration date; (vii) was under the control of the FACILITY's medical personnel at all time and has not been released to the inmate population or labeled as "Keep on Person"; (ix) was properly stored at the FACILITY; (x) upon reasonable inspection by a DIAMOND pharmacist, the package does not appear to have been adulterated; and (xi) and is otherwise eligible for return and redispensing in accordance with applicable law.

8. INSURANCE, INDEMNIFICATION, AND FINES

- a. **Insurance** - Both DIAMOND and FACILITY shall maintain professional and general liability insurance coverage at a minimum in the amount of one million dollars per occurrence, and five million dollars aggregate, naming the other as an additional insured. This insurance will be fully applicable to all services rendered by Party under this Agreement subject to the normal terms and exclusions of the policy. Each Party will provide the other with a certificate evidencing that the insurance is in place upon this execution of this Agreement. Each policy will provide for at least thirty (30) days written notice before any cancellation or alteration in policy terms before any term can be changed, or the policy cancelled. Each Party agrees to send the other copies of any notices of cancellation or alteration, and that they will do so within ten (10) days of the receipt of any notice.
- b. **Indemnification** – Negligent Acts of Either Party - FACILITY agrees to indemnify, defend, and hold harmless DIAMOND, its agents, officers, and independent DIAMONDS individually or collectively, from any and all claims, demands, liabilities, loss, costs or expenses for any loss, damage or injury, caused by the negligent acts or omissions of FACILITY or any of its employees, subcontractors, and agents.

DIAMOND agrees to indemnify, defend, and hold harmless FACILITY, its agents, officers, and independent DIAMONDS individually or collectively, from any and all claims, demands, liabilities, loss, costs or expenses for any loss, damage or injury, caused by the negligent acts or omissions of DIAMOND or any of its employees, subcontractors and agents. This indemnification includes all costs and expenses, including reasonable attorney fees.

Either Party or any Party affected by this contract shall be entitled, at their own expense, to participate or have their agents or attorneys participate in the defense of any suit against the other where the Party wishing to participate has, or may have, an indemnification obligation to the other Party. Each understands and agrees that any settlement, compromise or consent judgment of any claim, loss or damage asserted against either Party, or anyone contracting under either Party who provided services under this Agreement, shall not be binding against the other, unless that Party has expressly approved the settlement, compromise or consent judgment in writing.

The indemnification and hold harmless provisions of this Agreement shall survive the termination of this Agreement for a period not to exceed that period upon which a claim for loss or damages could be brought against either DIAMOND or FACILITY under the statute of limitation applicable to any act or acts by either Party. If any complaint or litigation arising out of the terms and conditions of this Agreement is filed against either Party, the Party served will notify the other Party in writing by providing the other Party with a copy of the complaint or notice of claim at which point the indemnification provisions of this Agreement will become enforceable.

- c. **Indemnification for Civil Fines, Penalties or other Monetary Assessments** - Any fine, penalty or other monetary assessment ("Fines") issued against either Party by any State Board of Pharmacy, DEA, FDA, Facility, State, County or any other federal or state entity with jurisdiction over FACILITY shall be the responsibility of the Party whose conduct is the subject of such Fines, regardless of which Party to this Contract is named and against whom the Fine is actually assessed. Thus, FACILITY will indemnify Diamond with respect to any Fines assessed by the State Board of Pharmacy or other agency against DIAMOND based on the acts or omissions of the FACILITY; and Diamond will indemnify FACILITY with respect to any Fines assessed by the State Board of Pharmacy or other agency against FACILITY based on the acts or omissions of DIAMOND for non-compliance or arising from the failure of DIAMOND to provide services in accordance with this Agreement.

- 9. **NOTICE** - All notices, designations, consents, offers, acceptance or any other communication provided for herein required to be in writing will be given by registered, certified mail, return receipt requested, overnight courier addressed to the Parties as shown below:

FACILITY: _____

DIAMOND: Diamond Drugs, Inc.
Attn: Mark J. Zilner
645 Kolter Drive
Indiana, PA 15701

- . **GOVERNING LAW AND VENUE** - The laws of the Commonwealth of Pennsylvania shall govern this Agreement as to the interpretation, construction and performance of the Parties. Any dispute that should arise between the Parties as related to performance of this Agreement or in any way relating to this Agreement shall be resolved in the courts of Indiana County, Pennsylvania.

- 11. **AMENDMENTS** - This Agreement may be amended, changed or modified only in writing, signed by authorized representatives of each of the Parties hereto.

12. REPRESENTATIONS - BOTH PARTIES will comply with all applicable laws and regulations related to providing services under this Agreement, including ensuring that Both Parties and all employees of BOTH PARTIES comply with any and all licensing requirements, any and all applicable environmental laws and regulations, any and all federal, state, and local regulations and all state non-discrimination requirements.

13. CONFIDENTIALITY - The Parties acknowledge that in carrying out their obligations under this Agreement, the Parties may have to exchange or otherwise divulge Confidential Business information, including, but not limited to, FACILITY lists, vendor lists, pricing, proprietary procedures, software programs, and business processes, the formulary, etc. Confidential Information does not include: (i) information which, at the time of disclosure to the receiving party, is in the public domain; (ii) information which, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement; (iii) information which was in the receiving party's possession at the time of disclosure by the disclosing party, and which was not acquired, directly or indirectly, from the disclosing party; (iv) information which the receiving party can demonstrate resulted from its own research and development, independent of disclosure from the disclosing party; (v) information which the receiving party receives from third parties, provided such information was not obtained by such third parties from the disclosing party on a confidential basis; or (vi) information which is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

The Party receiving such proprietary information SHALL NOT DISCLOSE such information to any third-Party individual organization or entity without the prior, express, written approval from the original Disclosing Party. Each Party certifies that they have policies and procedures in place that will protect the Disclosing Party from the re-Disclosure of any such Confidential Information.

DIAMOND and FACILITY each agree to maintain and ensure the confidentiality, privacy, and security of patient information to the extent required by law and each Party's policy. Without limiting the generality of the foregoing, The Parties agree to comply with the Health Insurance Portability and Accountability Act of 1996 with respect to the privacy and security of "protected health information" (as defined by HIPAA) created, transmitted, maintained or received pursuant to, or in connection with, the performance of DIAMOND obligations under this Agreement.

The Parties acknowledge that federal regulations relating to the confidentiality of individually identifiable health information require covered entities to comply with the privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time (codified at 45 C.F.R. Parts 160 and 164) ("Privacy Standards"). The Privacy Standards require covered entities to ensure that business associates who receive confidential information in the course of providing services comply with certain obligations regarding the confidentiality of health information.

This Confidentiality section shall survive termination of this Agreement.

14. AUDIT - The FACILITY reserves the right to audit all DIAMOND bills to assure reasonableness and shall, upon written request, be permitted to audit such other PHARMACY invoices and documents used to support such bills as are mutually agreed to be appropriate. When FACILITY requests an audit, FACILITY shall advise DIAMOND of the billing period sought to be audited. FACILITY's right to audit shall be for a period of four (4) years from the time such purchases are made. DIAMOND shall provide all requested information to FACILITY within seven (7) days of the receipt of the request (request may be made by email, fax, or postal mail).

15. SEVERABILITY - If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

16. WAIVER OF CONTRACTUAL RIGHT - The failure of either Party to enforce any provision of this

Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

17. **SCOPE OF AGREEMENT** - By execution of this Agreement, Both Parties agree to the terms and conditions set forth herein. This Agreement supersedes any and all other agreements, either oral or in writing, between the contracting Parties with respect to the subject matter covered by this Agreement, and no other agreement, statement, or promise relating to the subject matter of this Agreement that is not

contained in this Agreement shall be valid or binding unless in writing as an amendment and signed by Both Parties.

- 18. **COOPERATION** - Both Parties agree to use their best efforts to cooperate with each other in providing all information pertaining to all legal and regulatory compliance requirements when providing services under this Agreement, and will duly investigate and comply with any complaints brought to the other's attention by the other Party immediately. DIAMOND and FACILITY agree to work with each other in good faith to rectify any problems that may arise between Parties.
- 19. **STATUS OF PARTIES** - Neither DIAMOND nor FACILITY is for any purpose an agent, partner, or employee of the other. This Agreement does not constitute a joint venture between the Parties. It is agreed that in performing pharmacy services pursuant to this Agreement, DIAMOND and its employees will, at all times, be an independent contractor of FACILITY.
- 20. **FORCE MAJEURE** - Neither Party shall be in breach of this Agreement if the failure to perform arises out of causes beyond the control and without the fault of that Party. Such causes may include, but are not restricted to strikes or labor disputes, inmate disturbances, acts of God, acts of civil and military authority, acts of public enemy, fires, explosions, earthquakes, supplies, manufacturers, and floods. Such non-performing Party shall immediately notify the other Party in writing of its inability to perform by specifying all reasons constituting the cause or causes beyond its control and without its fault.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused their authorized representative to execute this Agreement on the date set forth above.

DIAMOND:

FACILITY:

Diamond Drugs, Inc.,
a Pennsylvania FACILITY, a.k.a. Diamond Pharmacy
Services

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____