

NPI#: 5622

PHARMACY SERVICES AGREEMENT

THIS PHARMACY SERVICES AGREEMENT, (the "Agreement"), dated as of June 1, 2012 ("Commencement Date"), between Superior Care Pharmacy, Inc. doing business as Superior Care Pharmacy, located at 2280 West Alexander Street, Salt Lake City, UT 84119 ("Pharmacy"), and Tooele County Jail, located at 1960 South Main Street, Tooele, UT 84074 ("Facility").

RECITALS

- A. The Facility is engaged in the operation of a prison, jail, detention center and/or corrections facility for which it requires pharmacy services in accordance with applicable local, state and federal laws and regulations.
- B. The Pharmacy is qualified, licensed and capable of providing approved drugs (prescription and non-prescription), intravenous products, supplies and services, respiratory supplies, enteral and parenteral nutritional products, and pharmaceutical supplies (collectively, "Products"), as required by the patients/residents of the Facility upon order or prescription of their physicians and in accordance with accepted professional principles and applicable local, state and federal laws and regulations.
- C. The Facility desire to utilize the Pharmacy's services, and the Pharmacy is willing to furnish such services and items as provided herein.

AGREEMENT

In consideration of the mutual covenants contained herein and for the reliance of the parties hereto, the Facility and the Pharmacy agree as follows:

1. **RESPONSIBILITIES OF THE PHARMACY:** For the benefit of the Facility, the Pharmacy will render all services and label all medication in accordance with any applicable requirements of local, state and federal laws and regulations, community standards of practice, and the Pharmacy's Policies and Procedures Manual. The Pharmacy agrees to deliver to the Facility any prescriptions and supplies on a mutually agreed upon schedule, with additional deliveries if emergencies arise.

All Pharmacy personnel are responsible for abiding by the Employee Code of Conduct of the Facility. Such employees are responsible first to the Deputy Warden of Programs of the Facility and ultimately to the Warden of the Facility in regard to their duties and responsibilities as specified in this Agreement.

Pharmacy shall provide computerized Physician Order Sheets ("POSs"), Medication Administration Records ("MARs") and Treatment Records ("TRs") to Facility upon request. Facility shall pay Pharmacy one dollar (\$1.00) per resident per month for POSs, MARs and TRs provided. Such fee shall be increased on each anniversary of the Commencement Date by a percentage equal to the percentage change in the Medical Care Services Index (part of the Consumer Price Index for all urban consumers, United States city average as published on a monthly basis by the United States Bureau of Labor Statistics). If Facility is not current in its payments for POSs, MARs and TRs provided under this section, then Pharmacy shall have the right, in addition to any rights it may have herein, to immediately cease the provision of POSs, MARs and TRs until such time as Facility becomes current in such payments. For iMRRs, Facility shall pay Pharmacy a fee of ten dollars (\$10.00) per occurrence.

2. **RESPONSIBILITIES OF THE FACILITY:** The Facility will provide the Pharmacy with the necessary billing data, including, but not limited to, Medicare and Medicaid numbers, patient/resident name, responsible party, billing address, phone number, physician names and any other pertinent data as required by the Pharmacy. This information will be provided at time of admission and as changes occur.

In addition, the Facility will make available to the Pharmacy adequate working and storage space to allow the Pharmacy to fulfill the services required of Pharmacy under this Agreement, including, but not limited to, adequate space for the storage of medication carts, containers or cards and equipment to be provided by the Pharmacy. The Facility and the Pharmacy will work together to instruct the Facility's personnel to utilize the equipment properly.

3. **BILLING**

- 3.1. **Billing:** The Pharmacy shall perform billing and collection for all Products provided to Medicare residents (and shall itself be responsible for payment of same in accordance with the Medicare prospective payment system, as the same is implemented). The Pharmacy will perform all billing and collection for Products provided to private insurance, private pay or Medicaid residents, and to residents covered by any other governmental reimbursement program, in accordance with applicable laws and regulations, except where the applicable payor pays the Facility a per diem or other capitated amount which includes payment for items furnished under this Agreement ("Capitated Residents"). The Pharmacy will bill for such items at its standard rates, as changed from time to time. A minimum charge of one dollar and ninety-nine cents (\$1.99) shall be charged for each Pharmacy Product dispensed by Pharmacy.

- 3.2. **Invoices:** The Pharmacy will submit a monthly invoice to the Facility for goods and services provided under this Agreement to Medicare residents, Capitated Residents, or to the Facility itself. The Facility will remit payment in full within thirty (30) days of the billing date of the Pharmacy's invoice. Payments will be applied to interest and late charge penalties first and then any remainder will be applied to the principal sum. In the event the Facility fails to pay any invoice when due, the Pharmacy, at its option upon ten (10) days prior written notice to the Facility, shall have the right to: (a) declare all of the Pharmacy's outstanding invoices to the Facility immediately due and payable in full, and (b) require the Facility to pay on a COD basis for all Products delivered to the Facility until all of the Pharmacy's invoices to the Facility are current according to their respective terms.

The Facility will notify the Pharmacy within thirty (30) days of the billing date of the Pharmacy's invoice indicating any amounts in dispute. In the event of any dispute arising from any claim or bill submitted by the Pharmacy, the Pharmacy will have access to all reasonable and necessary documents and records that would, in the discretion of the Pharmacy, tend to sustain its claim. Further, where the Facility is an intermediary in the processing of claims, the Facility will promptly furnish to the Pharmacy any information regarding the status of the claim and will grant to any fiscal Facility involved the right to discuss the status of the claim with the Pharmacy.

4. **TERM AND TERMINATION**

- 4.1. **Initial and Renewal Terms:** The term of this Agreement shall commence as of the Commencement Date, and shall continue in effect, unless sooner terminated as herein

provided, until the third (3rd) anniversary of the Commencement Date ("Initial Term"). This Agreement will be automatically extended for additional three (3) year periods (each a "Renewal Term") upon the expiration of the Initial Term and each extension or Renewal Term, unless either party will notify the other in writing no less than one hundred and twenty (120) days prior to the expiration of such Initial Term, extension or Renewal Term of its election not to extend the term for such additional period; provided, however, that no notice of non-renewal from the Facility will be valid unless it is current in its payments to the Pharmacy.

4.2. Termination for Default: If either party defaults in the performance of its obligations under this Agreement and such default is not cured within sixty (60) days of the receipt of written notice (or three [3] days in the case of an obligation to pay money), then the non-defaulting party will have the right, in addition to any other rights it may have, by further written notice to terminate this Agreement on any future date not less than ten (10) days from the date of such further notice; and provided that no notice of termination from the Facility will be valid unless it is current in its payment to the Pharmacy.

4.3. Obligations Upon Expiration or Termination: Upon expiration or sooner termination of this Agreement, the Facility will return to the Pharmacy, in good working condition, all of the Pharmacy's equipment, formulary documents (including all copies of the Omnicare Geriatric Pharmaceutical Care Guidelines®), policies and procedures manuals, forms and any other documents, information, etc. belonging to the Pharmacy. The Facility will not reproduce or permit the reproduction of the Pharmacy's documents, policies or procedures manuals and forms, nor circulate such to any individual or entity. Termination of this Agreement shall not relieve either party from liability for any breach of this Agreement occurring prior to the effectiveness of such termination.

5. MISCELLANEOUS

5.1. Status of Parties: Neither the Pharmacy nor the 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, the Pharmacy and its employees will, at all times, be an independent contractor to the Facility and its patients.

5.2. Late Charges: If any amount is not paid when due under this Agreement, the party owing such amount shall pay the other party a late charge on such amount equal to one and five-tenths percent (1.5%) per month or the maximum rate allowed by law, if less. Such late charge will accrue from the date any party's invoice is due and will continue to accrue until receipt of payment by the invoicing party. Either party's failure to request or demand payment of any late charge will not constitute a waiver of that party's right to receive such late charge.

5.3. Force Majeure: If either party fails to perform its obligations hereunder (except for the obligation to pay money) because of strikes, accidents, acts of God, weather conditions, or action or inaction of any government body or other proper authority or other causes beyond its control, then such failure to perform will not be deemed a default hereunder and will be excused without penalty until such time as said party is capable of performing.

- 5.4. Notices:** Notices or communications to be given under this Agreement will be given to the respective parties in writing either by personal delivery or by registered or certified mail, postage prepaid, or by overnight delivery as follows:

To the Facility:

Tooele County Jail
1960 South Main Street
Tooele, UT 84074
Attn: Administrator

To the Pharmacy:

Superior Care Pharmacy, Inc.
doing business as
Superior Care Pharmacy
2280 West Alexander Street
Salt Lake City, UT 84119
Attn: General Manager

or at such other addresses and to such other persons as either party may from time to time designate by notice given as herein provided. Such notices or communications will be deemed to have been given three (3) business days after deposit in the United States mail or one (1) business day after delivery to an overnight delivery service. Time is of the essence.

- 5.5. Successors and Assignment:** This Agreement will be binding upon and inure to the benefit of both parties and their successors and assigns. Nothing in this Agreement is intended nor will be deemed to confer any benefits on any third party.

Except as provided in the next sentence of this Section 5.5, neither party may assign any of its respective rights, duties and/or obligations under this Agreement without the prior written consent of the other party; provided, that the Pharmacy may assign its rights and delegate its duties and obligations under this Agreement to any other licensed pharmacy which is owned, directly or indirectly, by Omnicare, Inc., but no such assignment and delegation shall relieve the Pharmacy of liability for any breach of this Agreement by such assignee. Notwithstanding the previous sentence, the Facility or Pharmacy, as the case may be, shall assign this Agreement to any person or entity which purchases or otherwise acquires the assets and operations of the Facility or Pharmacy, as applicable and shall cause such person or entity to assume this Agreement; and any sale of the assets or operations of the Facility or Pharmacy without such assumption, or the execution of any agreement contemplating the sale of such assets or operations without such an assumption, shall constitute a breach of this Agreement.

- 5.6. Attorneys' Fees:** If either party brings an action against the other to enforce any condition or covenant of this Agreement, the substantially prevailing party shall be entitled to recover its court costs and reasonable attorneys' fees incurred in such action.

- 5.7. Civil Rights:** The Pharmacy will comply with Title VI of the Civil Rights Act of 1964 and §§503-504 of the Rehabilitation Act of 1973 and all requirements imposed by or pursuant to the applicable civil rights regulations of the Department of Health and Human Services. Further, the Pharmacy will provide its pharmacy services equally to the residents residing at

the Facility as required by the residents, pursuant to the instructions of the attending physician of any resident.

- 5.8. Governing Law:** This Agreement will be construed and governed according to the laws of the state in which the Facility is located, without giving effect to any choice of law or conflict of laws provision or rule that would cause the laws of any other jurisdiction to be applied.
- 5.9. Waiver:** Waiver by either party of a breach or violation of any provision of this Agreement will not operate as, or be construed to be, a waiver of any prior, concurrent or subsequent breach. None of the provisions of this Agreement will be considered waived by either party except when such waiver is given in writing.
- 5.10. Access to Records:** Pursuant to Paragraph 1395x(v)(I) of Title 42 of the United States Code, until the expiration of four (4) years after each provision of services under this Agreement, the Pharmacy shall make available, upon written request of the Secretary of the United States Department of Health and Human Services or upon request to the Comptroller General of the United States General Accounting Office or any of their duly authorized representatives, a copy of this Agreement and such books, documents, and records as are necessary to certify the nature and extent of the costs incurred under this Agreement.

The Pharmacy further agrees that in the event the Pharmacy carries out any of its duties under this Agreement through a subcontract, with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such contract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request, to the Secretary of the United State Department of Health and Human Services or upon request of the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of such subcontract and such books, documents, and records of such organization as are necessary to verify the nature and extent of such costs.

- 5.11. Entire Agreement; Amendment:** This Agreement and any Amendments or Addenda hereto constitute the entire agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous discussions, representations, correspondence and agreements, whether oral or written, pertaining thereto. This Agreement may be amended or modified only by a writing duly executed by both parties.
- 5.12. Severability:** If any term or provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement will not be affected thereby and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law, unless doing so will materially alter the relative benefits and burdens the parties bargained for herein.
- 5.13. Confidentiality for Arrangement:** Except as otherwise provided herein or as required by applicable law or the rules of any applicable securities exchange, both parties agree to keep this Agreement and its contents confidential and not to disclose this Agreement or its contents to any third party without the written consent of the other party.
- 5.14. Confidentiality and Privacy:** Except as otherwise provided herein or as required by applicable law or the rules of any applicable securities exchange, both parties agree to keep

this Agreement and its contents confidential and not to disclose this Agreement or its contents to any third party without the written consent of the other party.

The Facility and the Pharmacy will, in order to fulfill their respective obligations under this Agreement, need to disclose to each other certain individual resident related medical information that is individually identifiable health information under the provisions of the Health Insurance Portability and Accountability Act of 1996 and the Standards promulgated thereunder ("HIPAA") and that may also be protected information under applicable state privacy of medical information laws, and/or federal certification laws (collectively, the individual resident-related medical information is "Protected Health Information" and HIPAA and applicable state privacy of medical information laws, and/or federal certification laws are "Privacy Laws") in order that the parties can each conduct the treatment, payment and health care operations activities provided for under this Agreement and/or otherwise lawful under the Privacy Laws. Each party agrees to comply with the requirements of the Privacy Laws as to such disclosure or exchange of Protected Health Information. The parties intend that the services furnished by Pharmacy under this Agreement as described in Section 1 constitute "treatment" (as that term is defined by the HIPAA privacy standards).

In addition, during the course of this Agreement, each party may gain access to information other than Protected Health Information that is confidential or proprietary information of the other party ("Confidential Information"). Following the termination of this Agreement, at the other party's written request, each party shall return to the other party all Confidential Information of the other party held by it, including copies thereof. Notwithstanding the foregoing sentence, each party may retain copies of its work papers and other information concerning the provision of Products or other performance under this Agreement to the extent necessary for that party to comply with applicable law or to document its performance of its obligations under this Agreement.

- 5.15. Certification:** Pharmacy and Facility hereby certify that they will not violate the Anti-Kickback Statute (42 U.S.C. §1320a-7b) with respect to their performance under this Agreement.

[Signature page follows]

The signatories hereto represent that they are duly authorized to execute this Agreement on behalf of the party for whom they sign and such party will be bound by this Agreement.

EXECUTED as of the date first written above.

Tooele County Jail

By: Colleen Johnson
Title: COMMISSIONER

Date: 26 July 12

NPI#: 5622

**Superior Care Pharmacy, Inc.
doing business as
Superior Care Pharmacy**

By: Michael Wood
Title: RVP

ATTEST: -

Marilyn K. Gillette
MARILYN K. GILLETTE
TOOELE COUNTY CLERK

Date: 6/28/12

