

CONTRACT
BETWEEN
STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
AND
CORRECTIONS CORPORATION OF AMERICA

This Contract is made as of the 28 day of Feb, 1997 ^{RAM} between the Department of Correction, State of Tennessee, ("State") and Corrections Corporation of America.

WITNESSETH:

WHEREAS, the State is authorized by law to enter into a Contract for the private management of a correctional facility, pursuant to T.C.A. § 41-24-101 et seq.; and

WHEREAS, the Contractor has the experience and resources to manage a correctional facility;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the State and Contractor hereby agree as follows:

ARTICLE 1

DEFINITIONS

ACA - means the American Correctional Association.

ACA Standards - means the Standards for Adults Correctional Institutions (Third Edition, January 1990, as the same may be modified, amended, or supplemented now or in the future) published by ACA.

Commissioner - means the Commissioner of the Tennessee Department of Correction.

Contract - means this Document, together with all written attachments, exhibits, amendments and modifications and incorporating by reference herein, (1) the Request for Proposals, including exhibits and amendments; and (2) the proposal, including amendments and/or written clarifications.

Contract Monitoring Unit - means the Tennessee Department of Correction unit responsible for monitoring the quantity and quality of services required and the reporting obligations of the Contractor, and for carrying out the liaison responsibilities between the State and the Contractor.

Contract Liaison - means a person or persons assigned to the Contract Monitoring Unit and appointed and paid by the state to monitor the implementation of this Contract and/or to act as the Commissioner's designee. The Contract Liaison will also be the official liaison between the State and Contractor on matters pertaining to the operation and management services of the

facility and may perform other functions described in Department policies. The Contractor shall be notified of the identity of any Contract Liaison in writing signed by the Commissioner.

Contractor - means Corrections Corporation of America.

Court Orders - means any orders, judgments or opinions issued by a court of competent jurisdiction or any stipulations, agreements or plans entered into in connection with litigation that are applicable to the operation, management or maintenance of the Facility or relate to the care and custody of Inmates of the Facility, whether currently existing or as may be rendered in the future.

Department - means the Tennessee Department of Correction.

Document - means this document with attached appendix, excluding the RFP and Proposal.

Effective Date of Contract - means the date stated on page one of this Contract.

Facility - means the correctional institution in Wayne County, Tennessee, including adjacent real property described in Section 3.1, for the incarceration of male felony offenders sentenced to the care, custody and control of the Department, known as the South Central Correctional Center (SCCC).

Indigent Inmates - means Inmates who are deemed indigent as defined by Department Policy 504.04, as said policy may be amended.

Inpatient Hospital Costs - means any expenses incurred as a result of an Inmate's admission to a medical care facility, and expenses incurred as a result of out-patient treatment for emergency medical services.

Inmate - means any male felony offender sentenced to the Department and assigned to the Facility by the Department.

Inmate Day - means each calendar day or part thereof that an Inmate is located at the Facility, including the first, but not the last day of incarceration at the Facility.

Local Area - means Wayne, Hardin, Lawrence, Giles, Lincoln, Marshall, Maury, Lewis, Williamson, Hickman, Dickson, Humphreys, Perry, Houston, Benton, Henry, Weakley, Carroll, Henderson, Decatur, Gibson, Crockett, Madison Haywood, Chester, Fayette, Hardeman, and McNairy counties in Tennessee.

Per Diem Rate - means cost per Inmate, per Inmate Day.

Partial Default - means default of a portion of the services to be rendered by the Contractor under this Contract due to Contractor's failure to perform.

Partial Takeover. - means the State's discretionary assumption of a portion of the services to be rendered by the Contractor under this Contract not resulting from Contractor's failure to perform.

Policy Directive - means formal statement of the State's correctional policy on a given subject.

All Policy Directives shall not conflict with administrative rules or statutes or applicable American Correctional Association standards.

Operating Procedure - means a statement of procedure implementing a policy directive. One is not to be issued as a substitute for an administrative rule or policy directive. Procedures identify who does what and when to implement a policy or rule.

Post Orders - means a written, step-by-step description for an employee on how to perform a specific job. A "post order" may be considered a job outline. Post Orders are similar to an operating procedure and may even be a portion of one.

Proposal - means the Contractor's Proposal of October 30, 1996.

RFP - means the Request for Proposals issued by the Department and identified as RFS 97-329.44-002, together with the following amendments: Amendment 1 (10/7/96), Amendment 2 (10/11/96) and Amendment 3 (10/17/96).

Service Commencement Date - means 12:00 noon February 28, 1997.

Standards - means the standards to which Contractor's performance under this Contract must conform pursuant to Section 5.1 of the Contract.

State - means the State of Tennessee, including but not limited to the Department.

TOMIS - means the Tennessee Offender Management Information System, a mainframe computer system that automates the management of information about offenders under the supervision of the Tennessee Department of Correction. TOMIS captures all offender related information at the point of origin to provide accurate and timely information to those who use it.

TRICOR - means the Tennessee Rehabilitation Initiative in Corrections.

ARTICLE 2

TERM & SCOPE OF THE CONTRACT

Section 2.1 Term

(a) The term of this Contract shall be from the Effective Date of Contract until three (3) years after the Service Commencement Date, February 28, 1997, unless terminated earlier pursuant to the terms hereof. This term requires three (3) years of management service ending at 12:00 noon on February 29, 2000.

(b) The State shall have an option to renew the Contract upon the same terms and conditions for an additional twenty-four (24) month period by giving the Contractor written notice of its intent to exercise such option on or before November 1, 1999; provided, however, exercise of the option to renew is solely within the discretion of the State.

Section 2.2 Scope of the Agreement

(a) This Contract, including the documents incorporated by reference, shall constitute the entire agreement between the parties, and no statements, promises or inducements made by either party or agents of either party that are not contained in the Contract shall be valid or binding with the exception of Opinion of Contractor's Counsel described in Section 11.11. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Contract.

(b) Contractor agrees to perform all acts and services and comply with all duties and promises as described in this Contract.

(c) State agrees to perform all of its obligations described in the RFP and this Document.

ARTICLE 3
FACILITY AND PROPERTY

Section 3.1 Lease and Possession of Facility.

(a) The State leases to the Contractor the real property described in Appendix A together with all improvements thereon (the Facility), subject to the State's right to the following:

- (i) to enter and inspect; and/or
- (ii) to construct additional buildings or expand the capacity of existing buildings.

(b) Contractor shall provide for maintenance, repair, and replacement for the Facility and shall keep said Facility in good repair, working order and condition, subject to normal wear and tear. Contractor shall be responsible for all expenses incurred in said maintenance, repair and replacement, subject to Section 3.9.

(c) The Contractor shall maintain the Facility in accordance with all applicable fire, building, life safety, and handicapped accessibility codes.

(d) The Contractor shall comply with any seller's or manufacturer's recommendations regarding maintenance of the Facility which are provided to the Contractor.

(e) The Contractor shall implement the system for vermin and pest control, trash and garbage disposal, and hazardous waste management described in the Proposal.

(f) Contractor agrees that the Facility will be used only for the purposes described in this Contract and shall not allow or suffer any waste at the Facility. Contractor shall not harvest

any timber at the Facility or extract any other resource at the Facility unless agreed to in writing by the Commissioner.

Section 3.2 No Warranty. The State leases the Facility to Contractor as is and with all faults and make no express or implied warranties regarding the Facility, including but not limited to warranties regarding fitness for-particular purpose and hereby disclaims any and all express or implied warranties.

Section 3.3 State Property.

(a) The State shall furnish the Facility with the property, including telephone and related wiring, listed in Appendix B on or before Service Commencement Date.

(b) All property furnished by the State shall remain at the Facility unless its location must be moved for maintenance, repair or replacement. Any removal of said property shall only be made with the prior written consent of the Liaison.

(c) The State shall be responsible for the installation of the property described in subsection (a).

(d) Effective on the Service Commencement Date, the State hereby leases to the Contractor said property described on Appendix B.

(e) The State leases the property on Appendix B to Contractor as is and with all faults and makes no express or implied warranties regarding said property including but not limited to warranties regarding fitness for a particular purpose and hereby disclaims any and all express or implied warranties.

Section 3.4 Additional Property.

(a) Contractor shall provide and install in the Facility any additional equipment as well as all necessary perishables and other items necessary for Contractor to comply with its obligations under this Contract including but not limited to cleaning/housekeeping equipment and supplies.

(b) Upon written agreement by the parties without a Contract amendment, the parties may agree to revise the State equipment list on Appendix B. Said agreement must be in writing signed by the Commissioner and the Contractor.

Section 3.5 Insurance. The Contractor shall obtain and keep in force insurance on all property to be located at the Facility, whether said property is supplied by the Contractor or State.

Section 3.6 Ownership of property at termination.

(a) At the conclusion of the Contract, whether by expiration or termination, all equipment, perishables, supplies and any other property, whether real or personal, including but not limited to Inmate files, fiscal records and any other records used at the Facility or purchased with state funds shall become the property of the State, whether initially acquired by the Contractor or the State.

(b) At the conclusion of the Contract, whether by expiration or termination, the facility and property furnished by the State shall be returned to the State in good order and in the condition received, reasonable use and wear thereof excepted, provided that if any property provided by the State is destroyed, lost or stolen and has not been replaced, the Contractor shall

be responsible to the State for the residual value of said property at the time of loss and said value may be withheld from any amounts owed Contractor.

(c) Contractor agrees that no security interest will attach to any property used at the Facility whether purchased by State or Contractor. In the event a security interest is created on any of said property, Contractor agrees to immediately notify the Liaison in writing and cause said security interest to be extinguished within thirty (30) days.

Section 3.7 Manuals. The State will provide Contractor with a copy of all equipment manuals, a set of as-built drawings, and any warranties affecting the property leased to Contractor under Section 3.3 and affecting the Facility.

Section 3.8 Maintenance.

(a) The Contractor shall be responsible for the maintenance, repair, and replacement of all property of any nature whatsoever located at the Facility at Contractor's expense whether said property is furnished by the State or the Contractor, subject to Section 3.9.

(b) The Contractor shall implement the plan, including the preventive maintenance program, contained in its Proposal to maintain the Facility and all property contained therein.

(c) Contractor shall comply with TDOC Policy 108.01 as it may be amended during the term of the Contract.

(d) The Contractor shall comply with any seller's or manufacturer's recommendations provided the Contractor regarding maintenance of any property leased to the Contractor under Section 3.3.

Section 3.9 Exceptions to Contractor Maintenance. The only exceptions to the Contractor's obligation to effect repairs or provide replacements to the facility and property contained therein at its expense are as follows:

(a) where repairs or replacements are covered by a warranty made by a third party to the State, provided, however;

- (i) if Contractor has caused or contributed to the invalidity of any warranty or failed to comply with Section 3.10, the Contractor shall bear the full expense to effect any repair or replacement; and
- (ii) for purposes of this Article, the decision regarding whether and to what extent the Contractor has invalidated a warranty, whether the Contractor has failed to comply with Section 3.10 or whether a defect is included in a warranty shall be within the sole judgment of the State;

(b) replacement of entire systems including but not limited to the boiler plant, heating, air conditioning, security electronics, communications and utility services, and costs to replace major components thereof which exceed \$5,000; provided, however,

- (i) decisions regarding whether and to what extent the entire system or a major component thereof should be replaced shall be within the sole judgement of the State; and

(ii) The Contractor shall be responsible for all costs if in the sole judgement of the State the replacement is necessary due to any of the following causes:

(a) Contractor's negligence,(b) Contractor's failure to adequately maintain the systems or portions thereof, or Contractor's failure to comply with the provisions of the Contract; and

(c) where repairs or replacements are necessary due to design error or omission or improper construction of the Facility and not covered by a warranty. The decision regarding whether and to what extent the repair or replacement is due to design error or omission or improper construction shall be within the sole judgment of the State.

Section 3.10 Warranties.

(a) The State shall promptly provide Contractor a copy of any warranty made by a third party to the State covering property provided by the State or on the Facility; provided, however, the State is not obligated to acquire or purchase any such Warranties.

(b) With respect to said warranties, Contractor agrees as follows:

(i) to maintain the Facility and property located thereon in compliance with said warranties; and

(ii) to promptly notify the Liaison in writing of any defects of whatever nature which are covered by said warranty allowing the State sufficient time under the warranty to notify the entity providing said warranty.

Section 3.11 Contractor Failure to Repair. If the State acquires notice of Contractor's failure to comply with its obligations regarding maintenance, repair or replacement with the Facility or property thereon, it may so notify the Contractor in writing but is not obligated to do so. Failure of the State to notify Contractor shall not relieve Contractor of its obligations hereunder. In the event the State is required to provide written notice of said failure pursuant to Section 9.1(c), the Contractor shall promptly comply with its obligation within the time specified by the State in the notice. If Contractor fails to effect said maintenance, repair or replacement within the time specified in said notice, the State may, but is not obligated, to do the following:

- (a) the state may effect the maintenance, repair, or replacement and withhold the expense of such maintenance, repair or replacement from amounts due the Contractor; and/or
- (b) avail itself of any or all of the remedies described in Article 9.

Section 3.12 Construction and Renovation.

(a) Contractor shall not modify, renovate, construct new buildings, add to existing buildings, or modify any of the systems contained therein including but not limited to the boiler plant, heating, air conditioning, security electronics, communications and utility services without the prior written approval of the State. Said approval shall include a review of the proposed modification by the Select Oversight Committee on Corrections and approval of the State Building Commission where required by law, regulation or policy. All modification, construction, and renovation requested by Contractor and approved by State shall be at Contractor's expense, unless otherwise specified.

(b) The State reserves the right to construct additional buildings at the Facility and/or to expand the capacity of existing buildings at the Facility. In the event the State exercises this right, Contractor agrees:

- i. To cooperate with the State to the fullest extent possible;
- ii. That this Contract shall remain in full force and effect; and
- iii. That Contractor shall accept an increase in the Inmate population under the terms of this Contract with additional compensation to the Contractor being described in Article 7.

Section 3.13 Utilities and Taxes. Contractor shall pay all taxes associated with this Contract and utility costs of the Facility including but not limited to water, gas, sewage and electric beginning on the Service Commencement Date. In the event ad valorem taxes are assessed against property at the Facility not owned by the Contractor, the Contractor may seek additional compensation pursuant to Section 7.5.

Section 3.14 Telecommunications. Contractor will provide, at its expense, all necessary telecommunications equipment except the telephone system. Such equipment must be capable of interfacing with the state existing communications and automated information systems and with any future department systems. Contractor shall enter all required data on TOMIS.

The Contractor may make additions to or rearrange features of the telephone system as it deems necessary, subject to written approval by the State. The Contractor must assure that the

quality of workmanship and added components are of equal or greater quality to maintain system integrity.

All cost incurred in connection with the telephone operations, but including additions, labor, maintenance, repair, moves and changes, local and long distance service, and training will be paid directly by the Contractor.

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

Section 3.15 Destruction of Facility.

(a) If destruction of the Facility is caused in whole or part due to the Contractor's negligence or due to Contractor's failure to perform its obligations under this Contract, then the State may seek reimbursement from Contractor for any damages sustained by the State.

(b) In the event the Facility is destroyed in part for any reason, then the Contractor remains obligated to fulfill its obligations under this Contract to the extent such is possible in the portion of the Facility that remains operational. The Contractor recognizes that the inability to perform its obligations due to the destruction may result in the State seeking a compensation adjustment pursuant to Section 7.5.

(c) In the event the Facility is destroyed such that the physical damage prevents the housing and programming of the appropriate number of Inmates as determined by the Commissioner in his sole judgment, then the State may terminate this Contract without penalty either immediately or within stages upon written notice to the Contractor.

ARTICLE 4

CONTRACT MONITORING

Section 4.1 Monitoring

(a) The State has the right and authority under this Contract to monitor Contractor's performance hereunder. Such monitoring shall include but not be limited to observing and reporting on the day-to-day operational performance of the Contractor regarding compliance with all terms and conditions of this Contract. Such monitoring or failure to monitor shall not relieve Contractor of its responsibility, obligation and liability under this Contract.

(b) The State, through its Contract Management Unit, shall develop reporting requirements for the Contractor that shall include but not be limited to weekly, monthly, and/or quarterly reports on the following subjects: Inmate jobs and education, incident reports, disciplinary reports, Inmate grievances, staff turnover, staff training, employee grievances, employee discipline, health care access, reclassifications, transfers, furloughs, releases, media contacts, lawsuits, volunteers, drug audits, cell searches, visitation, and maintenance. Also, an emergency reporting process shall be established that shall address, at a minimum, segregation of Inmates, use of force, and incidents which involve substantial risk to property, life, or institutional security.

(c) Contractor agrees to cooperate with the State, including any representatives of the State, in the Contract monitoring effort of the State through such means as may be requested from time to time, including, but not limited to the reporting of information as requested. The state and Contractor agree that the information collecting and monitoring processes described in

this Section 4.1, will be defined in the policies and procedures of the Tennessee Department of Correction.

Section 4.2 Comparative Evaluation

(a) The State has the right and authority under this Contract to compare the Contractor's performance with comparable State facilities. The State has the right and authority under this Contract to collect information to compare the cost and quality of services provided by the Contractor with the cost and quality of service provided by the State at its comparable facility.

One purpose of said evaluation may be to collect information to facilitate the State's comparison of the cost and quality of services provided by Contractor at the Facility with the cost and quality of services provided by the State at its comparable facilities.

(b) Contractor agrees to cooperate with the State, including any representatives of the State, in any comparison of services undertaken by the state through such means as may be requested from time to time, including, but not limited to, the provision of information.

(c) The State and Contractor agree that the information collecting and comparative evaluation processes, described in this Section, will be defined by the State at the time such a comparative evaluation is undertaken.

Section 4.3 Liaison

(a) The State shall provide Liaison(s) to be located at the Facility. The Liaison(s) will be an employee(s) of the Department and will be paid by the Department. The Contractor shall have no control over the activities of the Liaison(s), supervisory or otherwise.

(b) The Liaison(s) shall be the representative of the State at the Facility to monitor the Contractor's compliance with the Contract. The Commissioner may also appoint the Liaison to act as his designee. The Liaison may also have functions described in Department policies. The Liaison may have other functions as provided by the Commissioner in writing.

(c) Unless otherwise specified by the Commissioner in writing, the Liaison shall be the designated recipient of all information required of the Contractor.

(d) The individuals(s) acting as Liaison(s) may be changed during the term of the Contract, at the discretion of the Commissioner.

(e) The State hereby expressly disclaims that the Liaison or any other state employee or official has any authority, apparent or otherwise, to bind the State under this Contract unless expressly stated herein; provided, however, that the Commissioner shall have the same authority granted any state employee under this Contract and the Commissioner retains authority over the Inmates and Facility which may not be delegated at law.

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

Section 4.4 Multiple Liaisons.

(a) In the event that the Commissioner designates more than one (1) individual to act as Liaison, the State shall provide the Contractor with a description of the Liaisons' levels of authority in writing executed by the Commissioner.

(b) In the event the Contractor believes it is receiving conflicting instructions from the Liaison(s) or that a Liaison is acting beyond his or her level of authority under the Contract or as provided in subsection (a), the Contractor shall notify the Commissioner in writing. The written response of the Commissioner shall be final.

Section 4.5 Office Space.

(a) Contractor shall provide adequate office space and local telephone service for the Liaison(s) and the staff of the Liaison(s), which may include a secretary, in close proximity to other administrative offices.

(b) Contractor shall also provide the Liaison and staff with access to all major office equipment, at Contractor's expense.

(c) Contractor shall not provide the Liaison(s) or Liaison staff with gifts or any form of compensation at any time.

Section 4.6 Liaison Access.

(a) The Liaison(s), shall have immediate, complete, and unrestricted access to all parts of the Facility at any and all times.

(b) The Liaison(s), shall have immediate, complete, and unrestricted access to all documents in any way pertaining to the obligations of Contractor under this Contract, including but not limited to Facility records, Inmate files, personnel files, and financial records. In the event that any such document is not located on the facility site, upon request Contractor agrees to provide the Liaison with a copy of the document within seventy-two (72) hours of the request.

(c) The Liaison(s), shall have immediate, complete, and unrestricted access to all meetings and hearings which in any way pertain to the obligations of Contractor under this Contract. Contractor agrees to notify the Liaison of the time, place and agenda at least twenty-four (24) hours in advance of any such meeting or hearing, unless it is not reasonable to provide said notice in which case the Liaison shall be notified simultaneously with the other participants; provided, however, the Liaison may not have access to meetings between the Facility staff and legal counsel retained by Contractor unless permitted by Contractor, but Contractor shall provide the Liaison with written notice of said meeting identifying the participants within five (5) days after said meeting.

(d) The Liaison(s), shall have immediate, complete, and unrestricted access to all Inmates and access at a reasonable time and place to all employees of Contractor, including but not limited to the Warden.

Section 4.7 Meetings with Liaison. Contractor agrees to hold regularly scheduled weekly meetings with the Liaison to report on the operations of the Facility and to respond to any questions raised by the Liaison. Said regular meetings shall be in addition to interim meetings requested by the Liaison; provided, however, the frequency of such meetings is subject to modification at the sole discretion of the State. Contractor agrees that a representative of the Contractor having supervisory responsibility and authority to address the issues raised shall be in attendance at said meetings. An agenda shall be developed for said weekly meetings and Meeting Minutes shall be recorded and filed with the Contract Management Unit of the Department of Correction.

Section 4.8 Requests for Information.

(a) The Contractor shall provide the Liaison with written responses to any information requested by the Liaison or Commissioner concerning any aspect of Contractor's performance under the Contract within the period prescribed in the State's request.

(b) The Contractor shall certify that said information is accurate and if Contractor is unable to so certify then Contractor shall state the reason therefor.

(c) Upon written request by the Liaison or Commissioner, the Contractor shall compile information in the requested form and provide documentation substantiating said information.

(d) Contractor shall not destroy any document related in any way to the Contractor's performance under the Contract without the prior written consent of the Liaison.

Section 4.9 Routine Documents. The Contractor shall provide the Liaison upon request with a copy of, or opportunity to review, all routine documents generated by the Contractor contemporaneously with the dissemination of the document. The Liaison shall notify the Contractor in writing of the requested routine documents.

Section 4.10 State Inspection. The Commissioner or his/her designee(s) shall have the same access as described in Section 4.6, Liaison Access, which access shall include but not be limited to persons designated by the Commissioner to inspect the facility and/or audit Facility and/or Contractor's performance under the Contract. Contractor is also obligated to provide appropriate access to authorized inspection and regulatory agencies. The Contractor shall exercise due

diligence for the safety and welfare of the Liaison, any other State employee, and any visitor at the Facility.

Section 4.11 Immediate Compliance.

(a) If the Commissioner determines that the Contractor is not operating in compliance with a term or condition of this Contract which in the opinion of the Commissioner may adversely affect the security of the Facility or which may present a hazard to the safety or health of Inmates of other individuals, the Contractor shall be notified in writing (or verbally if it is believed an emergency situation exists). The notice shall direct the Contractor to immediately correct the noncompliance.

(b) The Contractor shall immediately notify the Commissioner of the proposed corrective action. If the Commissioner does not object to the proposed corrective action, the Contractor shall immediately implement said corrective action.

(c) If the Commissioner disagrees with the proposed corrective action or if the Contractor fails to notify the Commissioner immediately of its proposed corrective action, the Commissioner shall specify corrective action which the Contractor shall immediately implement.

(d) Notwithstanding any provision contained herein to the contrary, in such a circumstance, the Contractor shall immediately implement the corrective action specified by the Department before any appeal is taken.

(e) In the event the Contractor disagrees with the determination of noncompliance or designated corrective action, a request for reconsideration may be taken to the Commissioner. In no event shall the corrective action be delayed pending appeal. Upon examination, if the

Commissioner determines in his sole discretion that a noncompliance did not exist or that the corrective action required by the Department was excessive, the Commissioner shall authorize payment to the Contractor of the actual expense incurred in taking said corrective action or excessive corrective action upon receipt of appropriate documentation substantiating said expense from the Contractor. All directions and actions by the Commissioner and actions by the Contractor shall be recorded and reported in writing as soon as practical and filed with the Contract Management Unit.

Section 4.12 Incident Reports. Contractor shall implement Department policy regarding the reporting of incidents.

Section 4.13 Financial Statement. On or before April 1 of each year during the term of this Contract, Contractor shall provide the Commissioner with a copy of its previous fiscal year's audited annual financial statements.

ARTICLE 5
OPERATION OF FACILITY

Section 5.1 Obligations of Contractor. Contractor agrees to perform all acts and services and comply with all duties and promises as described and in conformance with the following:

(a) all applicable constitutional standards, federal, state and local laws, court decisions, and Court Orders and consent agreements, whether currently existing or as may be enacted or rendered in the future;

(b) all State and Departmental policies specified in Appendix C, as same may be amended in writing by the Department during the term of this Contract, or in the discretion of the Commissioner, policies approved by the Department which may not be identical to State or Department policies;

(c) such other policies as the Department may make applicable to the Contractor in writing during the term of the Contract as same may be amended during the term of this Contract;

(d) ACA standards;

(e) the terms of this Document;

(f) the terms of the RFP; and

(g) the terms of the Proposal.

The standards articulated in (a) through (g) shall hereinafter collectively be referred to as "Standards."

Section 5.2 Obligations of State. State agrees to perform its obligations as described in this Document and the RFP. Notwithstanding any provision contained herein to the contrary, the parties agree that the State incurs no obligations as may be contained in the Proposal.

Section 5.3 Conflicts.

(a) In the event of an irreconcilable conflict among the Standards, the Contractor is required to follow the Standard as determined by the Liaison.

(b) In the event of disagreement between the Contractor and the Liaison regarding which item provides the Standard of service, the Commissioner or his designee shall make the final decision.

(c) Approval by the State of any policy or procedure submitted by the Contractor which may deviate from the Standards shall not relieve Contractor of the obligation to follow the Standards.

(d) In the event of conflicts between the RFP and this Document regarding the State's obligations, the State shall comply with this Document.

Section 5.4 Policy and Procedures Manual. The Contractor, on or before January 15, 1997, shall provide the State with a written Policy and Procedures Manual which shall contain policies and procedures for all services to be rendered by Contractor in accordance with the Standards. Said manual shall establish the policies and procedures the Contractor shall follow in all areas covered by this Contract, including the areas covered by the Department policies listed in Appendix C. Said manual shall be subject to the written approval of the State and said manual shall not be

altered, amended, modified, revised or supplemented without the prior written approval by the State. The Contractor shall implement the provisions of said manual throughout the term of this Contract.

Section 5.5 Assignment and Transfer of Inmates.

(a) Inmates will be assigned to the Facility in accordance with Department policies. Contractor may not refuse to accept any Inmate assigned to the Facility, but if the Contractor believes that an Inmate has been erroneously assigned to the Facility, it may request his transfer in writing, through the Liaison citing the appropriate sections of Department policy. Any decision by the Department on such request shall be final.

(b) Contractor's requests for reassignment of Inmates from the Facility to another institution for medical, psychiatric, disciplinary or administrative reasons or for Inmate furloughs will be made in writing through the Liaison and evaluated by the Department. Any decision by the Department on such request shall be final.

(c) The State may transfer Inmates from the Facility with said decision to transfer being within the State's sole discretion.

Section 5.6 Safety and Emergency Procedures,

(a) The Contractor, or before January 15, 1997, shall develop and submit (1) written riot and disturbance control contingency plans, and (2) disaster preparedness plans to the State. Contractor shall cooperate with State in preparing contingent Inmate relocation plans.

(b) At a minimum, the Contractor shall implement the written guidelines for the prevention of fire, safety inspections, maintenance of fire alarm and smoke detection systems, fire evacuation drills, evacuation plans, a procedure to report job-related injuries, and provisions for testing equipment to maintain essential lighting, power and communications contained in its Proposal. All such procedures will comply with National Fire Protection Association life safety codes and Department Policies 112.04 and 112.05.

(c) The Contractor shall develop and submit to the State plans for the search and apprehension of any escaped Inmate, on or before January 15, 1997. Said plans shall address the Contractor searching for any escapee off the grounds of the Facility and coordination with local and State authorities. Contractor shall implement said plans regarding any search off the grounds of the Facility only if so requested by the Commissioner.

(d) During the term of the Contract, the Contractor shall develop and submit to the State in writing any other emergency and control plans as may be requested in writing by the Department within the time period set out in said request.

(e) All plans under this Section must be submitted to the State and approved by the State in writing. Contractor agrees to make any revisions, deletions or additions requested by the Commissioner or his designee. Upon written approval by the State, Contractor shall begin immediate implementation of the plans or in the case of contingency plans, certify that Contractor has the ability and shall implement the plan if the contingency occurs. Said plans may not be revised, amended, altered, or supplemented without prior written consent of the State.

(f) All plans must be in conformance with the Standards.

Section 5.7 Medical and Mental Health Services.

(a) Contractor shall provide all physical health services, mental health services and dental services as specified in this Section and in the Standards utilizing Department health services medical records forms and mental health service forms, as said forms may be revised or supplemented during the term of this Contract.

(b) At a minimum, these services must meet the Standards.

(c) The physical health, mental health, and dental services shall include but not be limited to the following:

- a. 24 hour-a-day, 7 day-a-week emergency physical health and mental health care;
- b. 24 hour-a-day, 7 day-a-week on-site RN coverage
- c. initial health screening;
- d. health appraisal examination;
- e. daily triaging of complaints;
- f. daily sick call per normal workday schedule;
- g. infirmary operation with at least supervision by an RN twenty-four hours per day, seven days per week (NOTE: Facility has a 12 bed infirmary, but inpatient hospital and surgical services will be provided and/or arranged to be provided outside of the institution.);
- h. use of the Department health record;
- i. special medical programs and services for, but not limited to, Inmates with chronic needs or requiring convalescent care;

j. mental health, sex offender screening and aftercare, and substance abuse services;

1. Mental Health. Provide up to sixty-eight (68) mental health psychiatric transition beds, single celled (or double celled upon clinical and administrative approval), for Inmates who are mentally or emotionally disturbed. This group of Inmates will encompass those who have completed a more intensive program at the Lois M. DeBerry Special Needs Facility (DSNF) and are not yet ready to be assimilated in a general population - step down capability. It will also include a step up capability for those who cannot function adequately in a general population but do not require as intensive treatment as that provided at DSNF. Diagnostic assessments, psychopharmacological management, jobs, programming activities, counseling and support groups should be provided in this housing unit. This program will serve Inmates from across the State.

Admission criteria to this unit for Inmates coming out of the DSNF for step down purposes will include:

1. A comprehensive discharge summary from the sending treatment providers,
2. Global Assessment of Functional Scale between 31 and 60,
3. Ability to participate in structured activities for longer than two hours, stabilized on medication,
4. Ability to function in group activity with minimal supervision,

5. Ability to participate in some unsupervised movement outside the unit, or
7. Considered by the institutional psychology staff to be in need of structured treatment.

Admission criteria to this unit for Inmates utilizing its step up capacity will be as follows:

1. A comprehensive discharge summary from the sending treatment providers,
2. Inability to participate in structured activities,
3. Not stabilized on medication, or
4. Inability to participate in unsupervised movement.
5. May present periodic episodes of emotional and/or behavioral misconduct related to a disorder.

Discharge criteria:

1. Demonstrates ability to remain compliant with medication(s), if applicable,
 2. Ability to function in a general population environment as determined by the treatment team,
 3. Meets criteria for admission into the DSNF, or
 4. Direct parole/discharge from TDOC custody.
2. Sex Offender. A sex offender aftercare treatment program that conforms to the department's policies and procedures shall be provided by

Contractor. Screens shall be provided for the purpose of placement into the Department's intensive treatment program.

3. Substance Abuse. Substance abuse programming that emphasizes relapse prevention and provides for after-care or self-help treatment services shall be provided by Contractor.

- k. Specialty physician care. Upon the Contractor's request, the State may in its sole discretion allow the Contractor to use the on-site specialty services at the DSNF. The Contractor shall pay the State for specialty care according to the State's fee schedule for specialty services.
 - l. ancillary services - radiology, laboratory, etc.
 - m. dental services - routine
 - n. pharmaceutical services and supplies. Upon the Contractor's request, the State may, in its sole discretion, allow the Contractor to purchase pharmaceutical services and supplies through the Department's pharmacy. The Contractor shall pay the State for such items at the State's cost plus a dispensing fee of \$2.50 per prescription.
 - o. optometric services (provided on-site)
 - p. health education
 - q. inpatient hospitalization services (utilizing the TDOC Contract hospital wherever possible)
 - r. outpatient hospitalization services
- (d) The Contractor shall furnish eyeglasses, hearing aids, and dentures.

(e) In the event it is the opinion of the Contractor's Medical Director that an Inmate's health or well-being would suffer or be damaged if a needed prosthesis is denied the Inmate, then said prosthesis shall be provided by the Contractor.

(f) The Contractor shall be responsible for security services for inpatient care during confinement period for which the Contractor is financially responsible, other than at a Departmental facility. Contractor shall provide security at an off site medical facility after the Department assumes responsibility, if requested to do so by the Department at the following costs:

Year 1	\$14.92 per officer/per hour
Year 2	\$15.40 per officer/per hour
Year 3	\$15.91 per officer/per hour
Year 4 (option)	\$16.42 per officer/per hour
Year 5 (option)	\$16.96 per officer/per hour

(g) Notwithstanding any provision contained herein to the contrary, the Contractor shall be responsible for the cost of providing all health, medical, mental health, and dental services, including but not limited to inpatient hospitalization, any surgery and specialty services, medications, specialty clinics, medically related transportation and the costs associated with the provision of services described in this section unless specifically excluded or limited below under EXCLUSIONS AND LIMITATIONS.

(h) EXCLUSIONS AND LIMITATIONS.

- a. If the inmate is hospitalized at a non-Departmental facility, the Contractor shall not be responsible for Inpatient-Hospital Costs which exceed \$4000.00

per Inmate per admission or for costs incurred after the third day of hospitalization, whichever comes first. The Department will decide on the location of care and confinement following this initial period and may, in consultation with the Contractor's representative, decide to utilize Departmental facilities during the initial period of inpatient care. The Contractor shall not have access to the Department's facilities without the Department's approval. If an inmate is housed and treated at a Departmental facility, the Department will assume financial responsibility for expenses incurred within its facilities. Provided, however, notwithstanding any provision contained herein to the contrary, any Inmate medical expenses resulting from the negligence or willful wrongdoing of the Contractor, its officers, agents or employees, shall be fully paid for by the Contractor.

2. The Contractor shall not be responsible for Inpatient-Hospital Costs, including any surgery and specialty services, associated with the treatment of persons with Acquired Immune Deficiency Syndrome (AIDS), as defined by the Centers for Disease Control. The Contractor shall be responsible for hospitalization costs associated with other Human Immunodeficiency Virus (HIV) infected patients.
3. The Contractor shall not be responsible for the cost of providing AZT, or other medications therapeutically indicated for the treatment of Inmates with AIDS or HIV infection. Such treatment shall be at the Department's discretion and expense.

Section 5.8 Food Service.

(a) Contractor will provide food service for the Inmates and volunteers in accordance with the Standards including but not limited to the provision of special diets for medical or religious requirements and three (3) meals for each Inmate served at regular times during each twenty-four (24) hour period with no more than fourteen (14) hours between the evening meal and breakfast.

(b) The Contractor shall not be required to follow the Department's master menu, but the food service area must comply with State health regulations. At a minimum the amount of daily calories must conform with the recommended dietary allowances published by the National Academy of Sciences. Menus shall be approved by a registered dietician. Menus and dietary allowances shall be filed with the Contract Management Unit.

Section 5.9 Laundry, Inmate Clothing and Hygiene.

(a) Contractor will provide complete Inmate laundry services, Inmate clothing and bed linen (including pillows, pillow cases, sheets, blankets), and towels in accordance with the Standards.

(b) Contractor shall implement the procedures described in the Proposal to ensure the issue of clean, usable bed linen, towels, shoes and clothing to all Inmates.

(c) Contractor shall provide Indigent Inmates with soap, toothbrush, toothpaste, comb, deodorant, and all other necessary hygiene supplies.

(d) Inmate clothing shall meet the Department's specifications, including but not limited to specifications related to quality and strength of materials.

Section 5.10 Recreation.

(a) Consistent with the Standards, the Contractor shall provide facilities, equipment and supplies for indoor and outdoor recreational and leisure time programs for the Inmate population.

(b) Contractor shall provide for a comprehensive recreational program supervised by a qualified person and shall set forth the number of hours of outdoor recreation available to each Inmate. On or before January 15, 1997, Contractor shall submit to the Department written policy and procedure which shall provide the specifics of said program and shall be subject to the prior written approval of the State.

Section 5.11 Transportation.

(a) The Contractor will be responsible for the following Inmate transportation:

1. All transportation between the Facility and the State's Turney Center located in Only, Tennessee to connect with central transportation system vehicles, to include transportation of Inmates initially assigned to the Facility and other Inmates being transferred to and from the Facility for various reasons.
2. All transportation within the Local Area; and
3. Transportation outside the Local Area, as necessary, when the Department's central transportation is unavailable or time restricts interinstitutional transfer, including but not limited to administrative transfers initiated by the Warden and approved by the Commissioner's designee, and missed or late notification of court dates.

(b) The Contractor shall provide security in conformance with the Standards while transporting Inmates.

(c) The Department will be responsible for all other Inmate transportation via connection at Turney Center Industrial Prison for Department-mandated moves of prisoner groups for assignment purposes.

Section 5.12 Inmate Commissary.

(a) Contractor will provide a commissary for Inmates which shall supply only those non-consumable items approved by the Department in writing and such consumable items as the Contractor approves.

(b) The Contractor may not have items in the Commissary which are prohibited by Departmental policy.

(c) Commissary items shall be sold at a reasonable price subject to the prior written approval by the Commissioner or his designee. All profits derived from the Commissary operation shall be retained by Contractor. Contractor shall utilize the automated system for all commissary transactions.

Section 5.13 Mail. Contractor will provide pick up and delivery of Inmate mail in compliance with the Standards. Contractor will furnish first class postage to indigent Inmates for the mailing of legal documents to courts or legal counsel and a reasonable amount of postage for other purposes.

Section 5.14 Religious Services. Contractor will designate adequate space within the Facility for religious services and provide religious programs and/or religious services in compliance with the Standards.

Section 5.15 Inmate Grievance Procedure. Contractor will utilize Departmental policies regarding Inmate grievance procedure and the Department's system for maintaining grievance related records, as said policies and/or system may be revised during the term of this Contract.

Section 5.16 Security.

(a) Contractor shall provide Inmate security in accordance with the Standards at all times in the Facility, and while Contractor is transporting Inmates and at all other times unless relieved of said obligation by the Commissioner in writing. All policies and procedures regarding security shall be provided to the State on or before January 15, 1997. Said policies and procedures shall be in accordance with the Standards and subject to written approval by the State prior to implementation. Contractor shall comply with said policies and procedures during the term of this Contract. All Inmate program activities in accordance with the Standards shall take place within the Facility. No Inmate shall leave the Facility except under security escort unless provided for by Department policy.

(b) At a minimum, the Contractor shall provide security, perimeter control, facility control, control center function, post orders, security patrols, security inspections, counting procedures, key control, procedure for search and control of contraband, tool control, escape plan detection, appropriate use of security equipment, use of restraints, use of firearms and chemical

agents, tactical unit procedure, inspections, housing unit assignment plans and internal and external movement control procedures and periodic shakedowns. Security procedures will be in compliance with Departmental policy when applicable.

Section 5.17 Visitation. Contractor shall designate physical space and provide appropriate security and supervision for indoor and outdoor visitation in accordance with applicable Standards, no less frequently than at comparable Department facilities. Contractor shall furnish State with a written attorney visitation policy no later than January 15, 1997.

Section 5.18 Access to Courts. Contractor shall provide Inmates with constitutionally required access to the courts as required by the Standards.

Section 5.19 Inmate Discipline.

- (a) The Contractor shall implement Department Inmate disciplinary rules and procedures as they may be amended by the Department.
- (b) All disciplinary processes and board activities must strictly adhere to Department Policies 9502-01, 502.01.1, 9502.02, 502.04, and 502.05.
- (c) Contractor agrees that no Inmate will be disciplined except as in accordance with this Section.
- (d) The Contractor shall use the present or any future system established by the Department for recording disciplinary information.

Section 5.20 Use of Force.

(a) The Contractor shall submit to the State written policies and procedures regarding appropriate use of force in accordance with the Standards on or before January 15, 1997. Said policies and procedures shall be subject to revision and written approval by the State.

(b) Notwithstanding any provision contained herein to the contrary, no use of force shall be allowed by Contractor except as in accordance with the Standards.

(c) Contractor's employees shall be allowed to use force only

1. While on the grounds of the Facility;
2. While transporting Inmates;
3. During periods of community hospitalization;
4. During court proceedings;
5. While pursuing escapees from the Facility if the Commissioner requests said pursuit; and
6. While supervising Inmates off the Facility and then only in accordance with the policies and procedures described in (a) and (b) above.

(d) Contractor's employees shall be authorized to use such non-deadly force as the circumstances require only in the following situations:

1. To prevent the commission of a felony or misdemeanor, including escape;
2. To defend themselves or others against physical assault;
3. To prevent serious damage to property;
4. To enforce institutional regulations and orders; and
5. To prevent or quell a riot or disturbance.

(e) Contractor's employees shall be authorized and trained to use deadly force in accordance with the Standards. The Contractor's employees authorized to use firearms must at a minimum meet the qualifications set forth in T.C.A. § 62-35-117. Deadly force may be used only as a last resort and then may be used only to prevent escape, to prevent the loss of life or serious bodily harm, or to quell a mutiny, rebellion, riot, or disturbance in which loss of life or serious injury to an individual is imminent. Only those employees who are appropriately trained and, if applicable, authorized by law shall be authorized to carry and use firearms.

Section 5.21 Sentence Reduction Credits.

- (a) Contractor shall submit sentence credit reports to the Contract Liaison monthly.
- (b) The decision on award or forfeiture of sentence credits remains solely with the Department.

Section 5.22 Sentence Computation. Contractor shall provide the State with essential data and information relating to sentence computation. All sentence computations, including calculation of Inmate release and parole dates, shall be done by the Department and copies furnished to Contractor and Inmates. All other record keeping functions (e.g. posting of disciplinary reports, filing, updating Inmate assignments, custody levels, etc.) are the responsibility of the Contractor.

Section 5.23 Records and Reports.

- (a) Contractor shall provide for comprehensive operations and Inmate record and reporting systems for the Facility in compliance with the Standards and Department policy

including the automated Inmate records and reporting system operated by the Department which shall include but not be limited to the following:

- (i) Inmate institutional records on each Inmate including, but not limited to, personal data, personal inventory receipts, disciplinary action reports, incident reports, release information, classification and counseling records, dental, psychiatric and medical records.
- (ii) documentation regarding complaints against Contractor's staff, the number and nature of violent or other disruptive incidents among Inmates or against staff, the number and nature of disciplinary actions against staff, the rate at which Inmates complete programs successfully, the number of Inmates productively active and the level of production;
- (iii) identification of all Inmates at the Facility and their actual assigned physical location within the Facility;
- (iv) identification of Facility staff and other authorized persons who have direct access to Inmate records; and
- (v) provision of all reports requested by the State in writing for monitoring or evaluation of the Contract or any court-ordered compliance.

The system shall adhere to the Standards governing confidentiality.

(b) The Contractor shall maintain a permanent log in addition to shift reports that record routine and emergency situations. Each shift should maintain records of pertinent information regarding individual Inmates and groups of Inmates. These records shall be compiled daily and reviewed by appropriate supervisory staff.

(c) All computer equipment and communication lines necessary to interface with the Department's Tennessee Offender Management Information System (TOMIS) will be provided by the Department at no cost to the Contractor.

(d) Contractor will be required to incorporate into its operation all new systems developed to report and track Inmate record information designated by the Commissioner.

(e) Upon request, all records, reports and documents will be made available immediately to the Contract Liaison for review. At the conclusion of the Contract, all records shall be turned over to the Department.

(f) The Contractor shall prepare and submit to the Contract Liaison such reports as are required by the State. Unless otherwise notified in writing by the Contract Liaison, these reports include the following which must be Submitted on a monthly basis:

- (i) Unusual Occurrence Reports
- (ii) Incident Reports
- (iii) Disciplinary Reports
- (iv) Medical Summaries
- (v) Program Activity Summaries

Contractor shall promptly notify the Contract Liaison whenever an Inmate leaves the Facility on court order.

Section 5.24 Escapes.

(a) The Contractor shall exercise its best efforts to prevent escapes from the Facility. If the frequency of escapes or nearly successful attempted escapes shall be in excess of the

frequency of escapes or nearly successful escapes from comparable State facilities without good cause or shall exhibit a disregard for the safety of the general public, the State may declare the Contractor in Breach pursuant to Article 9. Said determinations shall be within the sole judgment of the Commissioner.

(b) . In the event of an escape resulting in whole or part from Contractor's failure to perform pursuant to the provisions of this Contract, the State may seek damages in a court of competent jurisdiction.

Section 5.25 Post Orders.

(a) Contractor shall develop and submit to the State, as soon as each is available, but no later than January 15, 1997, Post Orders required by this Contract in compliance with the Standards.

(b) Post Orders shall be by post and shift and shall include Post Orders for all security positions.

Section 5.26 Policy Audit. Contractor shall be audited, using personnel independent from the Contractor, at least annually, concerning the implementation of at least those policies and procedures listed in Appendix C. The implementation will be in compliance with Tennessee Department of Correction Policies 103.07 and the Contractor will respond as required. In the event the audits reveals a Breach (as defined in Section 9.1) by the Contractor, the State shall have available the remedies set out in Article 9.

Section 5.27 Inmate Work.

(a) The Contractor shall establish work programs in accordance with the Standards.

(b) Inmate programming is subject to the written approval of the Commissioner pursuant to T.C.A. § 41-24-110 or as the same may be modified or amended in the future.

(c) Any minimum restricted or higher custody Inmate working outside the secured perimeter must be under armed supervision.

(d) The Contractor will be allowed to use Inmate labor for Facility operations and maintenance to the same extent Inmate labor is utilized in other State facilities pursuant to State policy and not for the benefit of the Contractor. The Contractor shall submit Inmate job descriptions for the State's written approval via TOMIS before assigning jobs to Inmates. Job assignments and re-assignments shall be made by the Contractor only after the job description has been approved in writing by the State. No Inmate shall ever be placed in a position of authority or control over another.

(e) In emergency situations, the Department, in its sole discretion, may require the Contractor to furnish Inmates and security for outside work crews. Labor costs of security services associated therewith shall be compensated as follows:

Year 1	\$14.92 per officer/per hour
Year 2	\$15.40 per officer/per hour
Year 3	\$15.91 per officer/per hour
Year 4 (option)	\$16.42 per officer/per hour
Year 4 (option)	\$16.96 per officer/per hour

plus expenses and cost of operation.

(f) Inmates shall not perform services or produce goods for use outside the Facility except upon written consent of the Commissioner.

(g) The Department shall provide Inmates with sentence reduction credit. The Contractor shall be responsible for establishing and administering a compensation program at its expense, which will include Inmate pay in compliance with the Standards.

Section 5.28 Industries. TRICOR currently has in place at the Facility an industry program that provides approximately 70 Inmate jobs. The Contractor may negotiate with TRICOR for the continuation or expansion of the TRICOR industry program at the Facility. In the event the Contractor chooses not to use the Inmate jobs provided through TRICOR industry program, the Contractor shall be responsible for all costs associated with the transfer of the program to another facility or the termination of the program at the Facility as elected by the State, including but not limited to costs of development of a relocation plan, physical relocation of equipment and raw materials, installation of equipment at new site(s), lost production, lost sales, relocation of staff, recruitment of staff, retraining of work force, renovation of new site(s), and vendor contract costs. Security for such industry program(s) shall be provided by the Contractor. Industry supervision for TRICOR programs shall be provided by the State.

Section 5.29 Vocational and Academic Training. Contractor shall furnish vocational and academic training as set forth in the Standards, at its expense.

Section 5.30 Classification and Case Management.

(a) Contractor shall comply with Departmental policies regarding classification and reclassification services.

(b) Contractor shall be required to maintain classification information which conforms to the Department's system.

Section 5.32 Inmate Trust Fund. Contractor shall maintain an Inmate trust fund according to Department policies and shall implement the plan contained in its Proposal governing use of the Department's trust fund procedures.

Section 5.33 Sanitation and Hygiene. The Contractor shall provide for sanitation and hygiene in accordance with the Standards.

Section 5.34 Computer Software. The State shall retain proprietary rights to all State provided software utilized in connection with this Contract.

Section 5.35 Inmate Drug Testing. Contractor will conduct drug tests in accordance with Department Policy 506.21. Contractor be will be responsible for all costs. All positive drug screens shall be confirmed through a second methodology. Selection of Inmates to be tested at random will be the responsibility of the Department.

Section 5.36 Resumption of Control.

(a) Contractor shall review and comment on the Department's plan for resumption of control within 15 days following its receipt by the Contractor. The plan will provide for the orderly transfer of control of the Facility from the Contractor to the Department, both temporarily, and under any conditions of termination. Contractor agrees to implement said plan upon written notice from Commissioner.

(b) Said plan will also provide for emergency assumption of control by the Department of whole or part of the Facility under conditions of natural disaster, in the event of riot or insurrection or other emergency circumstances wherein the Commissioner deems it necessary for the State to assume temporary or permanent control of the Facility. The Commissioner shall determine whether and to what extent an emergency circumstance exists in his sole discretion. Contractor shall be responsible for any expense the State may incur in the event the Department assumes emergency control of the Facility and the Contractor's payment shall be reduced commensurate with the reduction in services provided by Contractor during the emergency period. The State may withhold these amounts from any other amounts which may otherwise be due Contractor. The plan shall address Contractor's resumption of control after the circumstances causing the emergency assumption has ended. The plan will provide for the transfer of all records to the Department.

Section 5.37 Accreditation. The Contractor shall maintain, at its expense, ACA re-accreditation of the Facility.

Section 5.38 Inmate and Staff Identification. Contractor shall comply with the procedures in the Standards for Inmate and staff identification including but not limited to, uniforms, fingerprinting and photographing.

Section 5.39 Inmate Personal Property Space. Contractor shall follow Department policy on Inmate personal property.

Section 5.40 Library. A general Inmate library will be provided and maintained by Contractor in accordance with the Standards.

Section 5.41 Volunteer Services. Contractor shall implement the plans provided for volunteer service programs described in the Proposal in accordance with the Standards. At a minimum, the Contractor shall provide for supervision and monitoring of the program and security background checks for volunteer applicants. Contractor shall establish and maintain a Local Volunteer Advisory Board.

Section 5.42 Release Payments for Inmates. The Contractor shall follow Departmental policy regarding transportation for discharged Inmates and discharge payments to said Inmates. The Contractor shall make such payments at its own expense without reimbursement from the State.

Section 5.43 Space for Board of Paroles/Institutional Parole Officer. Contractor shall provide a hearing room for the Board of Paroles two (2) days per month or as otherwise requested by the

Board. The hearing room shall be large enough to comfortably accommodate three (3) Board members and fifteen (15) visitors. The Contractor shall provide local telephone service and furniture for the hearing room. The Contractor shall also provide furnished office space five (5) days each month, or as otherwise requested by the Board, for the institutional parole officer.

ARTICLE 6

STAFFING/EMPLOYEES

Section 6.1 Independent Contractor Contractor is associated with the State only for the purposes and to the extent set forth in this Contract. With respect to the performance of the management services set out herein, Contractor is and shall be an independent Contractor. The Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles or any other benefit afforded to the employees of the State as a result of this Contract.

Contractor, its agents and employees shall not be considered agents or employees of the State.

Section 6.2 Executive Officer. The Facility and its programs shall be managed by a single executive officer employed by the Contractor (sometimes referred to herein as "Warden"). The executive officer shall be subject to the prior written approval of the State.

Section 6.3 Organization. The Facility shall be managed according to the organizational chart submitted with the Proposal. Any modification or alteration to the management plan shown on said chart shall require the prior written approval of the State.

Section 6.4 Personnel. Notwithstanding any provision contained herein to the contrary, Contractor shall provide adequate staff to fulfill its obligations under this Contract, which shall be at a minimum the number of staff set forth in the Proposal. Security staff vacancies shall be filled within thirty (30) days and all other vacancies shall be filled in forty-five (45) days;

provided, however, that during the period of any vacancy, the services associated with said position shall be provided by Contractor unless the Commissioner has agreed in writing to the contrary with a reduction in the per diem rate as defined in Section 7.5.

Section 6.5 Staffing Pattern/Security Post Assignment. NOTE: Prior to Contract Execution, the State retains the unilateral right to require clarifications or revisions to any Proposal regarding security and said clarifications or revisions shall be at no cost to the State.

(a) Contractor shall provide sufficient staff to ensure the appropriate supervision of Inmates at all times and at a minimum shall abide by and fulfill the staffing pattern submitted with its Proposal.

(b) At a minimum, Contractor shall abide by and fulfill the security post assignment schedule in its Proposal which details by day and shift the security positions and hours of work. Said security post assignment schedule shall include designation of critical posts. The Contractor shall submit Post Orders and a security post assignment roster for the prior written approval of the State.

(c) Contractor shall develop and submit to the Liaison on or before the twentieth (20th) of each month, its written monthly post assignment schedule for the following month.

(d) After Contract execution, if the State determines at any time that the staffing pattern and/or security post assignment schedule is inadequate, the Contractor agrees to place additional employees at the Facility and/or revise and implement the revisions to its staffing pattern and security post assignment. If Contractor is required to increase staff, it may request an adjustment in the per diem pursuant to Section 7.5.

(e) Any revisions to the staffing pattern and/or security post assignment require the prior written approval of the State. Contractor shall submit monthly staffing reports on or before the fifteenth (15th) of each month describing for the preceding month whether and to what extent Contractor has complied with the staffing pattern, security post assignment, and monthly post assignment. Staffing patterns are determined by security and program requirements and associated workloads. If changed circumstances modify those requirements or workloads the Contractor and/or the State will review those changed circumstances and a formal review will determine any changes in staffing requirements at the sole discretion of the State.

Section 6.6 Job Descriptions.

(a) Contractor shall abide by the written job descriptions for each position in the staffing pattern as provided in the Proposal, including but not limited to job title, responsibility and required minimum experience and education.

(b) Any revisions or modifications of the job descriptions require the prior written approval of the State.

Section 6.7 Personnel Records. A personnel record shall be maintained for each employee at the Facility which at a minimum shall contain the following: application, background investigation, dates of employment, training, performance evaluations, and disciplinary actions. The Contractor shall obtain a signed statement from each employee authorizing the State to have access to the personnel record.

Section 6.8 Staffing Reports. On or before the fifth (5th) day of each month, Contractor shall submit a report to the Liaison providing the following information:

- (a) the number of employees hired, indicating position, the date of termination and the date the post became unstaffed;
- (b) the number of employees whose employment had been terminated for whatever reason whether voluntarily or involuntary, including reason for termination and position;
- (c) whether any position on the staffing pattern was vacant and for how many days; and
- (d) types and hours of training provided by position.

Section 6.9 Reduction in Staff.

- (a) Contractor shall immediately notify the Liaison if any positions on the staffing pattern are vacant.
- (b) If a position described in subsection (a) remains vacant in excess of the time allowed in Section 6.4, then the State shall have the option of exercising the remedies available in Article 9.

Section 6.10 Background Checks. Prior to employment with Contractor, applicants shall be subjected to a thorough background investigation, including criminal, employment, and medical histories. The background investigation for applicants for correctional officer positions shall also include psychological history. Criminal and employment histories must go back a minimum of five (5) years. Said background investigations shall be available to the State upon request. The State shall not provide NCIC background checks.

Section 6.11 Hiring Preference. Department employees who have been laid off shall also be given a hiring preference in the staffing of the Facility according to T.C.A. § 41-24-101, et seq, and shall comply with T.C.A. §§ Sections 41-24-112 and 41-24-113 in all respects, as those sections may be modified or amended in the future.

Section 6.12 State Assistance in Training.

(a) During the term of the Contract, Contractor shall send a representative to participate in periodic meetings regarding Departmental activities and shall send a representative to sessions in which relevant policy modifications are being discussed or presented.

(b) Contractor shall receive written notice of the time, place and agenda of the meetings or sessions described in subsection (a) at the same time Department employees are provided notice.

(c) Said meetings or sessions shall be held within the State and Contractor shall bear any and all expense associated with its representative being present.

(d) The Department shall supply Contractor with technical assistance, consultation and informational support consistent with that provided other comparable institutions in accordance with the Standards provided, however, said support shall consist solely of advice and consultation.

Section. 6.13 Training. Contractor shall provide training programs for all employees in accordance with the Standards. All costs incurred for said orientation and training programs

shall be borne by Contractor. The Contractor's employees shall receive at least the same number of hours of orientation, pre-service, and in-service training as required by ACA standards.

The Contractor shall provide documentation to the Contract Liaison of all completed employee training as soon as possible after its completion. The Liaison shall be permitted to review training curricula and other training-related records and to audit training classes at any time.

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

Section 6.14 Drug Free Work Force. Contractor shall at all times attempt to maintain a drug free work force for maintenance of a drug free work force and the employee assistance program described in its Proposal.

DCRAM
I shall implement the plan contained in its Proposal

ARTICLE 7

COMPENSATION AND ADJUSTMENTS

Section 7.1 Management Payment. The State shall pay the Contractor a Per Diem Rate per Inmate Day as follows:

Period	Rate 1 to 1506 Inmates
02/28/97 to 06/30/97	\$32.26
07/01/97 to 06/30/98	\$32.26
07/01/98 to 06/30/99	\$33.31
07/01/99 to 02/29/00	\$34.40
03/01/00 to 06/30/00*	\$34.40
07/01/00 to 06/30/01*	\$35.51
07/01/01 to 02/28/02*	\$36.67

*Option Period

In the event the State exercises its right to construct additional buildings at the Facility and/or to expand the capacity of existing buildings at the Facility, the parties will negotiate a Per Diem Rate for such additional Inmates, it being the intent of the parties that the State will pay only the marginal costs for such additional Inmates.

Section 7.2 Per Diem. The Per Diem payment will be made only for Inmates actually incarcerated at the Facility, except Per Diem payment shall be made for any Inmate hospitalized at a state departmental Facility during the period when the Contractor is responsible for said hospitalization expense. No Per Diem shall be paid for any Inmate out on court order.

Section 7.3 Billings. The Contractor shall bill the State for each calendar month, within 30 days of the end of each month. The invoice shall specify the total number of Inmate Days for the month. This total shall then be multiplied by the applicable Per Diem Rate. Payment on said invoices shall be due within 30 days from receipt of the invoice and shall be made through the State's automated clearinghouse wire transfer system. The Contractor shall complete and sign an "Authorization Agreement for Automated Deposits (ACH Credits) form." All payments to the Contractor under this or any other Contract, shall be made through the State's Automated Clearing House wire transfer system. The Contractor shall not commence work or invoice the State for services until it has completed this form and submitted it to the State. The debit entries to correct errors authorized by the "Authorization Agreement for Automatic Deposits Form" shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. All corrections shall be made within two banking days of the effective date of the original transaction. All other errors detected at a later time shall take the form of a refund or, in some instances, a credit memo if additional payments are to be made.

Section 7.4 Billing Disputes. If the amount to be paid to Contractor is disputed by the State, the State, on or before the date the invoice is payable, shall advise the Contractor of the basis for the dispute and, in the manner provided above, pay the amount of such invoice which is not in dispute.

Section 7.5 Compensation Adjustment for Change of Services.

(a) The parties recognize that each has entered into this Contract based upon the standards in effect as of the Effective Date of the Contract. Contractor agrees to be bound by any applicable Standard change and said change shall not affect the validity of this Contract. If a change occurs in an applicable Standard other than as provided in subsection (b) herein, either party may notify the other in writing if it is believed said change shall affect the services delivered by the Contractor. The Commissioner shall make the final, binding decision regarding whether a change has occurred in an applicable Standard and whether said change affects the services rendered by the Contractor. Any adjustment in compensation due the Contractor shall be determined in accordance with subsection (d).

(b) If Contractor desires to make minor revisions to its Proposal which will not affect its ability to comply with the other Standards, the Contractor shall notify the Commissioner of said proposed revision in writing. Said minor revisions to the Proposal may occur only upon the prior written consent of the Commissioner. It shall be within the Commissioner's sole discretion whether or not to agree to said minor revision and his decision shall be binding. Any adjustment in compensation resulting from said minor revision shall be determined in accordance with subsection (d). This provision is an exception to Section 12.17.

(c) In the event Contractor may receive payments or compensation of any nature for services it is obligated to perform under this Contract from any source, including but not limited to federal, state or local authority, or any third party, other than the compensation described in this Contract, Contractor shall receive prior written consent and direction from the State prior to receiving any such additional compensation. The State may withhold a comparable amount from

any payments due the Contractor. In the event said additional compensation is used to provide enhanced or innovative services at the Facility as compared to the services provided by the Department at comparable facilities, Contractor must still receive prior written consent from the State prior to receiving said compensation but the Contractor may retain those funds. The Commissioner shall decide whether the funds will be used to provide enhanced or innovative services at the Facility.

(d) Within thirty (30) days of the notices required in subsections (a) through (c) above, Contractor shall provide State with the proposed adjustment in compensation and appropriate documentation in support thereof. The Commissioner shall decide whether and to what extent an adjustment in Per Diem Rate is appropriate. In the event the proposed adjustment decreases the Per Diem Rate then the Commissioner may agree to reduce said Per Diem Rate, provided, however, in the event the proposed adjustment increases the Per Diem Rate then the Per Diem Rate may be increased only by amendment to this Contract as described in Section 12.17.

Section 7.6 Failure to Agree on Billing Dispute or for Additional or Reduced Services.

(a) In the event Contractor disagrees with the State's failure to pay a disputed amount under Section 7.4, disagrees with the adjustment in compensation determined by the Commissioner under Section 7.5 or disagrees with any other aspect or amount of payment made by the State then the Contractor shall submit a claim and the grounds for said disagreement in writing to the Commissioner within thirty (30) days of the date the State either makes partial payment of the disputed bill or refuses disputed bill in its entirety. Failure of the Contractor to submit said claim and grounds to the Commissioner in writing within the time period described

herein shall be an absolute waiver of said claim. The State shall be afforded a sixty (60) day period in which to effect a cure or take reasonable steps to effect a cure.

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

ARTICLE 8

INDEMNIFICATION, INSURANCE AND DEFENSE OF CLAIMS

Section 8.1 General Indemnification.

(a) The Contractor agrees to protect, indemnify, save and hold harmless the State, all State departments, agencies, boards, and commissions, as well as officers, agents, servants, and employees of the State, including volunteers, from any and all claims, demands, expenses, and liability arising out of the performance under the Contract of the Contractor, its agents, servants, employees, subcontractors, and independent Contractors, and from any and all costs, expenses, and attorneys' fees (including costs of work done by the Attorney General or his designees incurred as a result of any claims, demand, lawsuit or cause of action.)

(b) The State shall give the Contractor written notice of such claim or suit, if the State is notified first, and full right and opportunity to conduct the Contractor's defense thereof; but the State does not hereby accord to the Contractor, through its attorneys, any rights to represent the State of Tennessee and all State Departments, agencies, boards and commissions, as well as officers, agents, servants, and employees of the State, including volunteers in any legal matter; such right being governed by T.C.A. § 8-6-106.

The State, its Departments, agencies, boards, and commissions, as well as its officers, agents, servants, and employees of the State, including volunteers shall, at the option of the Attorney General, be represented by the Attorney General, his designee, or outside counsel selected by the State and the Contractor shall be responsible for all fees, costs and expenses associated with that representation.

This indemnification shall include, but not be limited to, the following:

- (i) Any Breach on the part of the Contractor in the performance of the Contract;
- (ii) Any claims or losses for services rendered by Contractor, by any person or firm performing or supplying services, materials or supplies in connection with the performance of the Contract;
- (iii) Any claims or losses, to any person injured or property damaged from the acts or omissions of the Contractor, its officers, agents, employees in the performance of the Contract;
- (iv) Any claims or losses by any person or firm injured or damaged by Contractor, its officers, agents, or employees by the publication translation, reproduction, delivery, performance, use, or disposition of any data processed under the Contract in a manner not authorized by the Contract, or by Federal, State, or local statutes and regulations; and
- (v) Any failure of Contractor, its officers, agents or employees to observe the laws of the United States and of the State of Tennessee, including but not limited to labor laws and minimum wage laws;
- (vi) Any claims or losses resulting from the escape of an Inmate; and
- (vii) Any claims or losses to any person injured or property damaged from the acts or omissions of any Inmate.

Section 8.2 Indemnification Regarding Policies.

(a) The indemnification of Section 8.1, includes but is not limited to, any claims or losses arising from the promulgation or implementation of the Contractor's policies and procedures whether or not said policies and procedures have been approved by the State.

(b) The indemnification of Section 8.1 includes, but is not limited to any claims of the Contractor's wrongdoing in implementing the Departmental policies listed in Appendix E.

(c) With regard to any claim that the Departmental policies listed on Appendix E are unlawful (i.e., the issue is that the policies and procedures are lawful on their face), if the State is named as a party, the Attorney General, his designee or an independent Contractor hired for that purpose will represent the State. The Contractor will be responsible for its own defense. The State will be liable for any judgment against it and the Contractor will be liable for any judgment against it. However, this subsection shall not apply if the claim in any way arises from Contractor's failure to appropriately implement policy.

The Contractor agrees to send copies of any and all documents which have been filed in any lawsuit naming the Contractor and/or its employees in which concern the operation of the Facility under this Contract to the State.

Contractor shall not waive, release, or otherwise forfeit any possible defense the State may have regarding claims arising from or made in connection with the operation of the Facility by Contractor without the consent of the State. Contractor shall preserve all such available defenses and cooperate with the State to make such defenses available to the maximum extent allowed by law.

Section 8.3 General Provisions. Unless otherwise required by the State, all insurance provided by the Contractor shall be in conformance with the General Specifications for Insurance detailed in Appendix D. Upon written request by the State, Contractor shall revise or supplement the insurance listed on Appendix D and may seek a compensation adjustment pursuant to Section 7.5.

Section 8.4 Types of Insurance. The Contractor shall continuously maintain and pay for insurance and insurance company services meeting the general and specific provisions set forth in Appendix D during the term of this Contract, for the following types of insurance:

Workman's Compensation

General Liability, excluding products and completed operations

Products and Completed Operations Liability

Business Automobile Liability

Owned and Non-owned Aircraft Liability

Umbrella/Excess Liability

Director's and Officer's Liability

Professional and Medical Liability covering nurses, attorneys, counselors, psychologists, and social workers

Property/Boiler and Machinery

Employee Dishonesty

Section 8.5 Fire and Property Insurance. The State shall maintain all risk property insurance on the State's buildings which comprise the Facility. The Contractor shall obtain and keep in force insurance on all property to be located at the Facility.

Section 8.6 Defense/Immunity. Notwithstanding any provision contained herein to the contrary, the State does not waive any immunity defenses which may exist by operation of law, including, but not limited to, limitations on the amount of damages which may be awarded or paid.

Section 8.7 Financial Strength. The Contractor shall, prior to signing this Contract, file with the State an audited financial statement showing a net stockholders equity, calculated according to generally accepted accounting principles consistently applied, of not less than five million dollars (\$5,000,000). Thereafter, the Contractor shall file annually, on or before April 1 of each year, a current financial statement and if the net stockholders equity of the company shall ever be less than five million dollars (\$5,000,000), the State may declare the Contractor in default unless the Contractor provides alternative evidence of equivalent financial worth within thirty (30) days of demand by the State.

Section 8.8 Exception to General Indemnification. The indemnification provisions of this Section shall not apply to injury, death or damage to property arising solely out of the negligence or misconduct of the State, its officers, agents, servants or independent Contractors (other than Contractor) who are directly responsible to the State.

ARTICLE 9

CONTRACT COMPLIANCE

Section 9.1 Breach.

- (a) A party shall be deemed to have breached the Contract if any of the following occurs:
- (i) failure to perform in accordance with any term or provision of the Contract;
 - (ii) partial performance of any term or provision of the Contract; and
 - (iii) any act prohibited or restricted by the Contract.

For purposes of this Article, items (i) through (iii) shall hereinafter be referred to as "Breach."

- (b) In the event of a Breach by Contractor, the State shall have available the following remedies as described further herein:
- (i) actual damages and any other remedy available at law or equity;
 - (ii) liquidated damages;
 - (iii) Partial Default; and/or
 - (iv) termination of the Contract.

(c) In the event of Breach by the Contractor, the Liaison shall provide Contractor written notice of the Breach and a time period to cure said Breach described in the notice. In the event the Contractor disagrees with the Liaison's determination of Breach, period to cure, or initiation of liquidated damages, the Contractor shall notify the Commissioner in writing, provided, however, any appeal to the Commissioner shall not toll or otherwise affect the period to cure. The decision by the Commissioner shall be final and binding. In the event Contractor

fails to cure the Breach within the time period provided, then the State shall have available any and all remedies described herein. In the event the Breach is not cured and in the event the State elects to invoke liquidated damages said liquidated damages shall commence on the date the cure period expires; provided, however, if the Commissioner determines the Contractor's management team has concealed or misled the State concerning the Breach, the liquidated damages shall commence on the date of the Breach. For purposes stated herein, Contractor's management team is defined as consisting of persons in the rank of shift supervisor or above. This subsection regarding notice and opportunity to cure shall not be applicable in the event of successive or repeated Breaches of the same nature, or in the event the Liaison or Commissioner invokes the immediate compliance provisions of Section 4.10.

Section 9.2 State Breach.

(a) In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within thirty (30) days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. The State shall be afforded a forty-five (45) day period in which to effect a cure or in which to take reasonable steps to effect a cure; provided, however, that if the alleged Breach concerns the State's failure to make payment under this Contract, the State shall have sixty (60) days after the notice to effect a cure unless the payment is the subject of a dispute between the parties.

(b) Failure by the Contractor to provide the written notice described in subsection (a) shall operate as an absolute waiver by the Contractor of the State's Breach.

(c) With the exception of the provisions contained in subsection (f) herein, in no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract.

(d) In the event of Breach by the State, the Contractor may itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure, as described in this Section operates as a waiver of the State's Breach.

(e) Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the notice described in subsection (a) shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a Contractual period of limitations for any claim brought by the Contractor.

(f) In the event the State fails to make any payment due under this Contract within the cure period specified herein and the amount not paid exceeds one hundred thousand dollars (\$100,000), the Contractor may terminate the Contract upon 90 days prior written notice to the Commissioner, provided, however, Contractor may terminate this Contract only upon the State's failure to pay an amount which is not in dispute.

(g) In the event the provisions of this Article are in conflict with the provisions of Section 7.6, Section 7.6 shall control. The Contractor's waiver of the State's Breach described in this Section is an exception to Section 12.17.

Section 9.3 Liquidated Damages.

(a) In the event of a Breach by Contractor described in Appendix E, the State may withhold as liquidated damages the amounts designated on Appendix E from any amounts owed Contractor.

(b) The State shall notify Contractor in writing of the Breach and the amounts to be withheld as liquidated damages.

(c) Liquidated damages shall be assessed in conformance with Section 9.1(c).

(d) The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor designated in Appendix E as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants that it has carefully reviewed the liquidated damages contained in Appendix E and agrees that said amounts are the liquidated damages resulting from negotiation between the parties, represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach.

(e) It is hereby agreed between the parties that the liquidated damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include:

- (i) any injury or damage sustained by a third party and Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision contained in Article 8 or otherwise; and

(ii) any damage sustained to the Facility or property located therein as a result of Contractor's Breach.

(f) The State may continue to withhold the liquidated damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract.

(g) The State is not obligated to assess liquidated damages before availing itself of any other remedy.

(h) The State may chose to discontinue liquidated damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said liquidated damages previously withheld except in the event of a Partial Default.

Section 9.4 Partial Default.

(a) In the event of a Breach by Contractor, the State may declare a Partial Default.

(b) If the Contractor fails to cure the Breach within the time period provided in the notice pursuant to Section 9.1(c), then the State may declare a Partial Default and provide written notice to the Contractor of the following:

(i) the date upon which Contractor shall terminate providing the service associated with the Breach; and

(ii) the date the State will begin to provide the service associated with the Breach.

The State may revise the time periods contained in the notice upon written notice to Contractor.

(c) In the event the State declares a Partial Default, the State may withhold from the amounts due the Contractor the greater of:

- (i) amounts which would be paid the Contractor to provide the defaulted service as provided in subsection (e); or
- (ii) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party

together with any other damages associated with the Breach.

(d) To determine the amount the Contractor is being paid for any particular service, the Department shall review the Contractor's budget. The Commissioner or his designee shall make the final and binding determination of said amount.

(e) The State may assess liquidated damages against the Contractor pursuant to Section 9.3 for any failure to perform which ultimately results in a Partial Default with said liquidated damages to cease when said Partial Default is effective.

(f) Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

(g) Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

Section 9.5 Termination.

(a) In the event of a Breach by Contractor, the State may terminate the Contract immediately or in stages.

(b) The Contractor shall be notified of the termination in writing signed by the Commissioner. Said notice shall hereinafter be referred to as Termination Notice.

(c) The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages.

(d) Contractor agrees to cooperate with the State in the event of a termination, Partial Default or Partial Takeover.

(e) In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity.

(f) In the event of a termination, Contractor shall be liable to the State for any and all damages incurred by the State including but not limited to transportation of Inmates, activation of the National Guard or any other state agency, expenses incurred by the State to staff the Facility, and any and all expenses incurred by the State to run the Facility which exceed the amount the State would have paid Contractor under this Contract.

Section 9.6 Partial Takeover.

(a) The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State.

(b) Contractor shall be given at least thirty (30) days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the state will assume and the date of said assumption.

(c) Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract.

(d) The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the Commissioner. The amounts shall be withheld effective as of the date the State assumes the service.

(e) Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Section 9.7 Termination Due to Unavailability of Funds. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Section 9.8 Termination for Convenience.

(a) Beginning one Year after the Service Commencement Date, the State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of Contract by the State. The State shall give the Contractor ninety (90) days written notice prior to termination of this Contract.

(b) Contractor shall be entitled to receive compensation for satisfactory authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor ~~for compensation for the Contractor~~ for compensation for any service which has not been rendered.

(c) Upon such termination, the Contractor shall have no right to any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount, except that the State shall pay for all supplies and equipment on order and not yet delivered to the Facility as of the date of termination.

Section 9.9 Performance and Payment Bond. Contractor agrees to provide the required Performance and Payment Bond described in the RFP within 15 days of the execution of this Contract and to maintain said Performance and Payment Bond throughout the duration of this Contract.

ARTICLE 10

PROHIBITIONS

Notwithstanding any other provision of this Contract to the contrary, nothing contained herein shall be interpreted to authorize, allow or imply authority of the Contractor to do the following:

(a) develop or implement procedures for calculating Inmate release and parole eligibility dates;

(b) develop and implement procedures for calculating and awarding sentence credits;

(c) approve Inmates for furlough and work release;

(d) approve the type of work an Inmate may perform, and the wages or sentence credits which may be given to Inmates engaged in such work; and

(e) grant, deny or revoke sentence credits; place an Inmate under less restrictive custody or more restrictive custody; or take any disciplinary actions; provided, however, that this Section shall not prevent Contractor from making recommendations to the State with respect to any of the above in conformance with Departmental policy. The Commissioner shall determine whether any action or proposed action violates the provisions of this Article.

ARTICLE 11

CONTRACTORS REPRESENTATIONS AND WARRANTIES

Section 11.1 Representations of Contractor. Contractor represents and warrants to and for the benefit of State, with the intent that State will rely thereon for purposes of entering into this Contract, as follows:

The Contractor's Proposal, incorporated herein by reference, contains no material misrepresentations by the Contractor. This Contract contains no factual changes from the Proposal submitted by the Contractor.

Section 11.2 Organization and Qualification. Contractor has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware with power and authority to own its properties and conduct its business as presently conducted. Contractor is duly qualified to do business as a foreign corporation in good standing in Tennessee and shall so remain during the term of this Contract.

Section 11.3 Authorization. This Contract has been duly authorized, executed, and delivered by Contractor and, assuming due execution by the appropriate State officials as indicated on the signature page of this Contract and delivery by State, constitutes a legal, valid, and binding agreement enforceable against Contractor in accordance with its terms.

Section 11.4 No Violation of Contract, Articles of Incorporation or Bylaws. The consummation of the transactions contemplated by this Contract and its fulfillment of the terms hereof will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, Contract, governmental license or permit, or other agreement or instrument to which Contractor is a party or by which its properties are bound, or any order, rule, or regulation of any court or any regulatory body, administrative agency, or their governmental body applicable to Contractor or any of its properties, except any such conflict, breach, or default which would not materially and adversely affect Contractor's ability to perform its obligations under this Contract, and will not conflict with, or result in a breach of any of the terms and provisions of, or constitute a default under, the Articles of Incorporation (or other corresponding charter document) or Bylaws of Contractor.

Section 11.5 No Defaults under Agreements. Contractor is not in default, nor is there any event in existence which, with notice or the passage of time or both, would constitute a default by Contractor, under any indenture, mortgage, deed of trust, lease, loan agreement, license, security agreement, Contract, governmental license or permit, or other agreement or instrument to which it is a party or by which any of its properties are bound and which default would materially and adversely affect Contractor's ability to perform its obligations under this Contract.

Section 11.6 Compliance with Laws. Contractor, its officers and directors purporting to act on behalf of Contractor or such officers and directors have been conducting business in compliance

with all applicable laws, rules, and regulations of the jurisdictions in which Contractor is conducting business including all safety laws and laws with respect to worker's compensation, discrimination in hiring, promotion or pay of employees. Contractor warrants that Contractor, and its current and former officers and directors have:

- (i) no convictions regarding criminal activity;
- (ii) no pending charges regarding criminal activity, or
- (iii) to their knowledge, no investigations on-going by any state, local or federal authorities regarding any possible criminal activity,

except as provided in writing.

Section 11.7 No Litigation. There is not now pending or, to the knowledge of Contractor, threatened, any action, suit, or proceeding to which Contractor is or may be a party, before or by any court or governmental agency or body, which might result in any material adverse change in Contractor's ability to perform its obligations under this Contract, or any such action, suit, or proceeding related to environmental or civil rights matters; and no labor disturbance by the employees of Contractor exists or is imminent which might materially and adversely affect Contractor's ability to perform its obligations under this Contract.

Section 11.8 Financial Statements. Contractor has delivered to State copies of financial statements provided in its Proposal.

Contractor represents such financial statements fairly present the financial position of Contractor at the dates shown and the results of the operations for the periods covered, and have

been prepared in conformity with generally accepted accounting principles applied on a consistent basis, except as discussed in the notes to the financial statements.

Section 11.9 No Adverse Change. Since the date of Contractor's financial statements described in Section 11.8 provided to State, there has not been any material adverse change in Contractor's business or condition, nor has there been any change in the assets or liabilities or financial condition of Contractor from that reflected in such financial statements which is material to Contractor's ability to perform its obligations under this Contract.

Section 11.10 Disclosure. There is no material fact which materially and adversely affects or in the future will (so far as Contractor can now reasonably foresee) materially and adversely affect Contractor's ability to perform its obligations under this Contract which has not been accurately set forth in this Contract or otherwise accurately disclosed in writing to State by Contractor prior to the date hereof.

Section 11.11 Opinion of Contractor's Counsel. Contractor shall furnish to State an opinion of counsel in connection with this Contract dated as of the date of the Contract. Such opinion shall address the Contractor's compliance with applicable law, affirm its authority to enter into this Contract, indicate that the Contractor is not currently in litigation or have notice of litigation that could cause the Contractor not to perform the terms of this Contract, affirm the enforceability of this Contract in accordance with its terms, and affirm that the financial statements provided by the Contractor were prepared in accordance with generally accepted accounting principles.

ARTICLE 12

MISCELLANEOUS

Section 12.1 Audits. Contractor shall maintain documentation of all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under the Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit at any reasonable time and upon reasonable notice, by the State or the Comptroller of the Treasury or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.

Section 12.2 Non-Discrimination. No person on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance under the Contract or in the employment practices of the Contractor. The Contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices of non-discrimination.

Section 12.3 Binding Nature. This Contract shall not be binding until the State has received a Payment and Performance Bond as required by the RFP and evidence of insurance required by

the RFP and it is approved and executed by all the parties indicated on the signature page of the Contract.

Section 12.4 Invalidity and Severability.

(a) In the event that any provision of this Contract shall be held to be unlawful, invalid or unenforceable, all parties agree that all other terms and conditions of the Contract shall remain in full force and effect except as specifically provided in this section.

(b) With the exception of the provisions contained in Article 9, in the event any or all provisions of this Contract are found to be unlawful, invalid or unenforceable by a commission or court of competent jurisdiction, both parties agree that neither shall be in Breach of Contract or liable in any manner to the other for damages, costs, or expenses of any nature which the other might sustain due to said finding; provided, however, in the event said finding reduces the services rendered by Contractor, the State may reduce the Per Diem Rate paid Contractor pursuant to Section 7.6 and said finding shall not excuse a Breach.

(c) In the event a court of competent jurisdiction finds a provision(s) of this Contract to be unenforceable the Commissioner may terminate this Contract upon thirty (30) days notice without penalty or liability to the State.

Section 12.5 Headings. The headings contained in the Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

Section 12.6 Terminology and Definitions. All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

Section 12.7 Interpretation and Venue. The Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. Any legal proceedings against the State regarding the Contract shall be brought in the State of Tennessee administrative or judicial forum with appropriate jurisdiction. Venue shall be in Davidson County, Tennessee.

Section 12.8 Change in Owners. Contractor shall notify the State in writing of any change of ownership of the Contractor, through sale or merger, which occurs during the term of the Contract. Contractor shall inform the State fully of the financial ability of the new ownership to fully comply with the terms and conditions of the Contract. The State reserves the right to terminate the Contract in the event of a change in ownership without penalty to the State or to consider the failure to comply with the notification or financial reporting provisions as a Breach by the Contractor.

Section 12.9 Duration of Services. Contractor agrees that the services and programs set forth in this Contract will be maintained for the duration of the Contract period.

Section 12.10 Approval of Bond Counsel.

(a) Because construction of the Facility was funded through the issuance of tax exempt, general obligations debt, the use and management of the Facility by the Contractor and any and all subcontractors in subject to and constrained by the Federal Tax laws and regulations governing tax exempt financing. Therefore, this Contract is subject to review by the State's bond counsel before approval.

(b) In addition, any use of the Facility by Contractor and all subcontractors, including, but not limited to, the conduct of an industries program pursuant to Section 5.28 of the Contract, which results in any payment to the State, either directly or indirectly, is subject to review by the State's bond counsel before approval.

Section 12.11 Release. Contractor, upon final payment of the amount due under this Contract, releases the State, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. Contractor agrees not to purport to bind the State to any obligation not expressly assumed herein by the State.

Section 12.12 Subcontracting and Assignment.

(a) The Contractor shall not assign the Contract or enter into a subcontract for any of the services performed under the Contract without obtaining the prior written approval of the State. No subcontract may be executed until the State has reviewed and approved the subcontract for conformity with this Contract.

(b) The Contractor shall provide that all subcontractors are notified in writing prior to the execution of the subcontract that the Facility is being funded through the issuance of tax exempt, general obligation debt and that the use and management of the Facility by the Contractor and any and all subcontractors is therefore subject to and constrained by the federal tax laws and regulations governing tax exempted financing. The State may consult with its Bond Counsel to determine whether any assignment or subcontract complies with such laws and regulations.

(c) The Contractor shall provide that all subcontractors warrant that no part of the total subcontract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the subcontractor in connection with any work contemplated or performed relative to the subcontract.

(d) The Contractor shall provide that all subcontractors agree that no person on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance under the subcontract or in the employment practices of the subcontractor. The subcontractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of non-discrimination.

(e) The Contractor shall provide that all subcontracts may be assignable to the State at the State's sole discretion. Any subcontract shall also provide that the State shall not be responsible for any outstanding liability to the subcontractors incurred by the Contractor and that

the State may terminate such subcontracts upon giving thirty days prior written notice with or without cause.

Section 12.13 Research Projects. Contractor shall not publish or disseminate any findings based on data obtained from the operation of the Contract or engage in any research projects without the prior written consent of the Department.

Section 12.14 Sovereign Immunity. The sovereign immunity of the State shall not apply to the Contractor nor any subcontractor, agent, employee, or insurer of the Contractor. Neither the Contractor nor any subcontractor, agent, employee, or insurer of the Contractor may plead the defense of sovereign immunity in any action arising out of the performance of or failure to perform any responsibility or duty under this Contract.

Section 12.15 Prohibited Payments. Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or an official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to the Contract.

Section 12.16 Notices. Addresses: All notices shall be hand-delivered to the Contractor's Warden, or the State's Liaison or sent certified mail, return receipt requested to:

State: Commissioner Department of Correction
4th Floor, Rachel Jackson Bldg.
320 6th Avenue North
Nashville, Tennessee 37243-0465

Contractor: Linda G. Cooper
Vice President, Legal Affairs
Corrections Corporation of America
102 Woodmont Boulevard, Suite 800
Nashville, TN 37205

The notice shall be deemed to be received on the date of the hand-delivery or on the third day after mailing.

Section 12.17 Amendments. The terms and provisions of this Contract may be waived, altered, modified, amended, supplemented or revised only by written amendment which has been executed and approved by the appropriate parties as indicated on the signature page of the Contract. Neither the Liaison(s) or any other employee or official of the State is authorized to modify, amend or waive the terms and provisions of this Contract except as provided in this Section.

Section 12.18 Waiver. No consent, waiver or excuse of any Breach of any of the terms or conditions of this Contract shall be held to be a consent, waiver, or excuse of any other or subsequent Breach; nor shall any such waiver or excuse be valid or binding unless the same shall be in writing and approved and executed by the party alleged to have granted the waiver as indicated on the signature page of the Contract.

Section 12.19 Third Party Beneficiary. Neither the Contractor nor the State intends to create rights for any third party by the Contract and no third party beneficiary rights are created hereby. Third parties shall mean all persons except the State and the Contractor, including but not limited to employees of Contractor, subcontractors of Contractor and Inmates located at the Facility.

Section 12.20 Laws. The Contractor shall comply with all applicable federal, state, and local constitutions, laws, and regulations, court decisions, Court Orders, and any applicable state and federal orders in the performance of the Contract including but not limited to the provisions of T.C.A. § 41-24-101, et seq., which may be in effect during the term of this Contract.

Section 12.21 Attorney Fees. The Contractor agrees that in the event either party deems it necessary to take legal action to enforce any provision of the Contract and in the event the State prevails, the Contractor shall pay all expenses of such action, including but not limited to the State's attorney fees and costs of all stages of the litigation.

Section 12.22 Approvals. Any policies, procedures or other documents contained or referenced in this Contract subject to the State's approval under the terms this Contract shall remain subject to State prior written approval whenever they are revised, amended, replaced or supplemented.

Section 12.23 Fraud/Misrepresentation. If, in the course of any stage under the RFP, Proposal evaluation, Contract negotiation, Contract execution or term of the Contract, the Contractor commits fraud, misrepresentation or conspiracy to defraud the State, the State shall have the right

to pursue any remedies described in Article 9 and/or pursue any criminal sanctions allowed by law.

Section 12.24 Financial Termination. The State may terminate the Contract without penalty to the State in the event the Contractor:

- (a) admits in writing its inability to pay its debts;
- (b) makes a general assignment for the benefit of creditors;
- (c) suffers a decree or order appointing a receiver or trustee for it or substantially all of its property to be entered and, if entered without its consent, not to be stayed or discharged within 60 days;
- (d) suffers proceedings under any law relating to bankruptcy, insolvency, or the reorganization or relief of debtors to be instituted by or against it and, if contested by Contractor, not to be dismissed or stayed within 60 days; or
- (e) suffers any judgment, writ of attachment or execution, or any similar process to be issued or levied against a substantial part of its property which is not released, stayed, bonded, or vacated within 60 days after issue or levy.

Section 12.25 Set-Off. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the parties any amounts which are or shall become due and payable to the State by the Contractor. The State may withhold any amounts which may otherwise be due the Contractor without waiver of any other remedy or damages available to the State under this Contract at law or at equity.

Section 12.26 Maximum Liability. Notwithstanding any provision contained herein to the contrary, in no event shall the maximum liability of the State under this Contract exceed \$55,639,180. The maximum liability to the State under this Contract for each respective year of this Contract is as follows:

Fiscal Year 1996 - 1997	<u>\$ 6,037,924</u>
Fiscal Year 1997 - 1998	<u>\$ 18,069,683</u>
Fiscal Year 1998 - 1999	<u>\$ 18,656,075</u>
Fiscal Year 1999 - 2-29-2000	<u>\$ 12,875,498</u>

Section 12.27 Confidentiality. The Contractor shall maintain the confidentiality of all records required by the Standards.

Section 12.28 Construction. In the event of a dispute about the construction or interpretation of any provision of the Proposal, said Proposal shall be construed in favor of the State. The parties agree that should a dispute arise involving the construction or interpretation of the RFP or this Document, said documents shall not be construed or interpreted in favor of either party.

Section 12.29 Written Notices. The necessity of written notices herein shall be strictly construed.

Section 12.30 Implied Covenants or Agreements. The State shall be bound only by the express, written terms contained herein and shall not be bound by any implied covenants or agreements.

Section 12.31 Approvals. Contractor agrees to accept and implement any revisions, alterations or supplements suggested by the State to any document, plan, policy or procedure which requires State approval.

Section 12.32 Notices. Failure of the State to provide any notice to Contractor described in this Contract whether or not the State had knowledge of the appropriateness of said notice shall not relieve the Contractor of its obligation to perform in accordance with the Contract and shall not be a waiver or excuse of any failure to perform.

Section 12.33 No Contingent Fees. No person or entity shall be employed or retained or given anything of monetary value on a contingent fee basis to solicit or secure this Contract, except bonafide employees of Contractor (including proposed subcontractors) or bonafide established commercial or professional entities retained by Contractor for the purpose of securing business. For violation of this Section, in addition to the remedies available pursuant to Article 9, the State shall have the right to deduct from any amount owed Contractor the amount of such commission, percentage, brokerage or contingent fee, and other benefit from the Contractor.

IN WITNESS WHEREOF, intending to be legally bound, the parties have caused their authorized representatives to execute this Contract as of the 28 day of Feb, 1996.

[Handwritten signature]

STATE OF TENNESSEE
DEPARTMENT OF CORRECTION

BY: *Donal Campbell*
Donal Campbell, Commissioner

Date: 1/24/97

APPROVED:
STATE OF TENNESSEE

John D. Ferguson
John D. Ferguson, Commissioner
Commissioner, Finance
and Administration

Date: 2-3-97

William R. Snodgrass
William R. Snodgrass
Comptroller of the Treasury

Date: 2-3-97

John Knox Walkup
~~Charles W. Burson~~ John Knox Walkup
Attorney General and Reporter

Date: 2/27/97

CONTRACTOR

BY: *Daniel L. Myer*

Date: 1-18-97
President, CCA *DM*

ATTEST:

Secretary

Date: _____

Pursuant to T.C.A. Section 9-6-113,
I John D. Ferguson, Commissioner of
Finance & Administration, do hereby
certify that there is a balance in the
appropriation from which this
obligation is required to be paid, that
is not otherwise encumbered to pay
obligations previously incurred.