

# **PHARMACOLOGY SERVICES AGREEMENT**

**Between**

**THE COUNTY OF CUYAHOGA**

**And**

**CARDINAL HEALTH 411, INC.**

This Pharmacology Services Agreement (the "Agreement") is entered into on April 1, 2013 ("Effective Date") by and between the County of Cuyahoga, on behalf of the County Sheriff's Office ("SHO"), located at 1219 Ontario Street, Cleveland, Ohio 44113 (the "County") and Cardinal Health 411, Inc., located at 7000 Cardinal Place, Dublin, Ohio 43017 (the "Provider").

**WHEREAS**, the County is in need of a pharmaceutical supplier for the Cuyahoga County Corrections Center on-site pharmacy for the County's Sheriff's Department pursuant to a Request For Proposal #23384 (hereinafter "RFP23384"); and

**WHEREAS**, SHO has requested the employment of Provider by County, which pursuant to a review process was determined to be the most suitable for this RFP23384, to provide pharmacological services to SHO; and

**WHEREAS**, Provider has agreed to the terms and conditions indicated herein and did submit a certain proposal dated May 2, 2012 in response to RFP23384 (the "Proposal"), which Proposal is also incorporated herein by reference; and

**WHEREAS**, County has determined to engage Provider to perform said pharmacological services for SHO; and

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein, the parties hereby agree as follows:

## **SECTION I. TERM**

This Agreement shall commence on the Effective Date and continue through March 31, 2016 (the "Initial Term") for fees and costs set forth herein unless terminated at an earlier date in accordance with the provisions of this Agreement.

Thereafter, the County shall have the option of renewing the Agreement for additional terms of not less than one year each (each a "Renewal

Term") and for revised fees as then negotiated, unless the Agreement is terminated as provided herein.

## **SECTION II. SCOPE OF SERVICES**

- A. Provider shall perform the following services ("Services"), to include but not be limited to:
- (1) The provision of medications in bulk quantities to the on-site pharmacy at the Cuyahoga County Corrections Center ("Pharmacy") for administration to inmates;
  - (2) Administrative support and assistance to SHO; and
  - (3) Attendance at periodic management meetings.
- B. The attached Exhibit A ("Schedule of Services") further describes the Services to be provided hereunder. The attached Exhibit B ("List of Pharmaceuticals") is a non-exclusive list of the most used and/or most costly pharmaceuticals to be ordered under this Agreement. Exhibits A and B are incorporated herein and shall be a part of this Agreement.

## **SECTION III. CONSTRUCTION AND NON-EXCLUSIVITY**

- A. Nothing in this Agreement contemplates an exclusive arrangement. SHO reserves the right to purchase over the counter pharmaceuticals either through this Agreement or through other contracts the County may have executed with other vendors.
- B. This Agreement does not contemplate services that require licensed health care professionals. If the services of licensed health care professionals are needed, the parties shall execute a separate agreement on mutually agreed upon terms.

## **SECTION IV. PROVIDER'S RESPONSIBILITIES**

**Provider shall:**

- A. Comply with all applicable Federal, State and County laws, rules, regulations, ordinances, resolutions and policies, including those pertaining to confidentiality and disclosure with regard to all information and records obtained or reviewed in the course of providing services to SHO and its inmates; and

- B. Perform all services hereunder in a professional and efficient manner in accordance with the highest industry standards and practices applicable to the performance of such services; and
- C. Provide, at its own expense, all technical and professional services, labor, equipment and materials required for the execution of this Agreement, except as enumerated otherwise and elsewhere in this Agreement; and
- D. Cooperate with representatives of County, who may be involved in the completion of this Agreement; and
- E. Not engage the services of any person or persons in the employment of County or any other public body in the State of Ohio for any of the work covered by the terms of this Agreement, without the specific written permission of County.

#### **SECTION V. FEE; PAYMENT TERMS**

- A. Provider shall perform all Services under this Agreement for the maximum fee not-to-exceed TWO MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,400,000.00) ("Fee"). Provider hereby acknowledges that Provider shall assume the risk of performing any Services, the fee for which would exceed the maximum amount stated above.
- B. Provider shall submit a monthly, itemized invoice to SHO for Services actually rendered as further described in Exhibit A. Each invoice shall contain the following information:
  - 1) Individual medications provided;
  - 2) Monthly credit for returns; and
  - 3) Monthly total.

Provider will supply additional separate invoicing, if any, regarding lease costs for end terminals, software or equipment.

- C. All invoices will be reviewed prior to authorization for payment and are subject to audit by County or others and possible revision. Any discrepancies will be withheld until Provider provides a satisfactory written explanation to SHO.

#### **SECTION VI. INSURANCE AND INDEMNIFICATION**

- A. Provider shall maintain at all times Pharmacist Professional Liability Insurance with a per occurrence limit of One Million Dollars (\$1,000,000.00) and Commercial General Liability and Comprehensive

Automobile Liability insurance which includes bodily injury and property damage, with a per occurrence limit of Five Million Dollars (\$5,000,000.00). Provider hereby acknowledges that they are self-insured for Pharmacist Professional Liability coverage which does not change any obligations Provider has under this Agreement and shall not be deemed to exceed the scope of coverage and/or limits required under this Agreement. Provider also acknowledges that it may self-administer all or any portion of the required insurance so long as doing so does not alter the terms of the coverage and/or limits required under this Agreement. Said insurance to be placed with an insurance company authorized to do business in the State of Ohio. Provider shall name the County and its employees as an additional insured on the Commercial General Liability and Comprehensive Automobile Liability insurance and shall provide a certificate of such insurance and the County's additional insured status prior to execution of this Agreement. To the extent Provider is self-insured for purposes of Pharmacist Professional Liability coverage and therefore cannot name the County as an additional insured, Provider agrees to provide or administer Pharmacist Professional Liability coverage to the County as if the County was named as an additional insured under an equivalent policy of insurance in the amount of limits specified above.

- B. Provider shall secure Worker's Compensation for all of Provider's employees as required by law. A Certificate of Compliance from the State of Ohio's Bureau of Workers' Compensation shall be provided to the County upon request.
- C. Provider hereby agrees to save harmless and indemnify the County, and its officials, officers, employees, agents, representatives, departments, agencies, boards, commissions, and other authorities from any and all claims and liability, caused by the negligence, errors or omissions due to the activities of Provider, their agents and/or employees and subcontractors in the performance of the services under this Agreement.

#### **SECTION VII. NOTICE**

Any notice required pursuant to this Agreement shall be made in writing and shall be accomplished by e-mail, personal delivery, facsimile, or by U.S. Mail, certified, return receipt requested, addressed to the following parties:

When to Provider:

Cardinal Health 411, Inc.  
7000 Cardinal Place  
Dublin, Ohio 43017

Attn: \_\_\_ Kate Spirko, Vice President – State Government \_\_\_\_\_

When to the County:

The Cuyahoga County Sheriff's Department  
1215 West 3<sup>rd</sup> Street  
Cleveland, Ohio 44113  
Attn: \_\_\_\_\_

With a copy to:

The Cuyahoga County Department of Law  
1219 Ontario Street – 4<sup>th</sup> Floor  
Cleveland, Ohio 44113  
Attn: Law Director

### **SECTION VIII. RELATIONSHIP OF THE PARTIES**

- A. Neither party shall have any duty or obligation to:
- (1) Withhold and/or pay any Federal, State or Local taxes, or Workers' or Unemployment Compensation contributions, or to comply with any other employment laws regarding the other party's employees; or
  - (2) Provide employee fringe or other benefits to the other party's employees or agents.
- B. Each party shall satisfy all duties or obligations under Federal, State or Local law applicable to its relationship with its own employees.
- C. Each party shall be solely responsible for the control and supervision of its own employees and the payment to or on behalf of them of all distributions, wages and salaries, taxes, withholding payments, penalties, fees, professional education and seminar expenses, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans (including, but not limited to, workers' compensation and social security contributions, licensing and registration fees), additional benefits of any type, and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.
- D. Neither party shall make any claim that the other party is responsible for the payment or filing of any of the foregoing payments, withholdings, contributions, taxes, documents and returns, including but not limited to, Social Security contributions and employer income tax withholding obligations.

## **SECTION IX. TERMINATION**

### **A. Termination by County**

For Convenience. This Agreement may be terminated by County for convenience at its sole discretion upon sixty (60) days written notice to Provider. Upon delivery of said notice and upon expiration of the sixty (60) day period, Provider shall discontinue all Services and shall promptly cancel all existing contracts in so far as such contracts are chargeable to this Agreement. In case of such termination, payments shall be made for all documented Service related costs incurred for purposes of performing this Agreement. The amount due and invoiced shall not include any costs incurred, or anticipated costs beyond the scope of this Agreement and/or the end of the sixty (60) days.

For Cause. This Agreement may be terminated Immediately by County for cause upon written notification by County due to Provider's material default in the performance of any of its material covenants, agreements or obligations hereunder, and such default continues for a period of sixty (60) days after written notice of such default or breach from County. Payments shall be made for all documented Service related costs incurred for purposes of performing this Agreement. The amount due and invoiced shall not include any costs incurred, or anticipated costs beyond the scope of this Agreement and/or the effective termination date.

### **B. Termination by Provider**

This Agreement may be terminated by Provider upon written notice to the County if the County materially defaults in the performance of any of its material covenants, agreements or obligations hereunder, and such default continues for a period of sixty (60) days after written notice of such default or breach from Provider. In case of such termination, payments shall be made for all documented Service related costs incurred for purposes of performing this Agreement. The amount due and invoiced shall not include any costs incurred, or anticipated costs beyond the scope of this Agreement and/or the end of the sixty (60) days.

### **C. Survival of Section**

The provisions of this Section shall survive the termination or expiration of this Agreement.

## **SECTION X. DISPUTE RESOLUTION**

The parties agree to utilize good-faith efforts to amicably resolve any dispute, controversy, claim, or breach, arising out of or relating to this Agreement. In the event that an amicable resolution is not reached, the parties may pursue any and all available legal remedies, whether at law or in equity.

#### **SECTION XI. PUBLIC RECORDS**

Provider acknowledges and agrees that as a political subdivision, County is subject to the requirements of the Ohio Public Records Law. When Provider submits documents and/or information that properly and legally qualifies as a trade secret under Ohio law, Provider must segregate all protected information and/or documents submitted to County and conspicuously mark each page as "CONFIDENTIAL – TRADE SECRET."

This Section shall survive the completion of the performance of the Services hereunder and the termination of this Agreement.

#### **SECTION XII. CONFIDENTIALITY**

- A. Provider shall take all steps necessary to protect County's trade secrets.
- B. To the extent applicable, Provider agrees to respect and abide by all Federal, State and Local laws, rules and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any other laws, rules, and regulations pertaining to confidentiality and disclosure with regard to all information and records obtained or reviewed in the course of providing services to the County and/or its detainees. Notwithstanding anything to the contrary that may be contained herein, statistical data that does not reveal individually identifiable health information, which is generated, compiled or stored by Provider reflecting the purchase and resale of products to the Sheriff's Department and/or County ("Sales Data") does not constitute the Confidential Information of the Sheriff's Department or County, and Provider will be entitled to utilize all such Sales Data in any manner deemed appropriate by it, including, but not limited to, selling and/or otherwise providing such Sales Data to manufacturers and/or other third parties, without limitation. Under no circumstances shall Provider use individually identifiable health information that identifies an individual inmate, or that provides a reasonable basis to believe it can be used to identify an individual inmate, which is held or transmitted by the County or its business associates, in any form or media, whether electronic, paper, or oral.
- C. If Provider fails to meet its obligations as set forth in this Section, County may seek equitable relief.

- D. This entire Section shall survive the completion of the performance of the work hereunder and the termination of this Agreement unless County releases Provider of its obligations through a written signed communication from County's Director of Law at an earlier date.

### **SECTION XIII. MISCELLANEOUS**

- A. **County Agent and Liaison.** For the purpose of this Agreement, the agent for the County and liaison officer on the matter contained herein shall be the Director or Manager of SHO and/or such members of her/his staff as designated; and
- B. **Reports.** Notwithstanding Section XIIB of this Agreement, all reports and any other records developed by Provider in the performance of this Agreement shall remain the sole property of the County. Provider shall not copy or use such records except to develop contracted work associated with this Agreement. In addition, Provider shall not transfer any such records to any other party not involved with this Agreement. All of the above shall be delivered to the County upon completion of this Agreement.
- C. **Agreement to Remain in Compliance with Certifications, Representations, and Warranties as Continuing Commitments or Verification.** Provider shall ensure that all of its certifications, representations, and warranties under this Agreement shall remain true throughout the duration of the Agreement as if they are continuing commitments, and it shall immediately notify the County in writing in the event that any of the certifications, representations, and warranties ceases to be true. At its sole discretion, County has the unequivocal right to review and audit Provider's continuing certifications, representations, and warranties.

During the performance of this Agreement, Provider agrees to itself, its assignees, subconsultants, and successors in interest to comply with all applicable laws, resolutions, regulations and/or policies of the County, relative to equal employment, affirmation action and Small/Women/Minority Business Enterprise requirements, which are herein incorporated by reference and made a part of this Agreement. Failure to comply with any of the aforementioned laws, resolutions, regulations and/or policies may result in the termination of this Agreement. Provider warrants and represents that it has not employed or retained any company, firm or person, other than a bona fide employee working for the Provider, to solicit or secure this Agreement, and that it has not paid or



agreed to pay any company, firm or person, other than a bona fide employee working for Provider, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or in its discretion to deduct from the contract fee or consideration, or otherwise recover, the full amount of such fee, commission, gift, percentage, or contingent fee.

- D. Independent Contractor.** Provider, its employees and subcontractors shall perform all work pursuant to this Agreement as independent contractors and not as employees of the County or SHO.
- E. Prohibition on Assignment.** Provider may not assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the County. However, Provider may assign its rights and obligations under this Agreement to any entity owned by, or under common control with, Cardinal Health, Inc. without such consent, provided that Provider shall notify the County in writing of Provider's intent to assign its rights and obligations under this Agreement within a reasonable amount of time.
- F. Governing Law and Jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of Ohio without regard to conflicts of law provisions. The parties agree that the Federal and State courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Agreement, and each party consents to the exclusive jurisdiction of such courts. Provider hereby agrees not to challenge this Governing Law and Jurisdiction provision, and not to attempt to remove any legal action outside of the County for any reason.
- G. No Indemnity.** Provider acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no Section of this Agreement or any other contract or agreement between the Provider and the County may be interpreted to obligate the County to indemnify or defend Provider or any other party.
- H. Findings for Recovery.** Provider represents and warrants that it is not subject to an "unresolved" finding for recovery under the Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Agreement is void ab initio, and Provider must immediately repay to the County any funds paid under this Agreement and must make the County whole for any damages sustained by the County.

- J. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, either express or implied, with respect to the subject matter hereof. No modification of this Agreement shall be binding upon the parties unless set forth in writing and signed by both parties, or their respective successors or assigns.
- K. **No Apparent Authority.** Provider recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County's Contracting and Purchasing Procedures.
- L. **Parties Bound and Benefitted.** This Agreement shall bind and benefit the parties hereto and, as applicable, their respective owners, members, directors, officers, representatives, successors, and assigns.
- M. **Non-waiver.** Either party's failure to require performance of any Section of this Agreement, or if it requires performance and does not follow through, shall not affect the non-defaulting party's right to require performance at any time thereafter. Additionally, either party's waiver of any breach or default of this Agreement shall not constitute a waiver of any subsequent breach or default or a waiver of the provision itself or any other provision.
- N. **Contract Interpretation and Construction.** In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as though drafted by both parties, and no presumption or burden of proof shall arise favoring or disfavoring one party by virtue of the authorship of any of the Sections of this Agreement.
- O. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement (and each amendment, modification and waiver in respect of it) by facsimile or other electronic transmission, including email, shall be as effective as delivery of a manually executed original counterpart of each such instrument.
- P. **Severability.** If any Section of this Agreement is invalid or unenforceable for any reason, this Agreement shall be divisible as to such Section and the remainder of this Agreement shall be and remain valid and binding as though such Section was not included herein.
- Q. **Applicable County Ordinances.** All County contracts, including this Agreement, are subject to all applicable County ordinances, including,

but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogaCounty.us/>.

#### **SECTION XIV. ELECTRONIC SIGNATURE**

BY ENTERING INTO THIS AGREEMENT PROVIDER AGREES ON BEHALF OF THE CONTRACTING OR SUBMITTING BUSINESS ENTITY, ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, SUBGRANTEES, AGENTS OR ASSIGNS, TO CONDUCT THIS TRANSACTION BY ELECTRONIC MEANS BY AGREEING THAT ALL DOCUMENTS REQUIRING COUNTY SIGNATURES MAY BE EXECUTED BY ELECTRONIC MEANS, AND THAT THE ELECTRONIC SIGNATURES AFFIXED BY COUNTY TO SAID DOCUMENTS SHALL HAVE THE SAME LEGAL EFFECT AS IF THAT SIGNATURE WAS MANUALLY AFFIXED TO A PAPER VERSION OF THE DOCUMENT. PROVIDER ALSO AGREES ON BEHALF OF THE AFOREMENTIONED ENTITY AND PERSONS, TO BE BOUND BY THE PROVISIONS OF CHAPTERS 304 AND 1306 OF THE OHIO REVISED CODE AS THEY PERTAIN TO ELECTRONIC TRANSACTIONS, AND TO COMPLY WITH THE ELECTRONIC TRANSACTIONS AND THE ELECTRONIC SIGNATURE POLICY OF CUYAHOGA COUNTY.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year below.

Cardinal Health 411, Inc.

By: Kate Spirk  
Kate Spirk, Vice President – Government Accounts

Date: February 7, 2013

County of Cuyahoga

By: X Edward FitzGerald  
Edward FitzGerald, County Executive

Date: April 2, 2013