

PARTICIPATION AGREEMENT FOR INMATE COST CONTAINMENT PROGRAM

This Participation Agreement ("Agreement") is made and entered into by and between the City of Vicksburg, Mississippi (the "Client") and the Association Program Administrators, LLC ("APA").

FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, Client agrees to participate in APA's Inmate Medical Cost Containment Program (the "Program") and APA agrees to provide, certain administrative services pursuant to the terms and conditions of this Agreement, which are hereby agreed upon as follows:

I. PURPOSE

The purpose of this Agreement is to establish the enrollment of the Client as a participant in the Program and to establish the administrative responsibilities of each party pursuant to this Agreement. The Program is intended to reduce medical and Prescription (Rx) costs related to Client's inmates in accordance with the limitation placed on such costs by the 2010 amendments to Mississippi Code Annotated Section 47-5-901, HB 1111.

II. TERM OF AGREEMENT

- a. Client agrees to participate in the Program for a term commencing on the date this Agreement is executed and continuing for a period of one (1) year, unless sooner terminated in accordance with Section VI of this Agreement (the "Program Year").
- b. The Client may extend the terms of the Agreement for an additional one (1) year period by providing written notice to APA within ninety (90) days before the Agreement expires.
- c. The terms of this agreement are not binding upon any newly elected Board of Mayor and Aldermen who shall have the authority to terminate said Agreement in its discretion.
- d. Should the Client submit no Medical Claims or Rx Claims (as defined in Sections III.e and III.f below) to APA for any length of time exceeding ninety (90) consecutive calendar days during the Program Year or any Renewal Year, the Client will be considered "Inactive" pursuant to the terms of the Program, and APA will be relieved from its responsibilities under Section III hereof during such period that the Client is Inactive. The Client will return to active status automatically upon submittal of any Medical Claims or Rx Claims to APA.
- e. Upon termination of this Agreement, whether by expiration, failure to renew or in accordance with Section VI's provisions, all pending Medical Claims or Rx Claims incurred prior to, and including, the date of termination, submitted to APA shall be returned to the Client.

III. PARTIES' RESPONSIBILITIES

APA agrees to render services for the Client on the terms and conditions set forth in this Agreement and agrees to devote such time and attention to the performance of the duties

specified herein as is reasonably necessary. APA' duties shall be generally to provide medical claims administrative management services for all inmates housed in the Client's jails and/or detention facilities for whom the Client bears financial responsibility, as well as any other inmates for whom the Client is responsible even if housed in locations other than the Client's jails and/or detention facilities. Medical claims are those claims for services rendered by hospitals, minor medical centers, doctors, physicians, registered nurses, dentists and other medical care and healthcare providers, including pharmacies. In accordance with this general responsibility, APA agrees to provide the following services:

- a. Make a determination as to whether the medical treatment for which charges are made has been administered.
- b. Verify that the medical treatment administered to Client's inmates is a valid Mississippi Medicaid billable claim;
- c. Coordinate benefits to intercept Medicare eligibility and/or other applicable private insurance, when inmates insurance eligibility is provided;
- d. Re-price billed inmate medical charges ("Medical Claims") submitted to APA to reflect appropriate Medicaid rates or negotiated discount prices;
- e. Re-price prescription drug claims ("Rx Claims") submitted to APA to reflect appropriate Medicaid rates or negotiated discount prices;
- f. Provide for payment of Medical Claims and Rx Claims to hospitals, pharmacies, physicians and other medical care providers for treatment of Client inmates. APA shall not be responsible for paying Medical Claims prior to receipt of payment for such claims from the Client;
- g. Provide to the Client explanations of payment for its records that itemize the charges as originally billed, as re-priced and as paid on its behalf;
- h. Provide monthly claims reports to the Client;
- i. Provide Client with inmate provider claim cards for use by Client's Police Department personnel;
- j. Process all offsite Client and state inmate medical claims during contract term;
- k. Comply with all of Client's reasonable and lawful policies, standards and regulations;
- l. Permit the Client, upon reasonable notice, to make a full and fair review of each invoice and audit thereof; and
- m. Take commercially reasonable and appropriate actions to abide by and comply with all laws and regulations pertaining to confidentiality, privacy and security as

are applicable to medical records and medical billing including, but not limited to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Health Information Technology for Economic and Clinical Health Act (HITECH) of 2009. With respect to HIPAA, APA shall:

- i. Not use or disclose protected health information other than as permitted or required by this Agreement or as required by law;
- ii. Use commercially reasonable and appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, in an effort to prevent use or disclosure of protected health information other than as provided for by this Agreement;
- iii. Report to City any use or disclosure of protected health information not provided for by the Agreement of which it became aware, including breaches of unsecured protected health information as required by 45 CFR 164.410, and any security incident of which it becomes aware; and
- iv. Make available protected health information in a designated record sent to the Client as necessary to satisfy the covered entity's obligations under 45 CFR 164.524.
- v. All of the foregoing provisions are subject to and conditioned upon the terms, conditions and waivers set forth in the attached Addendum regarding HIPAA and Business Association disclaimers, which Addendum is incorporated herein by reference for all purposes.

The Client shall:

- a. Ensure that all appropriate personnel receive the inmate provider claim cards issued by APA;
- b. Direct all appropriate personnel to present the inmate provider claim cards on each occasion when any Client inmate is being treated by any medical provider or when filling prescriptions;
- c. Reimburse or otherwise pay to APA all Rx Claims paid and Medical Claims paid by APA for the benefit of the Client within forty-five (45) days after the receipt of the monthly claims report identifying such Medical Claims and Rx Claims;
- d. Never pay a medical bill received directly from a medical provider that has provided care to a Client inmate for whom the Client is financially responsible;
- e. Contact APA any time a medical provider which has provided medical care to a Client inmate makes contact with the Client concerning any fee or charge for such care;
- f. Except in situations where inmates are in need of immediate medical attention, Client will retain sole authority and discretion to determine which providers shall

render medical services to the Client inmates and the circumstances under which the Client inmates shall receive such care from the providers; and

- g. Provide a daily census report to APA for the use of validating the Client's responsibility based on date of service for medical claim.

IV. CONFIDENTIALITY

- a. APA acknowledges and agrees that all business records, accounting records and other Client data and information related to its business ("Confidential Information") are valuable assets of the Client and that the nature of this Agreement will require the transmission of records that may be considered confidential. Except for disclosures required to be made to advance the business of the Client and information which is a matter of public record, APA shall not, during the term of this Agreement or after its termination, disclose any Confidential Information for the benefit of APA or any other person except with the prior written consent of the Client.
- b. APA acknowledges and agrees that all originals and copies of documents, reports, records, lists, memoranda and other documentation related to the business of the Client or containing any Confidential Information shall be the sole end exclusive property of the Client and shall be returned to the Client upon termination of this Agreement or upon the written request of the Client.
- c. APA agrees that the termination of this Agreement shall not release it from the obligations set forth under Section IV.a and IV.b above.

V. COMPENSATION

- a. In consideration of services rendered by APA to the Client in processing Medical Claims as described in Section III.e above, the Client agrees to pay directly to APA ten percent (10%) of its Medical Claims Savings (as defined below) resulting from the services of APA. For the purposes of this Agreement, the term "Medical Claims Savings" shall mean the difference between the gross amount originally sought by the medical provider and the provider's final adjusted bill after application of APA adjustments resulting from its bill management services.
- b. In consideration of services rendered by APA to the Client in processing Rx Claims as described in Section III.f above, the Client agrees to pay directly to APA fifteen percent (15%) of its Rx Claims Savings resulting from the services of APA. For the purposes of this Agreement, the term "Rx Claims Savings" shall mean the difference between the gross amount originally sought by the pharmacy and the pharmacy's final adjusted bill after application of APA adjustments resulting from its bill management services.
- c. APA shall submit to the Client on a monthly basis a consolidated statement showing the Medical Claims Savings, the Rx Claims Savings and the calculated

fee for APA's services. The Client shall remit payment to APA within forty-five (45) days after the receipt of the claims savings statement.

- d. Compensation paid to APA pursuant to this Agreement shall not be subject to withholding of income taxes and other employment taxes. APA shall be solely responsible for reporting and paying any such taxes. The Client shall not be responsible for providing to APA any benefits of employment with the Client.

VI. TERMINATION

This Agreement may be terminated by either party, at will, upon providing the other party ninety (90) days' written notice of same. This Agreement also may be terminated at any time and immediately upon the mutual written consent of the Client and APA.

VII. INDEPENDENT CONTRACTOR STATUS

APA agrees that neither it nor any of its contractors are agents, partners, joint venturers or employees of the Client. APA represents that neither it nor its contractors have any authority to bind or otherwise obligate the Client in any manner, nor shall they represent to any party that they have a right to do so. APA and its contractors are independent contractors, and APA further agrees that in the event that the Client suffers any loss or damage as a result of a violation of this provision, then APA shall indemnify and hold harmless the Client from any such loss or damage.

APA shall not have any duty or obligation to defend against any legal action or proceeding brought against the Client to recover a claim for payment of medical services provided, but each shall make available to the Client and its counsel, such evidence relevant to such action or proceeding as they have as a result of the administration of the claims administration services provided.

VIII. MISCELLANEOUS PROVISIONS

- a. In the event of a default under this Agreement, the defaulting party shall reimburse the non-defaulting party for all reasonable legal fees, costs and expenses reasonably incurred by the non-defaulting party in connection with the default.
- b. This Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi. Any suit, action or proceeding arising out of or relating to this Agreement shall only be instituted in a Mississippi state court located in Warren County, Mississippi. No presumption shall be deemed to exist in favor of or against any party as a result of the negotiation or preparation of this Agreement.
- c. Each of the undersigned parties to this Agreement acknowledge and agree that they have fully read and completely understand this Agreement.
- d. This Agreement and all the exhibits referenced in this Agreement and attached hereto constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations and understandings of the parties. No supplements, modifications

or amendments of this Agreement shall be binding without the written agreement of both parties.

- e. This Agreement is for the benefit of the Client and APA and not for any other person and shall not create any legal relationship between any employee, beneficiary or any other party claiming any right, whether legal or equitable, under the terms of this Agreement.
- f. APA shall not assign any right, interest or obligation hereunder without the express written consent of the Client.
- g. Any notice, request, instruction or other document to be given or furnished under this Agreement by any party to the other party shall be in writing and shall be delivered personally or shall be sent facsimile transmission with transmit conformation report or registered or certified mail, postage prepaid, or by prepaid overnight delivery service, to the following addresses or facsimile number:

To Client:

The City of Vicksburg, Mississippi
Attention: Mayor Willis T. Thompson.
1401 Walnut Street
Vicksburg, MS 39180
Telephone: (601) 801-3411

To APA:

APA
Attn: Rob Tinsley
PO Box 321418
Flowood, MS 39232
Email: rtinsley@apadmins.com
Fax: 601-821-2621

or to any such other address, facsimile number or person as any party may designate by written notice to the other parties. A notice, request, instruction or other document shall be deemed to be given (i) when delivered personally, (ii) when sent by facsimile transmission with transmit conformation report, (iii) when sent by electronic mail (email) or (iv) if sent by certified mail overnight delivery service, at the time of delivery as indicated on the duty completed U.S. Postal Service return receipt of the time of package pickup as indicated on the records of the certificates provided by the overnight delivery service.

- h. The failure or omission of either party to insist upon, exercise or enforce any terms, conditions or provisions of this Agreement will not be deemed a waiver of such terms, conditions or provisions unless the waiver is in writing and signed by the waiving party. Waiver by either party of the right to exercise or enforce any right or

remedy that it may possess hereunder will not operate or be construed as a bar or estoppel to the exercise or enforcement of any right or remedy by such party upon the occurrence of any subsequent breach or violation, and shall not constitute waiver of any other right, term or condition.

- i. If any provision of this Agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- j. When the context so requires in this Agreement, words of gender shall include either or both of the genders and the singular number shall include the plural. The headings of the sections of this Agreement are inserted for the convenience of reference only and shall not be deemed to constitute a part hereof and shall not be deemed to limit, expand or modify in any way the provisions of this Agreement.
- k. To the fullest extent permitted by law, this Agreement shall be binding upon the parties hereto, and their representatives, successors and assigns, if any. This Agreement and the rights hereunder shall not be assigned without the prior consent of the non-assigning party, which consent or non-consent may be exercised in such non-assigning party's sole and absolute discretion. To the fullest extent permitted by law, this Agreement shall bind and inure to the benefit of the parties, their permitted assigns and successors, and legal representatives.
- l. The parties agree that digitally signed, scanned or faxed copies of this Agreement and any Exhibit or attachment attached hereto shall be deemed to have the same legal force and effect as the original signed version.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date written below:

CITY OF VICKSBURG, MISSISSIPPI

By: _____
Willis T. Thompson.
Mayor, City of Vicksburg

Date: _____

ASSOCIATION PROGRAM ADMINISTRATORS, LLC

By: _____
Rob Tinsley, CEO

Date: _____