

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: David Fortino

DATE: April 15, 2024

SUBJECT: Contract – Quest Diagnostics Laboratories inc, Jail Medical Laboratory Services

STATEMENT OF ISSUE:

Contract for Laboratory services for jail medical purposes, billed on an as needed basis.

ANALYSIS:

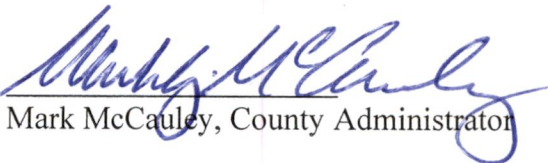
FISCAL IMPACT:

Billing for services occurs on an as needed basis, fee schedule billed in accordance with the pricing terms and conditions of the Premier GPO agreement.

RECOMMENDATION:

Approve Contract – Quest Diagnostics Laboratories inc, Jail Medical Laboratory Services

REVIEWED BY:


Mark McCauley, County Administrator

4/8/24
Date

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: Quest Diagnostics Clinical Laboratories, Inc. 2024-1
(Name of Contractor/Consultant) Contract No.

COUNTY DEPARTMENT:

Contact Person: David Fortino
Contact Phone: 360-344-9743
Contact email: dfortino@co.jefferson.wa.us

AMOUNT: 0
Revenue: _____
Expenditure: _____
Matching Funds Required: _____
Sources(s) of Matching Funds: _____

PROCESS:

- ☒ Exempt from Bid Process
☐ Cooperative Purchase
☐ Competitive Sealed Bid
☐ Small Works Roster
☐ Vendor List Bid
☐ RFP or RFQ
☐ Other: _____

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☒ N/A: ☐ David Fortino Digitally signed by David Fortino 3/27/2024
Signature Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☒ N/A: ☐ David Fortino Digitally signed by David Fortino 3/27/2024
Signature Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 3/29/2024.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 3/28/2024.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

LABORATORY SERVICES AGREEMENT
(General)

THIS AGREEMENT, (the “Agreement”) is effective as of the last date of signature below (the “Effective Date”) is by and between **Quest Diagnostics Clinical Laboratories, Inc.** ("Quest Diagnostics") and **Jefferson County Jail** ("Client"). Quest Diagnostics and Client may be identified individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, Client desires to engage Quest Diagnostics to perform certain clinical laboratory services (“Services”), for Client’s clinic and the clinic’s patients, and Quest Diagnostics desires, pursuant to the terms and conditions set forth herein, to provide such services; and

NOW THEREFORE, in consideration of the foregoing premises and mutual promises herein contained, and intending to be bound legally hereby, Client and Quest Diagnostics agree as follows:

1 SERVICES.

1.1 Quest Diagnostics will provide Services for Client pursuant to orders by persons who are authorized under state or federal law to order laboratory tests.

1.2 Supplies. Quest Diagnostics will provide to Client certain specimen collection supplies as part of its fees for its Services hereunder to be used solely for the collection of specimens that are to be tested by Quest Diagnostics. Client shall ensure that patient specimens referred to Quest Diagnostics are obtained in an appropriate container and in adequate quantity, are properly processed, and are properly packaged for transport.

1.3 Quest Diagnostics will provide courier service to pick up specimens to be tested by Quest Diagnostics from Client.

1.4 Quest Diagnostics will send reports back to Client either in an electronic format, subject to the execution by the Parties of the applicable Quest Diagnostics’ connectivity agreement, or via fax.

1.5 Services under this Agreement may be performed and billed by Quest Diagnostics or an entity that is now or may in the future be controlled by or under common control with Quest Diagnostics.

2 COMPENSATION.

2.1 Quest Diagnostics will invoice Client in accordance with the specific needs of Client and applicable federal and state statutes and regulations.

2.2 Where payment is due from Client to Quest Diagnostics, Client agrees to make payment to Quest Diagnostics by check, ACH payment, certified money order, or electronic wire within thirty (30) days of the date of each Quest Diagnostics invoice for Services, after which any undisputed unpaid invoice amounts will be overdue. Where available, client will be invoiced monthly via Quest Diagnostics eInvoice (Quest web-based invoicing system) or other similar electronic invoicing system. Paper invoices may incur additional fees. Client’s obligation to pay for Services rendered prior to termination of the Agreement will survive termination of this Agreement.

2.3 Client will provide Quest Diagnostics with all necessary information required by Quest Diagnostics to properly invoice and receive payment for Services. Client will ensure that such billing information accompanies each specimen submitted for testing.

2.4 All pricing contained herein and attached hereto as **Attachment 1: Fee Schedule**, will be in effect for one (1) year from the Effective Date. Thereafter, Quest Diagnostics reserves the right to increase such pricing at any time, but no more frequently than annually, upon thirty (30) days advance written notice to Client.

3 RECORDS.

Each Party agrees to maintain records for patients in such form and for such duration as may be required by Federal, State or local statutes or regulations, and to make available to the Department of Health and Human Services, the U.S. Comptroller General and their designees upon reasonable request and in a reasonable manner its books, documents, and records relating to its provision of services under this Agreement as may be required by applicable statutes and regulations. Quest Diagnostics acknowledges that these agencies and their designees have the right to audit, evaluate, or inspect Quest Diagnostics' (or its subcontractors' or transferees') books, contracts, medical records, patient care documentation, and other records, related to recipients of federal and state funds.

4 TERM. This Agreement will commence on the Effective Date and will continue in perpetuity until terminated as set forth below.

5 TERMINATION.

5.1 Termination Without Cause. Either Party can terminate this Agreement upon thirty (30) days prior written notice.

5.2 Termination With Cause.

5.2.1 **Material Breach.** Either Party may terminate this Agreement in the event of a material breach by the other Party by giving the breaching party ten (10) days written notice identifying the breach. If the breaching party fails to cure the breach within the ten (10) day cure period, the non-breaching party may terminate the Agreement immediately upon written notice to the breaching party.

5.2.2 **Material Change.** Either Party may, upon written notice to the other Party, immediately terminate this Agreement upon the occurrence of any of the following events: (i) the other Party makes an assignment for the benefit of creditors; (ii) a petition in bankruptcy or any insolvency proceeding is filed by or against the other Party and is not dismissed within thirty (30) days from the date of filing; (iii) all or substantially all of the property of the other Party is levied upon or sold in any judicial proceedings; (iv) the other Party is excluded from participating in any federally funded program; (v) a loss of licensure by the other Party that renders the other Party unable to perform its obligations under this Agreement; or (vi) if the Party determines in good faith that any portion of this Agreement may or does violate any law, rule, regulation or governmental policy, or any interpretation of any law, rule, regulation or governmental policy.

6 SURVIVAL.

Those sections, which by the nature of their terms are intended to survive termination, or that contemplate performance or observance after termination of this Agreement, will survive the termination or expiration of this Agreement, including without limitation the following sections: Indemnification, Insurance, Miscellaneous, Compliance with Law, Limitations of Liability, Terms of the Agreement, and Governing Law.

7 INSURANCE.

7.1 During the term of this Agreement, Quest Diagnostics will maintain, at its sole cost and expense, insurance against claims that may arise from or in connection with the Services provided with at least the following minimum limits of liability. Quest Diagnostics may provide the coverage required by this agreement through

self-insurance. Quest Diagnostics will include Client as an additional insured for general liability and automobile liability by a blanket additional insured endorsement, if applicable.

Coverage Type	Minimum Limits of Liability
General Liability	\$2,000,000 per occurrence \$4,000,000 general aggregate
Business Automobile Liability	\$3,000,000 combined single limit per accident
Worker's Compensation	Statutory - In accordance with the laws of the state exercising jurisdiction over employees
Employers Liability	\$1,000,000 each accident/each employee/policy limit
Professional Liability / Errors & Omissions Liability	\$5,000,000 each claim \$5,000,000 aggregate
Crime	\$1,000,000 each occurrence
Cyber Liability	\$5,000,000 each claim

7.2 Client will maintain, at its sole cost and expense, the following insurance coverages.

Coverage Type	Minimum Limits of Liability
General Liability	\$1,000,000 per occurrence \$3,000,000 general aggregate
Business Automobile Liability	\$1,000,000 combined single limit
Worker's Compensation	Statutory - In accordance with the laws of the state exercising jurisdiction over employees
Employers Liability	\$1,000,000 each accident/each employee/policy limit
Professional Liability / Errors & Omissions Liability	\$1,000,000 each claim \$3,000,000 aggregate
Crime	\$1,000,000 each occurrence
Cyber Liability	\$1,000,000 each claim

7.3 Each Party will continue the coverage (or purchase "tail coverage") which will extend the reporting period for incidents arising out of or related to this Agreement for at least three (3) years beyond the termination of this Agreement. Upon request, each Party will provide the other Party with a current and valid Certificate of Insurance evidencing coverage required by this agreement and annually thereafter. Cancellation notification is in accordance with policy provisions.

7.4 Quest Diagnostics acknowledges that client's coverage is provided by the Washington Counties Risk Pool and not traditional commercial insurance policies.

8 MISCELLANEOUS.

8.1 Independent Contractors. The Parties agree that each is an independent contractor engaged in the operation of its own business. Nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, and any and all employees of a party engaged in the performance of any work or service required under the Contract shall be considered employees of that party only and any claims that may arise on behalf of or against said employees shall be the sole obligation and responsibility of that party.

8.2 Assignment. Except in the event of a merger, consolidation, acquisition, or other transfer or change in ownership or control of the Party, or as otherwise set forth in this Section, neither Party may transfer or assign this Agreement nor any rights or obligations hereunder without the prior written consent of the other Party. Notwithstanding the foregoing, Quest Diagnostics may refer work to an affiliated testing facility or to subcontracted providers without prior written consent. This Agreement is intended to inure only to the benefit of Quest Diagnostics and Client.

8.3 Trademarks. Neither party shall use the trademark, tradename, nor service mark of the other party for any purpose without the prior written consent of the other party, however, Client authorizes the use of its name and/or logo in furtherance of administering Services pursuant to this Agreement.

8.4 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof, supersedes all prior agreements or understandings and may only be modified in a writing signed by both Parties. Notwithstanding the foregoing, if the Client is a member of a group purchasing organization ("GPO") with which Quest Diagnostics is under contract and the Client has complied with all requirements under that GPO agreement to access the rates set forth and that GPO approved, the terms of the GPO Agreement shall supersede any provisions of this Agreement. No modification of this Agreement will have any force or effect unless such modification specifically indicates it is a modification of this Agreement, is in writing and signed by authorized representatives of both Parties.

8.5 Notices. All notices under this Agreement will be delivered in accordance with this provision. Notice will be deemed properly delivered, as of the date received by the non-noticing party, if given as follows:

- Notice to Quest Diagnostics will be via email to: CommercialContracting@questdiagnostics.com
- Notice to Client will be via traceable delivery method addressed as follows:
Jefferson County Jail
81 Elkins Rd., Port Hadlock, WA 98339
ATTN: Spencer Patterson
Email: jaildoc@co.jefferson.wa.us

8.6 Governing Law. This Agreement shall be governed by the law of the state of Washington, without regard to its conflict of laws provisions. In the event of any litigation between the parties arising out of this Agreement the parties agree to waive the right to request a jury trial.

8.7 Force Majeure. No Party to this Agreement shall be liable for failure to perform any duty or obligation that such Party may have under this Agreement where such failure has been caused by any event, foreseen or unforeseen, outside the reasonable control of the Party who had the duty to perform and that renders performance impossible or impracticable, including but not limited to: acts of God; acts of government; natural disasters such as floods, earthquakes and severe weather events such as hurricanes; international or national hostilities, including acts of war (declared or undeclared), insurrection, terrorism, mass casualty events or other intentional violent actions; public health emergencies, including pandemic; fire; power failure; cyberattack or ransomware attack; strike; lockout; riot; civil unrest, inevitable accident, inability to procure labor or materials; or any other event, like or unlike those listed above (collectively, "Force Majeure Event") not within reasonable control of the Party, but only to the extent prevented by the Force Majeure Event. No such failure or delay shall excuse in any way the obligation of Client to make all payments to Quest Diagnostics provided for by this Agreement.

8.8 Excluded Provider. Each party represents and warrants that it has not been convicted of a crime related to healthcare or is not currently listed by a federal agency as debarred, excluded or otherwise ineligible for participation in federally funded programs (including, without limitation, federally funded healthcare programs, such as Medicare and Medicaid). If the foregoing representation changes during the term of this Agreement, the affected party shall provide prompt written notice to the other party.

8.9 Terms of the Agreement. Except as required by law, the terms of this Agreement (including without limitation the pricing provisions) are confidential and may not be disclosed to third parties without the prior written consent of both Parties. The provisions of this paragraph shall survive termination or expiration of this Agreement.

8.10 Disputes. The parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions. If either party deem it necessary to institute legal action or proceeding to enforce any right or obligation under the Contract, each party in such action shall bear the cost of its own attorney's fees and court costs. Any legal action shall be initiated in the Superior Court of the State of Washington for Jefferson County. The parties agree that all questions shall have the right of appeal from such decisions of the Superior Court in accordance with the laws of the State of Washington. Quest Diagnostics hereby consents to the personal jurisdiction of the Superior Court of the State of Washington for Jefferson County. The provisions of this section shall survive the expiration or termination of the Contract.

9 LIMITATIONS OF LIABILITY.

In no event shall either party or its respective officers, directors, employees, agents affiliates, or volunteers be liable for any special, exemplary, incidental, consequential or punitive damages, whether in contract, warranty, tort, strict liability or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy and shall survive termination of this Agreement. Only to the extent not covered by coverage by insurance and any deductible or self-insured retention the parties agree that Quest Diagnostics' liability arising from or related to the provision of Services hereunder shall be limited to the actual amounts paid to Quest Diagnostics pursuant to this Agreement in the twelve (12) months preceding the applicable claim.

10 COMPLIANCE WITH LAW.

Each of the Parties represents and warrants to the other Party that it will comply with all applicable laws, rules or regulations ("Applicable Laws"), including, but not limited to, the federal Physician Self-Referral Law, 42 U.S.C. 1395nn, and the regulations promulgated thereunder (together, the "Stark Law"), similar state physician self-referral laws and regulations (together with the Stark Law, the "Self-Referral Laws"), the federal Medicare/Medicaid Anti-kickback Law and regulations promulgated thereunder (the "Federal Anti-kickback Law") and similar state Anti-kickback laws and regulations (together with the Federal Anti-kickback Law, the "Anti-kickback Laws") and the Health Insurance Portability and Accountability Act ("HIPAA"). This paragraph will survive the termination of this Agreement.

11 INDEMNIFICATION.

Each party will indemnify, defend and hold the other party, its affiliates and their respective officers, directors, employees, agents and volunteers (and their marital communities) harmless from and against any and all losses, claims, suits, damages, liabilities and expenses (including without limitation, reasonable attorneys' fees and costs) based upon or arising, directly or indirectly, from their respective negligent or willful acts or omissions, and the negligent or willful acts or omissions of their affiliates and their respective officers, directors, employees, and agents. Should a court of competent jurisdiction determine that the Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of one party, and their affiliates and their respective officers, directors, employees, and agents and volunteers (and their marital communities), the parties, including the duty and cost to defend, hereunder shall be only to the extent of the other party's negligence. Each party specifically assumes potential liability for actions brought against the other party by the other party's their respective officers, directors, employees, and agents and volunteers, including all other persons engaged in the performance of any work or service required of the Contractor under the Contract and, solely for the purpose of this indemnification and defense, the parties specifically waive any immunity under the state industrial insurance law, Title 51 RCW. The parties

recognize that this waiver was specifically entered into pursuant to provisions of RCW 4.24.115 and was subject of mutual negotiation.

12 LEGISLATIVE / REGULATION CHANGES.

In the event federal or state legislative and/or regulatory changes impact the Services, either Party may seek to amend this Agreement to fully comply with any legislative or regulatory changes.

13 SIGNATURE AUTHORITY.

The individuals signing this Agreement represent that they have the authority to sign this Agreement on behalf of the respective Parties.

IN WITNESS WHEREOF, the Parties indicate their acceptance of the terms of this Agreement by having their authorized representatives sign below.

JEFFERSON COUNTY WASHINGTON

Board of County Commissioners
Jefferson County, Washington

By: _____
Kate Dean, Chair Date

By: _____
Greg Brotherton, Commissioner Date

By: _____
Heidi Eisenhour, Commissioner Date

SEAL:

ATTEST:

Carolyn Galloway, CMC Date
Clerk of the Board

Quest Diagnostics Clinical Laboratories, Inc.

Jean-Marc Halbout
By: Jean-Marc Halbout (Mar 25, 2024 11:55 PDT)
Signature

Name: Jean-Marc Halbout, Ph.D.
Title: Regional President - West Region
Date: Mar 25, 2024

Approved as to form only:



March 28, 2024

Philip C. Hunsucker, Date
Chief Civil Deputy Prosecuting Attorney

ATTACHMENT 1
FEE SCHEDULE

In the event Quest Diagnostics bills Client, Client shall be billed in accordance with the pricing terms and conditions of Premier GPO Agreement.

AMENDED AND RESTATED EXHIBIT A-2 PARTICIPATING MEMBER DESIGNATION FORM

SELLER: Quest Diagnostics Incorporated
CONTRACT NUMBER: PP-LA-486
CONTRACT DATES: 10/1/2018 - 9/30/2026
SERVICE CATEGORY: Clinical Reference Laboratory Testing Services

1. **Tier.** The undersigned Participating Member hereby designates the following desired tier under the above-referenced Premier Healthcare Alliance, L.P. Group Purchasing Agreement:

a. Select one Tier by initialing below

Member Initials	TIERS	TOTAL SERVICES PURCHASED (\$ PER CALENDAR YEAR)	Number of Hot List Tests Participating Members are Entitled to Receive Additional Discounts For*
	TIER 1	<\$60,000	Min. 10 Hot List Tests
	TIER 2	\$60,000 to <\$360,000	Min. 20 Hot List Tests
	TIER 3	\$360,000 to <\$1,000,000 or Academic Health Systems	Min. 25 Hot List Tests
	TIER 4	\$1,000,000 to <\$5,000,000	Min. 35 Hot List Tests
	TIER 5	\$5,000,000 to <\$10,000,000	Min. 40 Hot List Tests
	TIER 6	\$10,000,000 to <\$20,000,000	Min. 45 Hot List Tests
DF	TIER 7	≥\$20,000,000	Min. 50 Hot List Tests
	TIER 8	Hot List Tests	N/A
	TIER 9	Send-Out Tests	N/A

* Hot list test prices shall include additional discounts and may be locally negotiated

b. Seller shall not reduce a Participating Member's tier level without first (i) notifying the Participating Member and Premier in writing that the Participating Member's purchase volume is below the tier level selected by the Participating Member (the "Tier Reduction Notice") and (ii) providing the Participating Member thirty (30) calendar days from the date of notice to remedy the purchasing volume issues described in the Tier Reduction Notice. If the Participating Member does not remedy the issues described in the Tier Reduction Notice within thirty (30) days, Seller may move the Participating Member to the appropriate tier based on the Participating Member's Services purchased. Any tier adjustment pursuant to this paragraph that results in a less favorable tier for the Participating Member will apply for Services purchased after the effective date of the tier reduction.

2. **Aggregation Pricing Option.** By initialing where indicated below, the undersigned Participating Member or Participating Member group purchasing organization ("GPO") hereby elects to invoke the Aggregation Pricing Option whereby such Participating Member which operates multi-facility systems and has the ability to coordinate the purchasing decisions of such facilities, or such entity that has an established network of facilities for purposes of group purchasing, shall be entitled to aggregate the purchasing volume within their respective systems and networks in order to meet the tier designated in Item 1 above contingent upon the Participating Members that operate multi-facility systems or have established networks of facilities for purposes of group purchasing utilize Seller as their primary reference laboratory for those facilities that are aggregating their volume. In order to invoke this election, the undersigned must be a Participating Member that is able to coordinate the purchasing decisions of the facilities it wishes to aggregate or a GPO with members that are Participating Members. Attached hereto as Schedule 1 is a list of all such facilities. Seller shall be responsible for checking the

Discount and Rebate Reporting Assistance. Participating Member is advised that the programs provided in this Value Add Exhibit may reflect discounts or rebates. Seller will assist Participating Member in the proper reporting of all rebates and discounts (actual or proposed) provided under this Agreement. At a minimum, Seller will fully and accurately report any rebates and discounts provided to Participating Member pursuant to this Value Add Exhibit and Agreement in a manner reasonably calculated to enable the Participating Member to report the rebate and discount to payers. All rebates and discounts (actual or proposed) will be indicated on a written invoice to the Participating Member Facility that notifies the recipient that the purchase is subject to a potential rebate that will be reported when that rebate becomes known. Seller will not impede Participating Member's efforts to fully and accurately report all rebates paid and discounts received.

At a minimum, Seller will provide Participating Member with a year-end reconciliation statement which: a.) reflects the percentage discount and the total amount of the discount earned during the year for product classes purchased by Participating Member to which the discount applies, and b.) advises the Participating Member to properly account for and report these discounts, consistent with 42 CFR Section 1001.952(h), which requires the purchaser of items and services covered under Medicare, Medicaid, and other Federal healthcare programs to fully and accurately report any discounts, rebates and reductions in price in claims for payment and cost reports submitted to the applicable federal or state agency.

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PROPRIETARY AND CONFIDENTIAL

AMENDED AND RESTATED EXHIBIT A-2 PARTICIPATING MEMBER DESIGNATION FORM

SELLER: Quest Diagnostics Incorporated
CONTRACT NUMBER: PP-LA-486
CONTRACT DATES: 10/1/2018 - 9/30/2026
SERVICE CATEGORY: Clinical Reference Laboratory Testing Services

Membership Roster for updates as specified in Section 3.0 of the Agreement. DF undersigned Participating Member or GPO hereby elects to invoke the Aggregation Pricing Option: **Participating Member's (or GPO's) Initials:** DF.

The undersigned Participating Member hereby acknowledges and confirms the above designations.

Participating Member/GPO Print Name of Person Signing <u>David Fortino</u> Signature <u><i>David Fortino</i></u> DocuSigned by: David Fortino 827A18A7F74643C Title of Person Signing _____ Phone Number <u>(360) 344-9733</u> E-mail Address <u>dfortino@co.jefferson.wa.us</u> Date Signed <u>02-27-2024</u> Entity Code <u>AW3947</u> Print Name of Participating Member/GPO <u>Jefferson County Jail</u> Address <u>81 Elkins Rd</u> City and State <u>Hadlock WA 98339</u>	Seller Print Name of Person Signing _____ Signature _____ Title of Person Signing _____ Date Signed _____
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Upon completion, please submit this form to both Seller and Premier.

Seller Information –
Fax: 610.983.2010

Premier Information –
Fax: 704.816.3509
Email: PremierPMDF@PremierInc.com

SCHEDULE 1

LIST OF PARTICIPATING MEMBER'S (or GPO's) FACILITIES (For Purposes of Implementing the Aggregation Pricing Option)

[TO BE COMPLETED BY THE PARTICIPATING MEMBER OR GPO]

Participating Member/GPO name: Jefferson County Jail

Discount and Rebate Reporting Assistance. Participating Member is advised that the programs provided in this Value Add Exhibit may reflect discounts or rebates. Seller will assist Participating Member in the proper reporting of all rebates and discounts (actual or proposed) provided under this Agreement. At a minimum, Seller will fully and accurately report any rebates and discounts provided to Participating Member pursuant to this Value Add Exhibit and Agreement in a manner reasonably calculated to enable the Participating Member to report the rebate and discount to payers. All rebates and discounts (actual or proposed) will be indicated on a written invoice to the Participating Member Facility that notifies the recipient that the purchase is subject to a potential rebate that will be reported when that rebate becomes known. Seller will not impede Participating Member's efforts to fully and accurately report all rebates paid and discounts received.

At a minimum, Seller will provide Participating Member with a year-end reconciliation statement which: a.) reflects the percentage discount and the total amount of the discount earned during the year for product classes purchased by Participating Member to which the discount applies, and b.) advises the Participating Member to properly account for and report these discounts, consistent with 42 CFR Section 1001.952(h), which requires the purchaser of items and services covered under Medicare, Medicaid, and other Federal healthcare programs to fully and accurately report any discounts, rebates and reductions in price in claims for payment and cost reports submitted to the applicable federal or state agency.

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PROPRIETARY AND CONFIDENTIAL

