

MEMORANDUM OF UNDERSTANDING BETWEEN
OKLAHOMA OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES
AND
BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA,
COLLEGE OF PHARMACY DBA 1893 PHARMACY

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into between the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”, “OMES”) and The Board of Regents of the University of Oklahoma DBA 1893 Pharmacy (“Pharmacy” and/or “Supplier”) with its principal place of business at 901 N. Stonewall Ave Ste 1200, Oklahoma City OK 73117, under the authority of 74 O.S. § 1008, and is effective upon date of completed signatures. All Oklahoma State Agencies and/or affiliates may avail themselves of this contract.

WHEREAS, OMES has authority to contract with any other department of state government or institution having under its control the personal services, labor and equipment, machinery or other facilities to perform needed work for or on behalf of the state or its subdivisions, department or institutions, when such work may be performed by the use of machinery, equipment, material and/or labor of the department or institution under its control contracting to furnish such service by the use of such facilities of its own, or those of any institution of the state under its control pursuant to 74 O.S. § 581 and

WHEREAS, The OMES/PURCHASING DIRECTOR believes it is in the best interest of The State of Oklahoma to contract with the pharmacy to fill patient specific prescriptions or clinical stock medications for State Agencies and Affiliates to achieve better alignment, supply chain availability, and continued standardization of healthcare for patients under the supervision of the State of Oklahoma.

WHEREAS, Pharmacy believes it has the expertise necessary to assist and implement the necessary functions and process changes to be successful in achieving the goals of the Purchasing Director.

WHEREAS, Pharmacy has statutory authority to administer all policies and programs necessary to ensure the successful execution of state inpatient pharmaceutical services in accordance with state statute, federal regulations, and governmental accounting and reporting standards.

WHEREAS, Pharmacy acknowledges that they will maintain (“Protected Health Information or PHI”) in connection with the performance of this contract. This PHI is subject to protection under state and federal law, including the Health Insurance Portability and Accountability Act of 1996, Public Law (as amended) and the requirements for Confidential Information provided for under 74 O.S. § 1322.

WHEREAS, this MOU shall be governed in all respects by the laws of the State of Oklahoma.

WHEREAS, this MOU, including reference exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind any of the parties hereto.

NOW, THEREFORE, in consideration of the foregoing premises and subject to the following terms and conditions, OMES/PURCHASING and THE PHARMACY agree as follows:

MOU COMPONENTS

The following components are the MOU; all referenced are attached and incorporated into this MOU.

I. Definitions and Acronyms

II. General Terms

III. Oklahoma Statewide Contracting Terms

IV. Exhibit 1. Pricing

A. Dispensing Pricing

B. Labor Pricing

C. Support Pricing

V. State Pharmacy License

A. Pharmacy and Pharmacists Licenses

VI. Returned Supplier Documents Requested

A. CP_004 – Non-Collusion Form

B. OMES Supplier Payee Form

C. Certificate of Insurance

I. DEFINITIONS AND ACRONYMS

1. **Actual Acquisition Cost (AAC):** The amount invoiced to Supplier immediately prior to the date on which the drug is dispensed.
2. **Affiliate:** Officially recognized by the state as an associated organization.
3. **Average Daily Prescription (ADP):** ADP is calculated by the sum of each day's actual prescription count for the Agency's collective Facility Script count over a calendar month, then dividing the sum by the number of calendar days in the respective calendar month.
4. **Change Order:** The document that memorializes the specific additional Services an Agency has arranged with the Supplier.
5. **Class of Trade:** Supplier is a licensed pharmacy in the state of Oklahoma, with licensed pharmacists overseeing operations.
6. **Contract Management Fee:** Means two percent (2%) of all pharmaceutical orders or drug purchases only, connected to this MOU.
6. **Contract(ed) Items:**
 - A. **Products:** Means all medication offered by the Supplier in this MOU through its sourcing.
 - B. **Services:** Means the services that the Supplier is offering an agency as part of a Dispensing Fee or an additional elected costs in accordance with this MOU.
7. **Days:** (Not required to be capitalized) Unless otherwise specified in this MOU, all references to days will be calendar days.
8. **Dispensing Fee:** The fee the Supplier collects for the issuance and deliverance of a prescription to an agency based on the terms of this MOU and pricing exhibited below.
9. **Facility:** The applicable site/location/building of the agency that houses a group of patients the Supplier is serving; an agency may have multiple Facilities per arrangement.
10. **Order Form:** Means the document or electronic platform agency utilizes to obtain Products.
11. **Pricing:** Means the price that the Supplier has agreed to provide the Contracted Items to agencies as set forth and any subsequent amendment to this MOU.
12. **Primary Account Representative:** Michael Hines, Pharmacy Operations Administrator, [Michael-T- Hines@ouhsc.edu](mailto:Michael-T-Hines@ouhsc.edu) Office: (405) 271.6751, ext. 47206 Cell: (405) 255.1967
13. **Working Hours:** Monday – Friday 8:00AM to 5:00PM (Central Time).
 - A. **After Hours:** All hours outside of Working Hours.
 - B. **Holidays:** New Year's Day, Martin L. King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas.

II. GENERAL TERMS

A. PRICING AND CHANGES

1.1 Notices. All notices must be sent to Asha Parks: asha.parks@omes.ok.gov or current contract administrator.

1.2 Price Changes. Supplier must hold Pricing under this MOU firm for one (1) year from the Effective Date and can only be changed through an Amendment and require at least sixty (60) days' notice. Each time Pricing is changed, the Supplier must wait one (1) year from the change date to amend the Pricing again.

1.3 Dispensing Fee. A Dispensing Fee will be invoiced to an agency on a per prescription and per repackaged stock piece (those that have been removed or modified from their original packaging) basis. The amount invoiced will be based on the ADP of the applicable Facility the Supplier ships to in accordance with the table and option selected by the Agency.

A. Exceptions. The Dispensing Fee(s) in Exhibit 1-A will not apply to stock items that have not undergone repackaging, specialty pharmaceuticals, and compounded products. The fee schedule for these items is also found on Exhibit 1-A.

1.4 Taxes. Agencies are responsible for all applicable sales, use, lease, ad valorem, and any other tax that may be levied or assessed by reason of this transaction, unless the facility provides a tax exemption certificate (blanket or transaction specific) to Supplier before the transaction occurs. The Pharmacy will only pay taxes associated with this transaction that are applicable to the Pharmacy. In no event shall the Pharmacy be required to pay any tax from which it is exempt.

1.5 Labor Rates and Travel. Labor rates and travel expenses are outlined on Exhibit 1 - B. There may be additional costs and Dispensing Fees as stated within this MOU.

1.6 Alternative Pricing and Contracted Items. If the supplier does want to provide more advantageous or alternative terms to an agency, before implementing, the Supplier must submit the terms to OMES Central Purchasing for review to determine if those terms should be incorporated into this MOU for the entire contract. OMES will review and decide if (A) it should become part of this MOU through an amendment; or (B) the supplier and agency can individually reflect the changes through a Change Order.

B. SERVICE OFFERINGS

1.1 Service Area: Patient Specific Prescriptions under the care of a state agency and Clinical Stock Orders in the state of Oklahoma.

1.2 Hours of Operation. The Supplier is available 24/7/365. However, Services provided outside Working Hours may incur additional costs as outlined on Exhibit A or delays as described in this MOU.

1.3 Individual Agency Selection and Order of Services. Due to the individuality and customization each agency requires for its Facilities, the Supplier and Agency will document the selection of Contracted Items/services and the Pricing (Supplier's and Agency's mutual selection) a PO may constitute as this documentation.

1.4 Supplier's Staff or Agents. Regardless of any vacancy in its staffing the Supplier is required to provide adequate coverage for all Services an Agency selects. For all staff the Supplier (or subcontractors – and will apply throughout the Paragraph) provides for Services, the OMES will have the opportunity to review the credentials. OMES reserves the right to negate a hire or remove staff if it is found to have less than the necessary credentials and/or experience to perform the functions of the Services the Agency elects. Each of Supplier's pharmacy professionals shall provide proof of licensure or certifications to OMES before any Services are performed.

The staff of the Supplier will:

- A. maintain licensure or certification; and
- B. maintain liability insurance.

1.4.1The Supplier will maintain and make available for review by the states credentialing information that includes, at a minimum for pharmacists:

- A. Current license in good standing to practice.

1.5 Inspection Support and Operational Reviews. As part of the Dispensing Fee, the Supplier perform annual reviews with the Agency to review quality of the Services, timeliness, compliance monitoring, cost control, process improvements, and IT Risks.

1.6 Formulary Development and Maintenance. As part of the Dispensing Fee, the Supplier will perform the following Services for the Agency:

A. Formulary Review. At the initial start-up, the Supplier will create and maintain a formulary of legend drugs for the Agency. Ongoing, the Supplier agrees to perform a formulary review as needed to include non-formulary medications with written recommendations to the Agency regarding formulary alternatives.

B. Non-Formulary Review. For each non-formulary order, within the seventy-two (72) hours, the Supplier will review the prescription to ensure there are not formulary alternatives; and the medication and dosage is

appropriate for the indication. Before dispensing, the Supplier will obtain the Agency's approval.

C. 340B: Medications dispensed under a 340B program are not covered under this MOU but will be billed under a separately negotiated rate and documented. This is contingent on the Supplier being able to successfully establish a program with Agency and applicable covered entity

1.7 Barcoding and Tracking Services; Electronic Pedigree. Barcodes are utilized on all patient-specific scripts. Refill or order status can be tracked through the filling or refilling process upon request to the Supplier.

1.8 Emergency Service and after hour Offerings. Agencies will continue to use previously established after hours and emergency services. If those services are not established, then the agencies and pharmacies will collaborate to find an alternative supplier for these services.

A. Medication will be available within four (4) hours of the order placement. If ordered during business hours and located within 30 miles of the 1893 Pharmacy.

1.9. Reference Material: As part of the Dispensing Fee, the Supplier will provide agencies access to the med guides provided at the point of sales.

1.10 Grant Management. Supplier will work with agencies wishing to utilize grant program funding. Supplier will aid in negotiating specialized pricing applicable to individual grant programs and, provide monthly cost and utilization reports to track all products or therapies that are part of the grant program.

1.11 Failure to Provide Service. If Supplier fails to provide the Services as set forth in this MOU, Agency may obtain the same or equivalent Service through an alternative OMES supplier. OMES shall allow the Pharmacy twenty-four (24) hours cure time, but if OMES supplier still cannot provide Agency the Services required, the Agency may obtain the Service on the open market, including retail, for the period in which the Supplier is unable to provide the Service. The Supplier will reimburse for any additional costs (including shipping and third-party fees) over the Pricing of this MOU sustained by Agency via a credit within thirty (30) days of receipt of the claim.

C. PRODUCT DISPENSING AND ORDERING

1.1 Ordering Products. Supplier or Agency may use their own agreed upon Order Forms; to the extent that the terms of any Order Form(s) do not conflict with the terms of this MOU, the terms of this MOU supersede.

A. The use of obtaining a Contracted Item from the Order Form constitutes a binding contract. All Products furnished will be subject to inspection and acceptance by the ordering entity after delivery. No substitutions or cancellations are permitted without written approval of the Agency. Back orders, failure to meet delivery requirements, or failures to meet specifications in the Order Form and/or the MOU authorizes the ordering entity to cancel the order, or any portion of it,

purchase elsewhere, and charge the full increase in cost and administrative handling to the Supplier.

B. Cut-off Times. For next day delivery, Monday through Friday, 2:00PM Central.

C. Order Minimums. No minimum order will apply.

D. Generics. Supplier will dispense all medications as generics unless there is no approved generic substitute, or the Agency has requested “no substitute” in accordance with applicable state laws.

E. Specialty. As part of the Dispensing Fee and upon the request of the Agency, the Supplier will seek out specialty drugs from its network. The Supplier will provide options to the Agency if needed, providing information on delivery timeframe and price. Once the Agency notifies the Supplier of its selection, the Supplier will then process the order, making billing arrangements, and arrange for shipping.

F. Dates. All Products supplied to Agency’s must have an expiration date and have at least a six (3) month shelf life from the date of acceptance of the Product by the Agency.

1.2 Product Labeling Requirements. All strip packaging, unit-dose blister cards will have each individual bubble of the blister card labeled with the medication’s name and strength, lot number, NDC, manufacturer’s name, and expiration date.

A prescription label will be supplied on every medication order. Each label will contain the patient’s name and number, medication name, quantity, number of refills, prescriber, prescription number, and date the next refill is due.

A. Manifests. Every Product shipment will contain a detailed computerized delivery manifest containing Supplier’s name, patient name and identification number, prescription number, medication name and strength, manufacturer, quantity dispensed, date dispensed, and price. If an Agency needs additional information on the delivery manifest, Supplier will make every effort to accommodate the request.

1.3 Packaging Requirements. If packaging other than blister cards are required, the alternative packaging surcharge is identified on Exhibit 1-A.

A. Over-the-Counter (OTC). Supplier will distribute OTC commissary items in original manufacturer packaging. Each package is labeled with medication directions, side effects, ingredients, and all required information that are to be contained on OTC packaging.

B. Prescriptions. Prescriptions are packaged based on provider orders in quantities as allowed by state law in a tamper resistant blister cards or the manufacturer's original container per request. If an Agency uses a large volume of stock, Supplier may exercise the option to ship stock items via ground shipping.

C. Temperature Control. Supplier’s packaging will maintain Products at the manufacturers’ recommended specifications. All Products that require refrigeration will be shipped in to ensure proper temperatures controls; outer boxes containing refrigerated items are labeled with a sticker that indicates that refrigeration is required. Refrigerated items will not be shipped for weekend delivery unless requested.

D. Controlled Substances. Controlled substances will be packaged in a separate bag containing its own delivery manifest.

F. Absent Products. If an ordered item is not part of the current shipment, the item and the reason for its absence (i.e., ordered too soon to fill, ordered past cut date, non-formulary medication, etc.) will be clearly indicated on the exception report section of the manifest.

1.4 Shipping. Supplier must distribute and deliver the Contracted Items covered under this contract. If the Agency account is in good standing, the Supplier will at no time, refuse to deliver to any Agency without the prior written approval by the Agency and OMES. Delivery for Products under this MOU shall be FOB Destination unless otherwise agreed to by Supplier and Agency. Supplier will not add any fuel surcharges to the purchase under this MOU. Notwithstanding the foregoing, emergency orders, rush orders, and products dropped shipped from Supplier's contracted supplier, are subject to an added shipping and handling charge determined by Supplier and disclosed to in writing Agency before a purchase is made.

A. Damaged Products. All damaged Products will be reported to Supplier's customer service department and applicable credits will be issued within ten (10) days from date of notification of the damaged item.

1.5 Order Tracking Requirements. All orders shipped rather than couriered will be tracked to ensure the timeliness and accuracy of deliveries. Supplier's shipping software will track packages at every destination point. The software will provide estimates and confirmations of scheduled and actual delivery times as well as the names and signatures of delivery recipients. Upon request, Supplier will automatically email the Agency the courier tracking information, including the tracking number and a link to the shipping company's website. If an order is not delivered by its guaranteed delivery time, Supplier's shipping department will begin the process of tracking the shipment. If Supplier determines the package is lost in shipment, Supplier will immediately contact the Agency and provide a copy of the missing delivery manifest, so each item can be reviewed, and it can be determined if Supplier needs to supply the medication(s) using local backup sources or immediate overnight shipment.

1.6 Emergency Orders (non-prearranged Service). For agencies that are not utilizing the Supplier's emergency services under Article II. Emergency orders can be submitted directly to Supplier. The Supplier will either deliver the Products directly to the Agency by courier or arrange access to a local pharmacy. Costs for both will be passed through at Supplier's cost, without any margin or markup. Detailed line-item reports of all emergency prescriptions will be provided with Supplier's invoice each month. Charges may include expedited courier charges, the local pharmacy's fees and price differentials, on-call charges, etc.

1.7 Termination of Individual Orders. Agencies may terminate, immediately or as identified by Agency, individual Order Forms, in whole or in part, upon written notice to Supplier upon the occurrence of any of the following events:

A. The Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contracted Items to be purchased under the Order Form;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Contract Items under the Order Form are prohibited, or the Agency is prohibited from paying for the Contracted Items from the planned funding source; or

C. Supplier commits any material breach of this MOU or Order Form.

Upon receipt of written notice of termination, Supplier will stop performance under the Order Form as directed by the Agency. If a standing Order Form is terminated, the Agency must pay Supplier in accordance with the terms of this MOU for goods delivered and accepted by the Agency.

1.8 Product Outages. It is the responsibility of the Supplier to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the agencies. It is expected that the Supplier will be able to fulfill the higher of the following: (A) 120% of the agencies' previous quarter's purchase volume; or (B) if applicable, the agreed upon volumes as described in the formulary management between Agency and Supplier.

The Supplier agrees to utilize the following process in the event of a backorder situation due to a Supplier-created stock outage.

A. Immediate Notification. Supplier's ordering system will provide notice within twenty-four (24) hours to OMES and its agencies of any Products covered by this MOU that the Supplier has placed on backorder. Supplier's backorder notification will include:

- i. the Products placed on backorder status;
- ii. the expected timeline of the backorder;
- iii. how the Supplier intends to resolve the backorder situation.

B. Substitution: If agencies consent, Supplier may offer like-kind Products at the same or lower price as the out of stock product. If no acceptable substitution can be offered: (i.) the Agency may purchase the same or equivalent Product from an alternative source or open market; or (ii.) or the Supplier may source the Product through other mechanisms.

1.9 Jurisdiction and Venue of Orders. Upon completion of the Dispute Resolution process outlined in this MOU, and solely with the prior written consent of OMES and OMES Attorney General's Office, the Agency may bring a claim, action, suit, or proceeding against Supplier. This MOU is governed by the laws of the State of Oklahoma, without giving force and effect to its choice of law provisions. As it applies to purchases made by an Agency, nothing in the MOU will be construed to deprive the Agency of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this MOU or afforded by the Agency's law.

1.10 Recalls. Supplier will employ dedicated staff pharmacists to address manufacturer recalls, shortages, and medication backorders. When Supplier is notified of recalls, the team will immediately review Supplier's current inventory and remove items identified in the recall. Supplier will provide reports to each affected Agency, identifying the patients who received recalled medications. Supplier will notify all relevant prescribers and other personnel according to pre-established protocols and procedures. Agencies will not incur costs for Product returns related to recalls Supplier will issue credit for recalled Product.

D. INVOICING AND PAYMENT

1.1 Agency Responsibility. Each Agency will be responsible for payment for Contracted Items to the Supplier and OMES will not be liable for any unpaid invoice of any Agency. Supplier agrees to invoice the agencies as established in this MOU.

1.2 Conditions of Payment. All Contract Items provided by the Supplier under this MOU must be performed to the satisfaction of OMES and the Agency, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Supplier will not receive payment for work found by OMES to be unsatisfactory or performed in violation of federal, state, or local law.

1.3 Payment Method. Supplier will accept Electronic Funds Transfer (EFT), credit card, or P-Card as a payment method and Agency will initiate this process with its financial institution. Supplier may not impose a surcharge on a P-Card holder who elects to use a credit or debit card in lieu of payment by EFT or similar means.

1.4 Federal Funds. Payments under this MOU may be made from federal funds. The Supplier is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Supplier's failure to comply with federal requirements.

1.5 Payment Terms. The Agency will pay all undisputed invoices to the Supplier within forty five (45) days of receipt. Interest on late payments will be paid in accordance with 62 O.S. § 34.72

1.6 Invoicing. Supplier will submit an invoice with each order.

A. Invoice Fields: At a minimum, Supplier's invoice will contain the following fields:

- i. Agency name and Supplier-assigned account number for the Agency;
- ii. Invoice line number and Agency's order number (Agency must provide an order number at the time of order for this to appear on Supplier's invoice);
- iii. Bill to and ship to address;
- iv. Invoice date;
- v. Prescription number, patient name and identification number, medication name and strength, quantity dispensed, price, NDC number, date the prescription was dispensed, prescriber name;
- vi. Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), value of Dispensing Fees assessed, number of Dispensing Fees, total Dispensing Fee price, and total invoice price; and
- vii. If applicable, charges related to elected Services along with description of service provided.

B. Invoice Rounding: Supplier agrees to round down if the third digit after the decimal is four (4) or less. Supplier agrees that any rounding will occur at the Agency invoice unit price.

C. Invoice Disputes: Agency will notify Supplier of any known dispute with an invoice within fifteen (15) days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Supplier shall issue a credit and/or adjust the original invoice to the Agency appropriately and provide a corrected invoice. Where the above is prohibited by an Agency state's applicable law(s), the Supplier shall comply with requirements of that state's law(s) related to disputed invoices. Supplier will make a good faith effort to resolve known disputes related to MOU pricing within thirty (30) days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.

1.7 Credits and Rebills. Supplier will process credits and rebills as notifications are received from an Agency. In the case of an invoice dispute, Supplier will promptly issue credits/rebills, after the Dispute Resolution process set forth in this MOU.

A. Supplier credits are valid until they are refunded, or the account has used payment.

B. In the event of a facility closure, or other extreme event where the Agency will not be making another purchase through Supplier, the Agency may cash out its credit(s).

C. If directed by an Agency, a credit can be transferred from one account to another account.

D. The Supplier will take all commercially reasonable steps to ensure that credits that become available close to the end of the Agency's fiscal year, are activated for use by the Agency no later than five (5) days before the end of the fiscal year.

E. Supplier's credit memo will contain, but is not limited to the following information:

- i.** Original order number and invoice number;
- ii.** Itemized listing of the Contract Items affected;
- iii.** Rationale or reason codes for returned products not eligible for credit;
- iv.** Any new invoices associated with the credit; and
- v.** Net credit amount available to the Agency.

1.8 Price Audits and Corrections. In the event of a Pricing error that is attributable to the Supplier, Supplier agrees to process credit/rebills for the past six (6) calendar months. When an Agency or OMES discovers an error in pricing, they will notify Supplier.

E. TERMINATION, CANCELLATION, AND REMEDIES

1.1 Cancellation. Either party may cancel this MOU any time, without cause, upon thirty (30) days' written notice.

1.2 Termination for Cause. Either party may terminate this MOU at any time on the basis the other party breached this MOU. The moving party must provide written notice to the other party, which upon the receiving, the other party has thirty (30) days to cure the defects. Upon the thirty (30) days, the breaching party has not cured the defects, the moving party may terminate this MOU after ten (10) subsequent days.

1.3 Termination for Insufficient Funding. OMES may immediately terminate this MOU if it does not obtain funding from the Oklahoma Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Contracted Items covered here. Termination must be by written or electronic mail notice to the Supplier, termination shall only be valid if executed by authorized parties. OMES is not obligated to pay for any Contracted Items that are provided after notice and effective date of termination. However, the supplier will be entitled to payment, determined on a pro rata basis, for Contracted Items satisfactorily performed to the extent that funds are available. Oklahoma will not be assessed any costs, fees, or other charges if the MOU is terminated because of the decision of the Oklahoma Legislature, or other funding source, not to appropriate funds. OMES must provide the Supplier notice of the lack of funding within a reasonable time of OMES receiving that notice.

A. For orders made by an Agency, Supplier agrees to the applicable statutory terms of the applicable Agency if the Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Contracted Items.

1.4 Force Majeure. A party will not be considered in default in the performance of its obligations in the MOU to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could

have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.

1.5 Breach. In the event of a breach of this MOU, OMES and agencies reserve the right to pursue any other remedy available by law. In the event of a breach, Supplier shall be allowed time to cure the breach, if Supplier is unable to provide a valid solution or cure to the breach, Suppliers may be removed from Oklahoma's supplier list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the MOU.

1.6 Dispute Resolution. Supplier and OMES will handle dispute resolution for unresolved issues using the following procedure.

A. Notification. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within thirty (30) days.

B. Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either OMES or Supplier may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between OMES and the Supplier to review the dispute and develop a proposed resolution and plan of action.

C. Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all their responsibilities under the MOU that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the MOU, in the accomplishment of all undisputed work, any additional costs incurred by OMES and/or agencies because of such failure to proceed shall be borne by the Supplier.

D. No Waiver. This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

III. OKLAHOMA STATEWIDE CONTRACT TERMS

1. Statewide Contract Type

1.1 The Contract is a mandatory statewide contract for use by State agencies. Additionally, the Contract may be used by any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department or other entity designated to act on behalf of the political subdivision; a state, county or local governmental entity in its state of origin; and entities authorized to utilize contracts by the State via a multistate or multigovernmental contract.

1.2 The Contract is a firm, fixed price contract for indefinite delivery and quantity for the Acquisitions available under the Contract.

2. Orders and Addendums

- 2.1 Unless mutually agreed in writing otherwise, orders shall be placed directly with the Supplier by issuance of written purchase orders or by Purchase Card by state agencies and other authorized entities. All orders are subject to the Contract terms and any order dated prior to Contract expiration shall be performed. Delivery to multiple destinations may be required.
- 2.2 Any ordering document shall be effective between Supplier and the Customer only and shall not be an Addendum to the Contract in its entirety or apply to any Acquisition by another Customer.
- 2.3 Additional terms added to a Contract Document by a Customer shall be effective if the additional terms do not conflict with the General Terms and are acceptable to Supplier. However, an Addendum to the Contract shall be signed by the State Purchasing Director or designee. Regarding information technology and telecommunications contracts, pursuant to 62 O.S., §34.11.1, the Chief Information Officer acts as the Information Technology and Telecommunications Purchasing Director.

3. **Termination for Funding Insufficiency**

In addition to Contract terms relating to termination due to insufficient funding, a Customer may terminate any purchase order or other payment mechanism if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. The determination by the Customer of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.

4. **Termination for Cause**

In addition to Contract terms relating to termination for cause, a customer may terminate its obligations, in whole or in part, to Supplier if it has provided Supplier with written notice of material breach and Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. The Customer may also terminate a purchase order or other payment mechanism or Supplier's activities under the Contract immediately without a thirty (30) day written notice to Supplier, if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements if such non-compliance relates or may relate to Supplier provision of products or services to the Customer or if Supplier's material breach is reasonably determined (i) to be an impediment to the function of the Customer and detrimental to the Customer, or (ii) when conditions preclude the thirty (30) day notice.

5. **Termination for Convenience**

In addition to any termination for convenience provisions in the Contract, a customer may terminate a purchase order or other payment mechanism for

convenience if it is determined that termination is in the Customer's best interest. Supplier will be provided at least thirty (30) days' written notice of termination.

6. Contract Management Fee and Usage Report

6.1 Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all drug purchase transactions or orders, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

6.2 While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a two percent (2%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

6.3 All Contract Usage Reports shall meet the following criteria:

- i. Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv. Contract quarterly reporting periods shall be as follows:
 - a. January 01 through March 31;
 - b. April 01 through June 30;
 - c. July 01 through September 30; and

2. No assignment of this MOU or any of the rights or obligations set forth herein by either party shall be valid without the specific written consent of the other party, which shall not be unreasonably withheld or delayed.
3. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
4. Each party will be responsible for its own negligent and intentional acts and omissions, with University's liability governed by the Oklahoma Governmental Tort Claims Act, Okla. Stat. Tit. 51 §§ 151 et. Seq. Each Party certifies that it shall maintain, for the duration of this Agreement, insurance, or a program of self-insurance, in an amount that will be adequate to cover its respective obligations and/or risks hereunder, or as otherwise provided by Oklahoma State law. Upon request, will provide the other Party proof of insurance showing that such insurance is in place. Should any Party have their policy cancelled or terminated, they shall notify the other Party within ten (10) days and pursue reinstatement. Cancellation of an Insurance policy or a reduction in insurance limits doesn't eliminate the respective party's obligation to financially meet the minimum coverage limits required per this agreement.
5. The relationship between the parties is that of independent Agreement not employer/employee, joint venture, agent or business partners and nothing in this Agreement shall be construed to make either party the legal representative or agent of the other party, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, either expressed or implied, in the name of or on behalf of the other party.
6. The invalidity or unenforceability of any provision of this MOU shall not affect the validity or enforceability of any other provision.

[Signature Page Follows]

Exhibit 1.

Dispensing Fee and other Pricing**A. Dispensing Pricing**

Fee for Patient Specific Prescriptions.

1. Standard fee inclusive of all shipping/Courier costs

Facility Average Daily Prescriptions (ADP)	Dispensing Fee Per Prescription
1-250	\$20.81
251-500	\$13.18
501-1000	\$9.36
1001+	\$7.50

Other Dispensing Pricing

1. Wholesale prescription medications for patients: **AAC+ 2% plus Standard Dispensing Fee.**
2. Wholesale medications (i.e., inhalers/OTCs) that have been repackaged (blister packs or strip package) for clinic use: **AAC+ 2% plus \$5.00 Dispensing Fee.**
3. Wholesale medications (i.e., inhalers/OTCs) that have not been repackaged: **AAC+ 10%.**

B. Labor Pricing

1. Consulting Pharmacy Services: **\$85/hour**, plus pass through travel costs.
2. Non-Formulary Management Services: **\$60/hour**, plus pass through travel costs.
3. Ad Hoc Services (special request reports): **\$60/hour**, plus pass through travel costs.

C. Support Pricing

Unless it is stated otherwise in this Agreement, the Vendor will provide the following services at no additional charge:

1. Start-up in-service and limited ongoing training;
2. Dedicated point of contact and pharmacist manager;
3. Formulary review;
4. Utilization management review;
5. Therapeutic substitution review;
6. Participation by the clinical pharmacist in P&T committee meetings; and
7. Access to Suppliers online ordering/reporting system.

EHR/EMR: Any information technology (IT) costs associated with EHR/EMR software interfaces and hardware will be billed as a pass-through charge to member.

Long-Term Care and Assisted Living: Any work relating to eMAR, MARs, treatment sheets, and other paperwork will be billed as a pass-through charge

Both parties represent that they have full power, authority, and legal right to execute and carry out their respective obligations under this Agreement.

WHEREFORE, the parties, intending to be legally bound, have signed this MOU, effective as of the last date signed by a party, below.

For: OMES

For: Pharmacy

State Of Oklahoma by and through the
Office of Management and Enterprise

The Board of Regents of the University of
Oklahoma, a constitutional entity of the
State of Oklahoma

Signed: 
Amanda Otis (Jul 20, 2023 13:13 CDT)

DocuSigned by:
Signed: 
CA72FA954DCE481...

Printed: Amanda Otis _____

Printed: Scott Davis

Title: Interim State Purchasing Director

Title: Director, Office of Research Administration

Date: Jul 20, 2023

Date: 20-Jul-2023

OMES Legal Review:

Name: 
Tim Tuck (Jul 20, 2023 11:48 CDT)

Date: Jul 20, 2023

Johnson_114492_MOU_OMES-Partially Executed Contract-ready for signature

Final Audit Report

2023-07-20

Created:	2023-07-20
By:	Asha Parks (asha.parks@omes.ok.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAmOBzC4RlStWYrfmos44OtOkvyaZxCMje

"Johnson_114492_MOU_OMES-Partially Executed Contract-ready for signature" History

 Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)

2023-07-20 - 2:20:55 PM GMT

 Document created by Asha Parks (asha.parks@omes.ok.gov)

2023-07-20 - 3:45:24 PM GMT

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 Signer tim.tuck@omes.ok.gov entered name at signing as Tim Tuck

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 Document e-signed by Tim Tuck (tim.tuck@omes.ok.gov)

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 Agreement completed.

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