

## I INTRODUCTION

This agreement dated \_\_\_\_\_, May \_\_\_\_, 2003 is between the City of Lincoln, Nebraska (City), for the Metropolitan Medical Response System (MMRS), and:

1. McKesson Corporation (Company), a for-profit corporation of the State of Nebraska with a place of business, 7009 South 108<sup>th</sup> Street, LaVista, Nebraska, 68128, and phone 402-564-9763; and
2. Ken's Pharmacy (Pharmacy), a for-profit corporation of the State of Nebraska with a place of business Crete, Nebraska, and phone 402-826-3784.

The Lincoln – Lancaster County Health Department (LLCHD) is the fiscal agent for MMRS, pursuant to a contract with the United States Public Health Service [MMRS Contract No. 233-01-055]. All contact regarding the MMRS program should be directed to the LLCHD.

## II PURPOSE

The general purpose of this agreement is to develop a MMRS Pharmaceutical Cache (Cache) within the City of Lincoln, which would be readily available in the event of a public health emergency. Due to the limited shelf life of pharmaceuticals, there is a need to provide a constant refreshing of the pharmaceuticals within the Cache.

## III TYPES AND QUANTITIES OF PHARMACEUTICALS

The needs of the MMRS Pharmaceutical Cache are the ability to treat various diseases and other conditions that might result from a potential biological weapon or other public health emergency. The pharmaceuticals must be able to treat one or more of the following diseases:

1. Anthrax
2. Plague
3. Tularemia
4. Brucellosis

In furtherance of these goals, a mix of pharmaceuticals has been established to treat the various populations that may be affected, such as children and those with allergies to the pharmaceutical of choice. The following are the pharmaceuticals chosen to be provided through this contract:

- |    |               |        |
|----|---------------|--------|
| 1. | Doxycycline   | 100 mg |
| 2. | Amoxicillin   | 500 mg |
| 3. | Ciprofloxacin | 750 mg |

#### **IV CHANGE OF PHARMACEUTICALS**

The types of pharmaceuticals kept in the Cache may be changed to different types of pharmaceuticals from time to time as new needs are discovered and / or as new pharmaceuticals are brought to the market. The City reserves the right to change the types of pharmaceuticals and their respective quantities without notice, as directed by the LLCHD. The City understands that it may incur costs to change the type or quantity of pharmaceuticals.

#### **V STORAGE**

The Cache will be stored at LLCHD in accordance with the approval of the Health Director. The storage will be in an area where the temperature and humidity can be controlled. The area shall be secured to prevent tampering.

#### **VI INITIAL PROCUREMENT PROCEDURES**

The pharmaceuticals will be procured in the following manner after the usual and customary City procedures:

1. LLCHD agent will contact Pharmacy with the pharmaceutical quantities and types.
2. Pharmacy will place the order with Company. All orders are subject to acceptance and approval by Company. If Company anticipates a shortage of any of the pharmaceuticals covered by this agreement, Company shall have the right, in its sole discretion, to allocate such pharmaceuticals among its various customers.
3. Pharmacy will contact LLCHD agent when the order has arrived at Pharmacy.
4. LLCHD agent will deliver a check payable to Pharmacy.
5. LLCHD agent will pick up order and transport to LLCHD.
6. LLCHD agent will verify order, log expiration dates, storage conditions and corresponding lot numbers.

#### **VII FOLLOW-UP INSPECTIONS & SUBSEQUENT REPLACEMENT**

The following procedures shall be used for the inspection and replacement of pharmaceuticals:

1. Every six (6) months, LLCHD agent shall make a visual inspection of the Cache.

2. LLCHD agent shall note lot numbers along with expiration dates and storage conditions.
3. In the event that any pharmaceutical lot will expire in less than 12 months from the time of inspection, LLCHD agent shall notify Pharmacy.
4. Pharmacy will make a replacement order for the expiring pharmaceutical lots.
5. Pharmacy will notify LLCHD agent when the replacement lot is available for pick up and ensure that the replacement lot has a minimum of a 12 month expiration date.
6. LLCHD agent or their designee will then transport the expiring pharmaceutical lots to Pharmacy and exchange with new lots. The new pharmaceuticals will then be transported back to LLCHD for storage.
7. LLCHD agent will verify order, log expiration dates, storage conditions and corresponding lot numbers.

#### **VIII TRACKING**

The LLCHD agent shall maintain, at a minimum, a paper tracking system for the quick examination of lot numbers and their corresponding expiration dates, storage conditions and replacement dates. The LLCHD may add a computer / internet based reporting system, but is not required to do so.

Part of the tracking requirement is that the LLCHD agent shall make reports of his findings for each inspection to the following people: LLCHD Health Director, LLCHD Communicable Disease Program Supervisor, and to the designated Company agent.

#### **IX REPLACEMENT COSTS**

Company and Pharmacy shall make the replacement pharmaceutical lots available to LLCHD at no cost to City, LLCHD, or MMRS, unless City requests a change to the type or increased quantity of pharmaceuticals.

#### **X CACHE USAGE**

The Pharmaceutical Cache shall be accessed only under the direction of the LLCHD Health Director. Any containers consumed under this direction shall be recorded. Any container that has its factory seal broken, is considered consumed in its entirety, even if all of the contents were not used.

Pharmaceuticals that are removed from the cache may be restocked at the direction of the LLCHD Health Director, but is not required to do so. Restocking the Cache shall be in accordance with the terms in Part VI Initial Procurement procedures of this agreement. The City may not make substitutions for Company or Pharmacy when restocking. The City may make a change in the Pharmaceutical type, in accordance with Part IV of this agreement at this time.

### **XI CACHE INSPECTION BY OUTSIDE AGENCY**

Upon request by Company, LLCHD shall make the storage area for the Cache available for inspection to the designated Company agent. Company shall make a written request for inspection not less than 7 working days in advance of the desired inspection day. Inspection shall be at the reasonable scheduling of the LLCHD agent. This inspection may not take place more than twice annually. The LLCHD agent shall make any reasonable changes to the storage conditions as requested by Company.

### **XII TERM OF SERVICE**

This agreement shall be for a period of no less than 5 years.

### **XIII RENEWAL**

Prior to the expiration of this agreement the parties shall meet to discuss the agreement and the satisfaction with its performance. This meeting shall also concern the renewal of the agreement for an additional five (5) year term.

### **XIV TERMINATION**

All parties have the right to terminate this agreement for any reason with or without cause. The terminating party shall provide written notice to the other parties no less than sixty (60) working days prior to termination. If this agreement is terminated prior to the end of the five years, by any party, City may make a final inspection and request replacement of any lot to expire within eighteen (18) months. The replacement terms of this agreement shall apply to replacement of the lot.

Dissolution of any party shall automatically terminate this agreement. Any merger or acquisition of any party with another entity shall not terminate this agreement.

### **XV PROPERTY**

The contents of the Cache are the sole property of the City.

### **XVI TRADE PRACTICES**

All pharmaceuticals provided to City under this agreement shall conform to industry standards and meet all federal regulations and guidelines for quality and safety.

Any pharmaceuticals found to be in non-compliance with any of the above, shall be replaced. Company shall inform LLCHD agent of any mandatory or voluntary recalls or changes in pharmaceuticals.

### **XVII INDEPENDENT CONTRACTOR**

The City is only interested in the results produced by this agreement. Pharmacy and Company has sole and exclusive charge and control of the manner and means of performance. Pharmacy and Company shall perform as an independent contractor and it is expressly understood that Pharmacy and Company are not employees of the City and are not entitled to any City employee benefits including, but not limited to, overtime, retirement benefits, worker's compensation, sick leave, or injury leave.

### **XVIII NEBRASKA LAW**

This agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

### **XIX INDEMNIFICATION**

To the fullest extent permitted by law, Pharmacy and Company shall indemnify, defend and hold harmless the City, its officers, agents, and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising out of this agreement, that results in any Claim for Damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom, and that the are caused in whole or in part by the intentional or negligent act or omission of Pharmacy or Company or anyone directly or indirectly employed by Pharmacy or Company, or anyone for whose acts any of them may be liable. This section shall not require Pharmacy or Company to indemnify or hold harmless the City for and losses, claims, damages, and expenses arising out of or resulting from the independent or active fault of the City, its officers, agents or employees. This section survives any termination of this agreement.

### **XX INTEGRATION, AMENDMENTS, ASSIGNMENTS**

This agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this agreement. This agreement may be amended only by the written consent of all parties. This agreement may not be assigned without the prior written consent of the other parties.

**XXI CAPACITY**

The undersigned person representing City, Pharmacy and Company does hereby agree and represent that he or she is capable of to sign this agreement and to lawfully bind City, Pharmacy and Company to this agreement.

**XXII FORCE MAJEURE**

No party shall have any obligation or liability hereunder for failure or delay of performance due to fire, shortage of materials or transportation, government acts, acts of terrorism or any other cause beyond its control.

**IN WITNESS WHEREOF**, the City, Pharmacy and Company do hereby execute this agreement.

W. K. Heming  
McKesson Corporation

8/3/03  
Date

Keith M. Mori  
Ken's Pharmacy

7-25-03  
Date

\_\_\_\_\_  
City of Lincoln

\_\_\_\_\_  
Date

REVIEWED for Form and Legality:

\_\_\_\_\_  
City Attorney