

DEPARTMENT OF STATE HEALTH SERVICES



This contract is entered into by and between the Department of State Health Services (DSHS or the Department), and _____ (Other Party), (collectively, the Parties).

1. **Purpose of the Contract.**

By arrangement with the Centers for Disease Control and Prevention (CDC), the Department of State Health Services (DSHS) has been given the opportunity to purchase quantities of the antiviral medications Tamiflu® and Relenza® (“antivirals”) specified below, at below-market prices.

2. **Total Amount of the Contract.** The total amount of this Contract shall be determined by the number of units the Other Party orders.

3. **Term of the Contract.** This Contract begins when signed by both parties and ends on **December 31, 2009**

DSHS is not responsible for performance under this Contract before both parties have signed the Contract or before the start date of the Contract, whichever is later.

4. **Authority.** DSHS enters into this Contract under the authority of Health and Safety Code, Chapter 1001. If this is an interagency, contract authority is also granted through the Texas Government Code, Interagency Cooperation Act, Chapter 771 et seq. If this contract is an interlocal, contract authority is also granted through the Texas Government Code, Interlocal Cooperation Act, Chapter 791 et seq.

5. **Documents Forming Contract.** The Contract consists of the following:

- a. Core Contract (this document)
- b. Exhibits, if applicable

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by DSHS and Other Party and incorporated herein through written amendment.

This Contract may be modified within the Contract period by written amendment signed by both Parties.

6. **Statement of Work.**

By arrangement with the Centers for Disease Control and Prevention (CDC), the Department of State Health Services (DSHS) has been given the opportunity to purchase quantities of the

antiviral medications Tamiflu® and Relenza® (“antivirals”) specified below, at below-market prices.

DSHS is allowed to extend this availability to local governmental entities, councils of government, utility providers (such as electric, gas, and municipal utility districts), Federally Qualified Health Centers/community health centers, hospitals, local health departments, municipal health authorities, trauma regional advisory councils, school districts, and state agencies (“Eligible Applicants”) on the terms and conditions below. This participation must be evidenced and effectuated by the execution of this binding contract with DSHS. Eligible Applicants and DSHS are the parties to this contract.

- Purchase must be made by the Eligible Applicant only. Separate purchases by different branches of the same local government will not be allowed. The prices given below are firm, non-negotiable prices.
- The Anti-virals may be used only for the purposes allowed by the CDC. At this time the CDC has limited the use of the anti-virals purchased through this contract to treatment of pandemic flu only. Anti-virals cannot be released for usage until a pandemic influenza-specific public health emergency is declared by federal and/or state officials. Management, storage, and distribution are the sole responsibility of the Eligible Applicant.
- This contract must be signed and returned to DSHS and payment must be received for the subsidized purchase price for Tamiflu® (\$14.43 per course), pediatric Tamiflu® (\$9.74 per course for 45 mg and \$6.50 per course for 30 mg) and Relenza® (\$16.29 per treatment course). The actual order will be placed after payment is received.
- Eligible Applicant may place orders by:
 - Completing the online ordering information at <http://antivirals.questionpro.com/>,
 - Submitting a signed, completed contract either by upload to the online ordering tool (see URL above) or by hard copy to:

Contract Management Unit
Division for Prevention and Preparedness Services
P.O. Box 149347, Mail Code 1990
Austin, TX 78714-9347

- And, submitting payment in full to:
Cash Receipts Branch
Department of State Health Services
P.O. Box 149347, Mail Code 2003
Austin, TX 78714-9347

The payment should reference Antiviral order – Account ZZ101-008

- State agencies may make payments for anti-virals through interagency transfer voucher (ITV) using RTI 380263.
- The payment must be received and the online order tool complete by July 24, 2009.
- The delivery of the anti-virals will be made directly by the manufacturer to the Eligible Applicants at one site only. DSHS bears no responsibility for shipping.

- The timing of the delivery is dependent upon the manufacturers' schedules and capacities and is beyond the control of DSHS.
- Within two days of receipt of the anti-virals from the manufacturer, Eligible Applicant must complete the packing list that comes with the order and send the packing list, by mail or fax, (preferably fax 512-458-7489) to the Pharmacy Branch, DSHS so that it can be compared against the original order.
- Should the order received be missing any product, the local entity must immediately contact the Pharmacy Branch at 512-458-7500 and ask to speak with the Pharmacy Branch manager or his designee to provide the details.
- Payments for which DSHS cannot supply the product ordered shall be refunded by DSHS as quickly as practical.

Please complete the online ordering form at (insert link here) to include the amount of anti-virals you will purchase and the requested contact information. Your completed online order will be attached as Exhibit A of your completed, executed contract. Please note that a course of Tamiflu® consists of 10 capsules, 75mg each, per bottle. A course of pediatric Tamiflu® consists of 10 capsules, 75 mg each, per bottle. A course of Relenza® consists of 20 powder blister packages per unit. The anti-virals may be stored at room temperature away from sunlight and moisture and have a shelf life of approximately seven (7) years.

7. **Payee.** The Parties agree that the following payee is entitled to receive payment for services rendered by DSHS or goods provided under this Contract:

Name: Department of State Health Services
 Address: Cash Receipts Branch
 Department of State Health Services
 P.O. Box 149347, Mail Code 2003
 Austin, TX 78714-9347

Vendor Identification Number: 35375375371000

8. **Payment Method.**

Unit Rate

DSHS will inactivate any individual who does not use their account for ninety (90) days.

9. **Termination.**

This Contract may be terminated by mutual agreement of both parties. Either party may terminate this Contract by giving 30 day's written notice of its intent to terminate. Written notice may be sent by any method, which provides verification of receipt, and the 30 days will be calculated from the date of receipt. This Contract may be terminated for cause by either party for breach or failure to perform an essential requirement of the Contract.

Upon termination of all or part of this Contract, Department and Other Party will be discharged from any further obligation created under the applicable terms of this Contract except for the

equitable settlement of the respective accrued interests or obligations incurred prior to termination.

10. **Terms & Conditions.**

A. Federal and State Laws, Rules and Ordinances. Parties shall comply with all applicable federal and state statutes, rules and regulations.

B. Applicable Contracts Law and Venue for Disputes. Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.

D. Records Retention. DSHS shall retain records in accordance with the Department's State of Texas Records Retention Schedule, located at <http://www.dshs.state.tx.us/records/schedules.shtm>, Department Rules and other applicable state and federal statutes and regulations governing medical, mental health, and substance abuse information.

E. Severability and Ambiguity. If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

F. Legal Notice. Any notice required or permitted to be given by the provisions of this Contract shall be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address first given above (or at such other address as the Party shall specify to the other Party in writing) or, if sent by certified mail, on the date of receipt.

G. Immunity Not Waived. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

H. Waiver. Acceptance by either party of partial performance or failure to complain of any action, non-action or default under this Contract shall not constitute a waiver of either party's rights under the Contract.

I. Breach of Contract Claim. The process for a breach of contract claim against the Department provided for in Chapter 2260 of Texas Government Code and implemented in the rules at 25 TAC §§1.431-1.447 shall be used by DSHS and Other Party to attempt to resolve any claim for breach of contract made against DSHS.

L. Credits.

DSHS will handle credit requests on a case-by-case basis. Credits may be considered in those cases of emergency situations, i.e., equipment and systems failures or inclement weather. Other party shall submit these requests in writing along with pertinent documentation to provide justification to the State Registrar and/or designee for approval. DSHS will provide written documentation to the Other Party on the status of the approval of credit requests.

16. **Entire Agreement.** The Parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract. By signing below, the Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the requisite authority to execute this Contract on behalf of the named party.

DEPARTMENT OF STATE HEALTH SERVICES

OTHER PARTY

By: _____
Signature of Authorized Official

By: _____
Signature

Date

Date

Bob Burnette, C.P.M., CTPM

Printed Name and Title

Director, Client Services Contracting Unit

Address

1100 WEST 49TH STREET
AUSTIN, TEXAS 78756

City, State, Zip

(512) 458-7470

Telephone Number

Bob.Burnette@dshs.state.tx.us

E-mail Address for Official Correspondence