

**MEMORANDUM OF AGREEMENT**  
**No. HU358032**

**MEMORANDUM of AGREEMENT (AGREEMENT)**

**BETWEEN**

**THE ARIZONA DEPARTMENT OF HEALTH SERVICES (“ADHS”)**

and

**Peoria Fire Department (“CONTRACTOR”)**

**For the use of CHEMPACK(s)**

**1. Term of the Agreement:**

The term of this Agreement will be for five (5) years upon signature of the Agreement.

**2. Termination:**

2.1. This Agreement remains in effect until terminated in accordance with the provisions of this section, or as otherwise provided below:

**2.1.1. Termination without Cause**

Both the ADHS and the Contractor may terminate this Agreement at any time with sixty (60) calendar days' notice in writing specifying **the** termination date. Such notices shall be given by personal delivery or by certified mail, return receipt requested. If the Contractor terminates this Agreement without cause, the Contractor shall pay the ADHS the Agreement price for all services and materials completed up to the date of termination;

**2.1.2. Termination for Default**

The ADHS reserves the right to terminate the Agreement in whole or in part due to the failure of the Contractor to comply with any material obligation, term or condition of the Agreement, to acquire and maintain all required, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The Contractor should receive written notice detailing the area of non-performance and have thirty (30) days to correct non-performance prior to termination for default;

**2.1.3. Cancellation for Conflict of Interest**

Pursuant to A.R.S. § 38-511, the ADHS may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the Department is, or becomes at any time while the Agreement or an extension of the Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation, unless the notice specifies a later time. If the Contractor is a political subdivision of the ADHS, it may also cancel this Contract as provided in A.R.S. § 38-511; or

**2.1.4. Mutual Termination**

This Agreement may be terminated by mutual written agreement of the parties specifying the termination date and the terms for disposition of property and, as necessary, submission of required deliverables and payment therein.

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### **3. Health Insurance Portability and Accountability Act of 1996 (HIPAA):**

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the Arizona Department of Health Services (ADHS) in the course of performance of the Contract so that both ADHS and Contractor will be in compliance with HIPAA, including cooperation and coordination with the Government Information Technology Agency (GITA), Statewide Information Security and Privacy Office (SISPO) Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep ADHS and Contractor in compliance with HIPAA, including, but not limited to, business associate agreements.

If requested by the ADHS Procurement Office, Contractor agrees to sign a "Pledge To Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in HIPAA training offered by ADHS or to provide written verification that the Contractor has attended or participated in job related HIPAA training that is: (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the GITA/SISPO Chief Privacy Officer and HIPAA Coordinator.

### **4. Utilization of Confidential Information:**

- 4.1. Contractor agrees not to use or disclose confidential medical information or personally identifying information other than as permitted by this MOU or as required by law,
- 4.2. Contractor agrees to use appropriate safeguards to prevent use or disclosure of confidential medical information or personally identifying information other than as provided by this MOU,
- 4.3. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor from a use or disclosure of confidential medical information or personally identifying information other than as provided by this MOU,
- 4.4. Contractor agrees to report to the ADHS any use or disclosure of confidential medical information or personally identifying information not provided in this MOU of which it becomes aware, and
- 4.5. Contractor agrees to ensure that any agent, including a subcontractor, to whom Contractor provides confidential medical information or personally identifying information received from the ADHS or created or received by Contractor on behalf of the ADHS agrees to the same restrictions and conditions that apply through this MOU to Contractor with respect to such information.

### **5. Non-Discrimination:**

The parties shall comply with Executive Order 75-5 as modified by Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Parties shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

### **6. Records:**

Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain all data and other records ("records") relating to the Agreement for a period of five (5) years after the completion of the Agreement. All records shall be subject

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to inspection and audit by ADHS at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

**7. Arbitration:**

The parties to this Agreement agree to resolve all disputes arising out of or relating to this Agreement, after exhausting applicable administrative review, through arbitration to the extent required by A.R.S. §12-1518.

**8. Indemnity Clause:**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

**9. Amendment or Modifications:**

No amendment or modifications to this Agreement, including any amendment or modification of this paragraph, shall be effective unless the same is in writing signed by the parties.

**10. Arizona Law:**

The law of Arizona applies to this Agreement including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona.

**11. Relationship of Parties:**

The Contractor under this Agreement is an independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.

**12. Severability:**

The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.

**13. No Parole Evidence:**

This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document.

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**14. No Waiver:**

Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

**15. Headings:**

Headings are for organizational purposes only and shall not be interpreted as having legal significance or meaning.

**16. Advertising and Promotion of Contract:**

The Contractor shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of an ADHS Procurement Officer.

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### SCOPE OF WORK

#### 1. Definitions

- 1.1 CHEMPACK means the sustainable repository of nerve agent antidotes and other necessary and certain supporting equipment to care for individuals exposed to nerve agents, including but not limited to auto-injectors, bulk symptomatic treatment supplies, and self-monitoring storage containers. CHEMPACK is a component of the Strategic National Stockpile (SNS) Program, which is part of the federal medical response infrastructure. The CHEMPACK Project provides two (2) types of containers:
  - 1.1.1. The Emergency Medical Service (EMS) container that is designed for use by emergency responders (materiel packaged primarily in auto-injectors), and
  - 1.1.2. The Hospital container that is designed for hospital dispensing (materiel packaged primarily in multi-dose vials for precision dosing and long-term-care).
- 1.2 Shelf Life Extension Program (SLEP) means the Food and Drug Administration's (FDA) shelf life extension program designed to maintain the readiness and effectiveness of pharmaceuticals over extended periods of time. The SLEP defers costs by extending the expiration date of stored pharmaceuticals rather than replacing stocks that have reached a set expiration date. Through centrally located automated monitoring devices, the SNS Program staff are able to ensure that conditions of CHEMPACK materiel comply with SLEP guidelines, thus enabling CHEMPACK to provide the State a long-term capability.

#### 2. Background

To effectively respond to acts of chemical terrorism and other public health emergencies, ADHS has entered into a Memorandum of Understanding (MOU) with the Administration for Strategic Preparedness and Response (ASPR) to pre-position sustainable repositories of nerve agent antidotes in locations in the State of Arizona. This MOU establishes the terms, conditions, and responsibilities between the parties for deployment, management, and maintenance of this federally owned asset.

#### 3. Objective

To authorize the Contractor to store, monitor, maintain, dispose, transport, and inventory CHEMPACK material.

#### 4. Tasks

The Contractor shall:

- 4.1 Authorize breaking the CHEMPACK container seal and use the packaged products only when it has been determined that an accidental or intentional nerve agent release has threatened the medical security of the community; has put multiple lives at a risk; is beyond local emergency response capabilities; and the materiel is medically necessary to save lives;
- 4.2 Provide the address of the CHEMPACK cache storage location (cache location) and ensure pre-coordinated access for SNS Program personnel to cache location as needed to monitor CHEMPACK materiel and provide this information to ADHS at least sixty (60) days prior to expected date of delivery;
- 4.3 Ensure that the cache location:
  - 4.3.1. Is of a suitable size, and
  - 4.3.2. Is designed to provide adequate lighting, ventilation, and temperature control,

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- 4.4 Provide sanitation, humidity, space, and security conditions for storage of pharmaceuticals. See Exhibit One (1) Contractor Responsibility for Cache Storage Standards for Schedule IV Controlled Substances and Pharmaceuticals based upon the DEA and Food and Drug Administration (FDA) criterion. (See the SNS Program Storage Criterion as outlined in Exhibit One (1));
- 4.5 Ensure proper disposal in accordance with applicable federal, state, and local regulations of expired CHEMPACK medical materiel and provide copies of the destruction documentation to ADHS. The Contractor is Responsible for Disposing in Accordance with Applicable Federal, State and Local regulations;
- 4.6 Conduct joint inventories with the CHEMPACK fielding team upon initial placement and approximately every eighteen (18) months thereafter;
- 4.7 Conduct monthly security checks to visually inspect SNS Program seals on the CHEMPACK containers (in accordance with applicable federal and state regulations). The person signing for custody shall be a Registered Pharmacist or medical professional;
- 4.8 Conduct quality control checks at each cache location to ensure the facility's climate is within acceptable environmental limits;
- 4.9 Coordinate adequate transportation of CHEMPACK materiel in the event of an emergency with state and local officials, assisting in the use of vehicles, freeway routes, and airfields;
- 4.10 Ensure the storage facility has the capability to rapidly move CHEMPACK materiel as required. This may include, but is not limited to, hydraulic lifts, forklifts, loading docks, or ramps;
- 4.12 Ensure cache storage locations correct non-complying environmental and security conditions identified by CHEMPACK Program POC in a timely manner (within one (1) hour). When conditions cannot be corrected within twelve (12) hours, the ASPR CHEMPACK Logistics Team shall coordinate with the ADHS CHEMPACK POC to move CHEMPACK container(s) to an acceptable location to safeguard the quality or security of the materiel;
- 4.13 Notify the ASPR CHEMPACK Logistics Team within two (2) hours if a cache location loses climate control. Any reports of materiel stored outside of the accepted storage temperature range shall be handled on a case-by-case basis. Outcomes could range from having the materiel remain in the SLEP to removing the materiel from the SLEP program and the Contractor forfeiting the long-term sustainability of the resource;
- 4.14 Coordinate with ADHS/SNS Program personnel to ensure the maintenance of proper security and environmental conditions for CHEMPACK materiel during any non-emergency movement (to include pre-positioning assets for special events);
- 4.15 Immediately notify the Department of Public Safety (DPS) through established procedures that personnel are opening a CHEMPACK container for emergency deployment;
- 4.16 In the event of a non-emergency use or compromise of CHEMPACK materiel, Contractor shall report the loss to ADHS/SNS Program personnel as soon as possible following discovery. Within forty-eight (48) hours of the discovery of the loss the Contractor shall submit a report to ADHS documenting the circumstances resulting in the loss and providing an inventory of materiel lost or destroyed; and
- 4.17 Ensure adequate and proper levels of inventory. Refer to the CHEMPACK Loan Agreement from the ASPR.

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### 5. Deliverables

- 5.1 Submit a monthly CHEMPACK Project Quality Control (QC) checklist on the 15<sup>th</sup> of the following month to document storage conditions at the cache location to ADHS;
- 5.2 Every June and December, provide to ADHS a list of personnel with access to the CHEMPACK container(s) and update as changes occur;
- 5.3 Complete and submit to ADHS a deployment report to identify the amount of CHEMPACK expended and the amount of materiel returned to the container within twenty-four (24) hours of an emergency deployment;
- 5.4 The Contractor shall contact ADHS with a request to move the CHEMPACK on a temporary basis at least seventy-two (72) hours in advance.

### 6. Requirements

- 6.1 The ASPR shall at all times retain ownership of all CHEMPACK materials. Subject to the terms of this MOA ASPR grants ADHS, and the ADHS grants the Contractor permission to use CHEMPACK materials in the event of an accidental or intentional nerve agent release that threatens the medical security of the community, puts multiple lives at risk, is beyond local emergency response capabilities, and the materiel is medically necessary to save lives;
- 6.2 State and local agencies shall only store the materiel provided as part of the CHEMPACK Project in the SNS-provided containers. State-owned and SNS Program-owned nerve agent antidotes may not be co-mingled in storage containers since co-mingled storage will compromise the SNS Program's ability to maintain the materiel under the SLEP. The Contractor may, however, store ADHS-owned materiel at the same cache location as the CHEMPACK containers;
- 6.3 The ASPR authorizes ADHS, and ADHS authorizes the Contractor to move CHEMPACK for State-designated special events (e.g., National Special Security Events, Super Bowl, World Series, major political conventions, state fair, major concerts, and key summits) on a temporary basis. The temporary movement of CHEMPACK assets is subject to the following requirements:
  - 6.3.1. The Contractor shall contact ADHS with a request to move the CHEMPACK on a temporary basis at least seventy-two (72) hours in advance,
  - 6.3.2. The ADHS CHEMPACK POC or backup shall notify the SNS Program at least forty-eight (48) hours prior to such movement of CHEMPACK containers,
  - 6.3.3. The Contractor shall ensure that environmental and security requirements are maintained throughout transport and deployment, and
  - 6.3.4. Any movement of CHEMPACK materiel not specifically directed in advance by ADHS and the SNS Program shall be funded by the Contractor,
- 6.4 All assistance provided under this MOA shall comply with applicable laws, regulations, and agency policies;
- 6.5 Compliance with U.S. Drug Enforcement Agency (DEA) Requirements:

The Contractor agrees to comply with all applicable federal, state, and local requirements regarding storage, use, and handling of controlled substances. A non-exclusive list of federal requirements regarding the storage, use, and handling of these substances may be found at Title 21 Code of Federal Regulations,

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Part 1301-END. The website is located at: <http://www.deadiversion.usdoj.gov> In addition, the Contractor agrees to designate pharmaceutical or medical professional with a DEA registration who will sign for and accept custody for controlled substances and other pharmaceuticals in CHEMPACK containers at each cache location. The designee shall be responsible for the storage and safeguarding of controlled substances within the CHEMPACK container and ensure compliance with federal, state, and local requirements. The ADHS CHEMPACK Point of Contact (POC) shall provide the custodian's name, license number and contact information two (2) weeks prior to the scheduled delivery of a cache location.

### 6.6 Requests for Information:

The Contractor shall not disclose any information identifying the location at which Strategic National Stockpile (SNS) Program materials are stored. To the extent permitted by law, the parties agree that neither shall disclose the nature of this effort and the terms of this agreement to any person or entity, except as may be necessary to fulfill its mission and statutory and regulatory responsibilities. The parties agree to notify one another before releasing materials or information relating to CHEMPACK or this MOU pursuant to federal or state freedom of information act statutes or similar provisions in law.

### 6.7 No Private Right Created:

This document is an internal agreement between ADHS and the Contractor and does not create or confer any right or benefit on any other person or party, private or public. Nothing in this agreement is intended to restrict the authority of either signatory to act as provided by law or regulation, or to restrict any agency from enforcing any laws within its authority or jurisdiction.

## 7. Notices, Correspondence and Reports

### 7.1. Notices, correspondence and reports from the Contractor to ADHS shall be sent to:

Arizona Department of Health Services  
Bureau of Public Health Emergency Preparedness  
Attn: SNS Coordinator  
150 N. 18th Avenue, Suite 150  
Phoenix, AZ 85007  
Phone: 480-253-8374  
E-Mail: [mcm@azdhs.gov](mailto:mcm@azdhs.gov)

### 7.2. Notices, correspondence, and reports from ADHS to the Contractor shall be sent to:

Peoria Fire Department  
23100 N. Lake Pleasant Parkway  
Peoria, AZ 85383  
Justin Gorospe [Justin.Gorospe@peoriaaz.gov](mailto:Justin.Gorospe@peoriaaz.gov)

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**Signatures/Approvals**

FOR Peoria Fire Department

FOR ARIZONA DEPARTMENT OF HEALTH SERVICES:

\_\_\_\_\_

\_\_\_\_\_

Chief Procurement Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Jason Beck, Mayor

ATTEST:

\_\_\_\_\_

Lori Dyckman, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

Emily Jurmu, City Attorney

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## Exhibit One (1)

### Contractor Responsibility for Cache Storage Standards for Schedule IV

#### Controlled Substances and Pharmaceuticals are based upon the following DEA and FDA Criterion

1. Assure a locked room or cage is provided by the cache recipient(s). The CHEMPACK container is constructed of Lexan® mesh and is approved by the Drug Enforcement Agency (i.e., double locked standard, 24/7 security monitoring, and controlled designated entry) for storage of Class IV controlled substances. For this reason, there is no requirement for floor to ceiling construction. The purpose of the enclosed room or cage is to control access and ensure compliance with applicable federal, state and local pharmaceutical regulations.
2. Assure an intrusion detection device is installed, directed towards the CHEMPACK containers, to alert cache location security or pharmacy personnel of possible intrusion into the storage area. The sensor must be physically monitored on a 24-hour basis by security or pharmacy personnel. Cache location security managers will test the interior devices according to manufacturer specifications to ensure proper operation.
3. Ensure each container is locked with a padlock and access to the key is limited; key control shall be the responsibility of the DEA registrant and/or the cache location pharmacy director.
4. Ensure a minimum clearance of 72" aisles and 45" doorways to maneuver containers in and out of the storage location.
5. Ensure a minimum of 50 sq. ft. of floor space per container is provided at each cache location.
6. Ensure accessibility to CHEMPACK containers. CHEMPACK container dimensions are 64" long X 44" wide X 60.5" high and weigh approximately 600 pounds, depending on container type.
7. Ensure CHEMPACK containers are stored in a climate-controlled environment with room temperature maintained between 59 to 86 degrees Fahrenheit (15 degrees and 30 degrees Celsius). Humidity levels must be maintained below 60% in accordance with CFR 21, sec 205 and 211.
8. Establish and maintain a communication infrastructure that is compatible with container capabilities and that can support communication requirements.
9. Ensure one dedicated standard 120VAC, 60HZ, 10W, UL-listed power outlet power source per Sensaphone®. The outlet should be connected to an existing facility emergency generator or the location must provide an uninterruptible power supply (UPS) device.
10. Ensure a fire detection and alarm device, and adequate fire suppression in accordance with applicable federal, state and local pharmaceutical regulations and fire codes is provided at each cache location.
11. Ensure standard lighting is provided so CHEMPACK personnel can clearly see lot numbers and product expiration dates as required by applicable federal, state and local pharmaceutical regulations.
12. For any CHEMPACK Medical Items the Contractor Is Responsible For Disposing In Accordance With Applicable Federal, State, and Local Regulations.