MEMORANDUM OF AGREEMENT

BETWEEN THE

DEPARTMENT OF DEFENSE

And The

DEPARTMENT OF VETERANS AFFAIRS

1. PURPOSE

This Memorandum of Agreement (MOA) establishes the actions to be taken by the Department of Defense (DoD) and the Department of Veterans Affairs (VA) to achieve a common goal. The common goal is to combine the strengths and buying power of VA with those of the DoD to achieve lower medical materiel costs of these Departments and to eliminate redundancies in contracting.

2. AUTHORITY

This agreement is entered into under the authority of section 8111 of title 38, United States Code, as amended (38 U.S.C. 8111) and section 1104 of title 10, United States Code, as amended (10 U.S.C 1104).

3. BACKGROUND

VA has been delegated procurement authority by General Services Administration (GSA) to establish Federal Supply Schedules (FSS) for medical commodities for the entire Federal Government. Additionally, VA has a statutory mandate to administer and enforce Section 603 of the Veterans Health Care Act of 1992 (VHCA). 38 U.S.C. 8126. This includes maintaining master agreements and pharmaceutical pricing agreements, and receiving and checking the pricing data that is used for calculating Federal ceiling prices.

The Defense Logistics Agency (DLA) is a Defense Agency under 10 U.S.C. 191 and a combat support agency under 10 U.S.C. 193. It was established because the Secretary of Defense determined that it is more effective, economical and efficient to provide common supplies and services to the Military Departments. As a Combat Support Agency, DLA is responsible for maintaining a readiness posture to support operating forces in the event of war or threat to national security. As part of its responsibility, DLA, through the Defense Supply Center, Philadelphia (DSCP), supports the medical needs of the Military Departments. DSCP procures medical supplies and equipment for DoD and other Government agencies; and is skilled at establishing and operating networks to distribute

medical materiel using electronic commerce to facilities worldwide in both peacetime and war.

4. OBJECTIVES

The economic objective covered in this MOA is to combine identical medical supply requirements from both agencies and leverage that volume to negotiate better pricing. The organizational goals are to eliminate duplication of contracting effort and allow the customers of both Agencies to select the product and pricing that best meets their needs. The parties intend that each of them will continue to contract for their own prime vendor (PV) services to meet their distinctive needs. However, the parties agree that DOD distribution and pricing agreements (DAPA) will be phased out as quickly as possible in favor of VA contractual vehicles in the manner specified in the appendices incorporated herein

5. RESPONSIBILITIES

Both DoD and VA will be responsible for supporting the goals of this MOA.

Responsibilities of DoD and VA will be tailored for each of the product lines and services. These responsibilities will be delineated in appendices to this memorandum. Each appendix will be coordinated and signed by the incumbents of the offices signing this MOA or their designees The initial program areas for which appendices have been, or are to be developed are as follows:

a. Medical-Surgical Products – Appendix 1
b. Pharmaceutical Products – Appendix 2
c. Equipment – Appendix 3
d. Other areas as appropriate

6. DURATION OF AGREEMENT

This agreement becomes effective upon signature approval of both parties for a period of one calendar year. This agreement will be automatically extended for additional one-year periods on its anniversary date, unless either party gives the other a 180-day written notice of intent to modify or terminate the agreement. Either party may terminate this MOA in whole or in part with 180-day written notice; however, each party agrees to consult with the other before any action is taken to terminate the MOA or terminate any contracting action initiated pursuant to it.

7. APPORTIONMENT OF LIABILITY

In the event of a cancellation or termination of this MOA or any contracting initiatives begun pursuant to it by mutual agreement of the parties, each party will be liable for its own share of resulting costs, unless one party caused the

cancellation or termination by its negligence or by its violation of any Federal rule, regulation or statute. Any financial liability resulting from the actions of user facilities shall be the responsibility of the department with supervisory authority over that facility and/or the responsibility of the facility itself. Each department agrees to accept full responsibility and liability for any contractor claims that may arise under or relating to contracts entered into under this MOA when such claims result from any alleged breach of contract by an individual department or by facilities operating under its authority.

8. DISPUTES

The DoD and VA agree to take immediate action to resolve issues and disagreements that arise in accomplishing work under this MOA, in accordance with FAR 17.504(c). In the event that disagreements arise that cannot be resolved by the VA/DoD Executive Council, then the parties will submit such disagreements for resolution under a mutually acceptable DoD or VA alternative dispute resolution process.

9. MODIFICATIONS

Modifications to this MOA must be approved in writing by the signatories listed below or their designees.

10. SIGNATURES

Togo D. West, Jr.
Secretary of Veterans Affairs

Kenneth W. Kizer, M.D., M.P.H.
Under Secretary for Health
Veterans Health Administration

Edward A. Powell, Jr.
Assistant Secretary for Financial Management

Gary J. Krump
Deputy Assistant Secretary for Acquisition and Materiel Management
Department of Veterans Affairs

Daniel G. Mongeon
Brigadier General, USA
Commander, Defense Supply Center, Philadelphia

Henry T. Glisson
Lieutenant General, USA
Director, Defense Logistics Agency

Dr. Sue Bailey
Assistant Secretary of Defense
for Health Affairs

APPENDIX 1

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS

MEDICAL/SURGICAL PRODUCTS

a. RESPONSIBILITIES of VA

The VA Office of Acquisition and Materiel Management (OA&MM) will:

(1) Make Blanket Purchase Agreement (BPA) and National contract information for medical/surgical supply items available to DoD. VA will provide an electronic file of Federal Supply Schedule (FSS) data and pricing to DSCP for incorporation into the DoD distribution contracts.

(2) Where legally possible and with the agreement of existing contractors, modify their current medical surgical national committed volume contracts and FSS BPAs (preferred source agreements), to allow use of the favorable pricing by all DoD activities under DoD prime vendor contracts. Under existing FSS contract BPAs, addition of DoD facilities and/or requirements will be attempted immediately by opening bilateral modification negotiations. In the event DoD cannot be availed of the VA pricing, VA will include the DoD requirements during the next acquisition cycle for these items. To use BPA and/or committed volume contracts, DoD prime vendor customers will be required to make written volume commitments and commitments to the terms and conditions of the contracts to receive the favorable committed volume pricing. The VA price will include the industrial funding fee to be collected by VA from manufacturers.

(3) Attempt further discounted pricing as additional volume is accumulated.

(4) Attempt to obtain FSS coverage with vendors who have current DoD DAPAs and significant sales under the DoD prime vendor program. Attempt to add to current FSS contracts missing items that have sales using DAPA pricing. Until such items are added to the FSS, negotiate with VA PVs to honor DAPA coverage and pricing for VA customers.

(5) Support the implementation of Universal Products Numbers (UPN) and obtain them where available on all National Contracts, FSS and BPA items.

(6) Facilitate the transition of DoD facilities currently on VA PV distribution contracts to DSCP PV distribution contracts. VA will not solicit PV distribution requirements from DoD facilities without first coordinating with the Medical Logistics Proponents Subcommittee.

b. RESPONSIBILITIES OF DoD

Defense Supply Center, Philadelphia (DSCP) will:

(1) Be responsible to award all of the distribution contracts for Department of Defense activities.

(2) Provide VA an electronic file of all DoD DAPA pricing and item usage data so that VA can expand coverage of items and negotiate the same or lower prices under FSS. Enter into negotiations with DAPA holders to modify their agreements, where possible, to allow DAPA application to VA customers through the VA PVs, in those instances where DAPA items are missing from FSS contracts or DAPA prices are lower than current FSS prices (without IFF).

(3) Replace its DAPAs for medical/surgical items with joint committed use contracts and FSS contracts wherever the latter's prices are equal to or below DAPA pricing. Replacement will be accomplished as quickly as practical under the circumstances, and DoD will not attempt to match or obtain a lower DAPA price on items already contracted for by VA. Within 90 days of the execution of this agreement, DoD will delete DAPA coverage for medical/surgical items when VA demonstrates that its prices are equal to or lower than the existing DAPA prices. This process of price comparison and DAPA deletion will be performed by VA and DOD at least once each calendar quarter, as long as med/surg DAPAs continue to exist.

(4) Ensure that DoD prime vendor customers that elect to use VA BPA and National Contract items provide written commitment and annual requirements estimates.

(5) Proliferate available VA medical surgical national contract, FSS and BPA pricing nationwide to all DoD activities. DoD will incorporate VA's medical/surgical contract prices into DoD's electronic medical catalogs, to include the Forward Customer Support system and the Universal Data Repository – CD-ROM so all DoD customers can utilize VA's favorable pricing.

(6) Modify DSCP prime vendor contracts to require the delivery/ distribution of all VA medical/surgical contract items when selected by the customer.

(7) Actively market VA National Contract, FSS and BPA items, and prices (where available) to all DoD prime vendor customers.

(8) DSCP will not solicit distribution requirements from VA

(9) DoD will continue to contract for programs that may employ technologies and techniques such as web-based ordering , overseas distribution, foreign manufacturers, etc., and manage special readiness related program contracts consistent with the necessity for the national defense.

c. TERMINATION

Any modifications or the termination of this Appendix will be accomplished in accordance with procedures established as the main MOA delineates.

SIGNATURES

Togo D. West, Jr.
Secretary of Veterans Affairs

Kenneth W. Kizer, M.D., M.P.H.
Under Secretary for Health
Veterans Health Administration

Edward A. Powell, Jr.
Assistant Secretary for Financial Management

Gary J. Krump
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Daniel G. Mongeon
Brigadier General, USA
Commander, Defense Supply Center, Philadelphia

Henry T. Glisson
Lieutenant General, USA
Director, Defense Logistics Agency

Dr. Sue Bailey
Assistant Secretary of Defense
for Health Affairs

APPENDIX 2

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND THE DEPARTMENT OF VETERANS AFFAIRS

PHARMACEUTICAL PRODUCTS

A. RESPONSIBILITIES OF VA

(1) VA will continue to share contracting functions with the DoD in efforts to jointly procure high dollar, high volume pharmaceuticals under the auspices of the DoD/VA Federal Pharmacy Executive Steering Committee (FPESC).

(2) The VA Office of Acquisition and Materiel Management (OA&MM) will make Blanket Purchase Agreement (BPA) and National contract information for pharmaceutical items available to DoD. VA will provide an electronic file of Federal Supply Schedule (FSS) data and pricing to DSCP for incorporation into the DoD distribution contracts.

(3) Where legally possible and with the agreement of existing contractors, VA will modify their current pharmaceutical national committed volume contracts and FSS BPAs (preferred source agreements), to allow use of the favorable pricing by all DoD activities under DoD prime vendor contracts. Under existing FSS contract BPAs, addition of DoD facilities and/or requirements will be attempted immediately by opening bilateral modification negotiations. In the event DoD cannot be availed of the VA pricing, VA will include the DoD requirements during the next acquisition cycle for these items. To use BPA and/or committed volume contracts, DoD prime vendor customers will be required to make written volume commitments and commitments to the terms and conditions of the contracts to receive the favorable committed volume pricing. The VA price will include the industrial funding fee to be collected by VA from manufacturers.

(4) VA shall allow DoD facilities to receive favorable committed volume pricing under all future VA BPAs and National Contracts, conditioned on VA receiving their written volume commitments and commitments to the terms and conditions of the contracts. The VA price paid by DoD facilities will include the industrial funding fee to be collected by VA from the contractors.

(5) VA will attempt further discounted pricing as additional volume is accumulated.

(6) VA will attempt to obtain FSS coverage with vendors who have current DoD DAPAs and significant sales under DoD prime vendor program. VA will attempt to add to current FSS contracts missing items that have sales under DAPA pricing. Until such items are added to the FSS, VA will negotiate with VA PVs to honor DAPA coverage and pricing for VA customers.

(7) VA will facilitate the transition of DoD facilities currently on VA Prime Vendor (PV) distribution contracts to DoD's PV distribution contracts. VA will not promote its PV distribution contracts to DoD customers.

B. RESPONSIBILITIES OF DoD

(1) DoD will continue to share contracting functions with VA in efforts to jointly procure high dollar, high volume pharmaceuticals under the auspices of the DoD/VA Federal Pharmacy Executive Steering Committee (FPESC).

(2) DoD will provide VA an electronic file of all DoD DAPA pricing and item usage data on a regular basis to allow VA to expand coverage of items and negotiate the same or lower prices under FSS. DoD will enter into negotiations with DAPA holders to modify their agreements to allow DAPA application to VA customers through the VA PVs, in those instances where DAPA items are missing from FSS or DAPA prices are lower than current FSS prices (without IFF).

(3) DoD agrees to replace its DAPAs for pharmaceutical items with joint committed use contracts and FSS contracts wherever the latter's prices are equal to or below DAPA pricing. Replacement will be accomplished as quickly as practical under the circumstances, and DoD will not attempt to match or obtain a lower DAPA price on items already contracted for by VA. Within 90 days of the execution of this agreement, DoD will delete DAPA coverage for pharmaceutical items when VA demonstrates that its price is equal to or or lower than the existing DAPA price. This process of price comparison and DAPA deletion will be performed by VA and DOD at least once each calendar quarter, as long as pharmaceutical DAPAs continue to exist.

(4) Notwithstanding the above, DoD shall not delete DAPA coverage if such deletion would conflict with decisions regarding selected drugs made by the Department of Defense Pharmaceutical & Therapeutics Committees or other DoD clinical authorities regarding selected drugs.

(5) For items where VA is not able to provide FSS or national contract coverage, DoD will retain the authority to enter into DAPAs.

(6) DoD activities that elect to use VA BPAs or National Contracts will provide written commitment and annual requirement estimates.

(7) DoD will proliferate available VA pharmaceutical FSS contracts and BPA pricing nationwide to all DoD activities. DoD will incorporate VA's pharmaceutical contract prices into DoD's electronic pharmaceutical catalogs, to include the Forward Customer Support system and Universal Data Repository – CD-ROM so all DoD customers can utilize VA's favorable pricing.

(8) DoD will enter into negotiations to bilaterally modify all DSCP PV distribution contracts to require the delivery/distribution of all VA pharmaceutical items, including FSS, BPAs and national contract items when selected by the customer. DoD will not promote its PV distribution contracts to VA customers.

(9) DoD will actively market VA's available FSS BPAs and national contracts and prices to all DoD prime vendor customers.

(10) DoD will continue to contract for distribution programs that may employ technologies and techniques such as web-based ordering, overseas distribution, foreign manufacturers, etc. and manage special readiness related program contracts consistent with the necessity for the national defense.

C. TERMINATION

Any modification or the termination of this Appendix will be accomplished in accordance with the procedures established as the main MOA delineates.

SIGNATURES

Togo D. West, Jr.
Secretary of Veterans Affairs

Kenneth W. Kizer, M.D., M.P.H.
Under Secretary for Health
Veterans Health Administration

Edward A. Powell, Jr.
Assistant Secretary for Financial Management

for Henry T. Glisson
Lieutenant General, USA
Director, Defense Logistics Agency

Dr. Sue Bailey
Assistant Secretary of Defense
for Health Affairs

APPENDIX 3

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS

Medical Equipment

I. RESPONSIBILITIES of the VA

The VA Office of Acquisition and Materiel Management (OA&MM) will:

(1) In regard to Federal Supply Schedule items:

(a) Attempt to obtain FSS coverage with vendors who have current DoD DAPAs and significant sales under the DoD prime vendor (PV) program. The VA will attempt to add to current FSS contracts missing items that have DSCP sales using DAPA pricing. VA will negotiate with VA PVs to honor DAPA coverage and pricing for VA customers.

(b) Modify FSS contracts to allow items to be ordered through DoD Prime Vendor contractors.

(c) Maximize efforts to combine purchase volumes with DSCP in joint committed-use BPAs for FSS items and contracts for non-FSS items where practicable.

(d) Collaborate with DSCP to disseminate information on available VA FSS equipment contracts to all DoD Activities.

(2) In regard to major biomedical equipment:

(a) Enter into joint national contracts for biomedical equipment and maintenance. The contracts will include requirements for equipment and/or maintenance, and may include requirements for routine installation, extended installation, and turnkey installation. VA will continue to place individual delivery orders for major equipment upon customer request. Requests requiring "turnkey" installation will be referred to DSCP for order placement. Turnkey installation shall be defined in accordance with VA's internal policies.

(b) Invite DSCP to have clinical representation on the Technical Evaluation Panel (TEP), if convened, in evaluating offers on the contracts referenced in (2)(a) above.

(c) Where possible, partner with DSCP to combine requirements for lower pricing.

(d) Procure, upon customer request, Picture Archival and Communications Systems (PACS) to which the readiness applications of DSCP's DIN-PACS program do not apply.

(e) Provide copies to DSCP of all major biomedical equipment contracts as they are awarded.

II. RESPONSIBILITIES of the DoD

The Defense Supply Center, Philadelphia (DSCP) will:

(1) In regard to Federal Supply Schedule items:

(a) Cancel equipment DAPAs, except in those instances where DAPA items are missing from FSS contracts. Replacement will be accomplished as quickly as practical under the circumstances.

(b) Not pursue issuing open market contracts if the item is already covered by an FSS provided that the terms and conditions of the FSS will meet or can be negotiated to meet the needs of the customer.

(c) Maximize efforts to combine purchase volumes with VA in joint committed-use BPAs for FSS items and contracts for non-FSS items where practicable.

(d) Provide VA with an electronic file of all DoD DAPA pricing and item usage data so that VA can expand coverage.

(e) Collaborate with VA to disseminate information on available VA FSS equipment contracts to all DoD Activities.

(f) In the case of items for which VA is not able to provide FSS or national contract coverage, DSCP will retain the authority to enter into DAPAs or other contractual arrangements.

(2) In regard to major biomedical equipment:

(a) Enter into joint national contracts for biomedical equipment and maintenance. The contracts may include equipment, routine installation, extended installation, and turnkey installation. DSCP will continue to place individual delivery orders for major equipment upon customer request. DSCP may place VA orders requiring turnkey installation as defined above.

(b) Invite the VA to have clinical representation on the Technical Evaluation Panel (TEP), if convened, in evaluating offers on the contracts referenced in (2)(a) above.

(c) Where possible, partner with VA to combine requirements for lower pricing.

(d) Provide copies to VA of all major biomedical equipment contracts as they are awarded.

(e) Continue to purchase and manage military-unique items and special readiness program contracts consistent with the necessity for the national defense. This includes sole responsibility for the contracting of DIN-PACS, based on the unique configuration and set-up of the DIN-PACS contracts and the multitude of readiness applications for these systems. DIN-PACS is currently being deployed on all large platform Navy ships and will be fielded in forward-deployed medical units.

(f) Continue to contract for programs that may employ technologies and techniques such as web-based ordering, overseas distribution, foreign manufacturing, etc.

III. TERMINATION

Any modification or termination of this Appendix will be accomplished in accordance with the procedures established as the main MOA delineates.

IV. SIGNATURES

Not Required
Leo S. Mackay, Jr.
Deputy Secretary
Department of Veterans Affairs

Not Required
Dave S. Derr
Acting Deputy Assistant Secretary
Acquisition & Materiel Management
Department of Veterans Affairs

William H. Campbell
Assistant Secretary for Management
Department of Veterans Affairs

Robert H. Roswell, M.D.
Under Secretary for Health
Veterans Health Administration

Not Required
David S. C. Chu

William Winkenwerder, Jr., M.D.
Assistant Secretary of Defense for Health Affairs

KEITH W. LIPPERT
Vice Admiral, SC, USN
Director, Defense Logistics Agency

GARY L. BORDER
Brigadier General, USA
Commanding

Signed: 24 July 2003