

CONSULTING & SERVICES

Agreement Between

Omnicare, Inc.

100 East River Center Blvd.,

Covington, KY 41011

Attn: Dan Maloney

Director of Purchasing

REDACTED

Referred to as: "Omnicare"

AND

Johnson & Johnson Health Care Systems Inc.

425 Hoes Lane

P.O. Box 6800

Piscataway, New Jersey 08855-6800

Attn: Contract Administration

REDACTED

Referred to as "J&JHCS"

Agreement Term: July 1, 2000 to April 1, 2004

JOHNSON & JOHNSON HEALTHCARE SYSTEMS INC.

OMNICARE, INC.

Name: Bruce Cummins

Title: LTC Account Director

Date: *Bruce Cummins* 10/21/00

Name: Dan Maloney

Title: Director of Purchasing

Date: *Dan Maloney* 10/19/00

Name: Paul J. Kim

Title: Associate Manager, Account Development

Date: *Paul J. Kim* 10/11/00

## **INTRODUCTION**

**Agreement** J&JHCS shall pay Omnicare a "Service Fee" to partially defray the cost of designing, developing, and implementing the required processes to produce and deliver to J&JHCS Marketing Reports outlined herein.

### **Parties.**

**J&JHCS** is a New Jersey corporation and a wholly owned subsidiary of Johnson & Johnson, a New Jersey corporation.

**Omnicare** is a Delaware corporation and an independent provider of professional pharmacy and related services for long term care institutions such as nursing homes, retirement centers, home healthcare and other institutional healthcare facilities.

## **PAYMENT TERMS**

Service fees will be paid as follows: the first service fee payment of \$450,000 will be paid to Omnicare 10 days after the execution of this agreement. This will apply to the fee for the first quarter of this Agreement. Beginning with the second quarter of this Agreement, the remaining service fees of \$300,000 each will be paid within 30 days of the receipt of monthly and quarterly reports for each of the remaining quarters of this agreement, if such reports are electronic, received as described below (monthly or quarterly) and in a mutually acceptable format.

Quarterly reports are due 30 days after the end of each quarter. Monthly reports are due 30 days after the end of each month.

## **CONSULTING & SERVICES**

***Omnicare will provide the following Marketing Reports as described below:***

- A. ***Physician Prescribing Report by Strategic Brand- [Quarterly]*** This national report will list 200 competitive prescribing physicians for each J&J Strategic Brand (RISPERDAL® risperidone, DURAGESIC® fentanyl transdermal system, and ACIPHEX™ rabeprazole, LEVAQUIN TABS® levofloxacin, LEVAQUIN IV® levofloxacin, and ULTRAM® tramadol) and the preferred product of such physicians. This report will be provided by Omnicare's national clinical director.
- B. ***Competitive Market Share Report by Pharmacy Site - [Quarterly]*** This report will list Days of Therapy (DOT) market shares at each Omnicare pharmacy site for the following J&J products and their relative competitive products as defined by their respective J&JHCS Defined Markets: Risperdal, Duragesic, Aciphex, Ultram, Levaquin and Levaquin IV.
- C. ***Market Share Report by Pharmacy Site - [Monthly]*** This report will list DOT market shares at each Omnicare pharmacy site for the following J&J products as defined by their respective J&JHCS Defined Markets: Risperdal, Duragesic, Aciphex, Ultram and Levaquin.

***Note that none of the above reports should be in a format which would allow any patient specific data to be extracted.***

## **GENERAL TERMS AND CONDITIONS**

1. **Notices.** Any notice given in connection with this Agreement shall be sufficient if in writing and delivered by messenger or sent by postage prepaid mail or by facsimile to the address of the recipient as set forth on the cover page to this Agreement or as changed by the recipient by notice given hereunder. Notices or communications shall be effective when received by or otherwise known to the recipient or its legal representative. This provision is not intended to be exclusive, and any notice actually received shall be sufficient.
2. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the Products and subject matter hereof and supersedes all prior negotiations, agreements and

understandings between the parties, whether oral or in writing, concerning the Products and subject matter hereof. This Agreement may be modified only in writing signed by both parties. The terms of any purchase order, invoice or similar document used to implement this Agreement shall not modify and shall be subject to this Agreement.

3. **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. For purposes of this paragraph assignment shall include any assignment by operation of law and any change in control of a party.
4. **Independent Contractors.** The parties hereto are independent contractors engaged in the operation of their own respective businesses. Nothing herein shall be deemed or construed to create any other relationship between the parties.
5. **Term.** The term of this Agreement is set forth on the cover page hereof. Either party may terminate this Agreement earlier by giving 30 days' notice to the other party pursuant to the provisions of Paragraph 2 of the General Terms and Conditions section of the Agreement. The provisions of these General Terms and Conditions shall survive termination of this Agreement.
6. **Audit.** J&JHCS shall have the right to audit all records of Omnicare relating to Omnicare's performance of services pursuant to this Agreement.
7. **Force Majeure.** Noncompliance with any obligation under this Agreement for reasons of force majeure (such as: acts, regulations or laws of any government; war or civil commotion; destruction of production facilities or materials; fire, earthquake or storm; labor disturbances; failure of public utilities or common carriers; and any other causes beyond the reasonable control of the party affected) shall not constitute a breach of this Agreement.
8. **Dispute Resolution.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be held in New Jersey and the arbitrator shall apply the substantive law of New Jersey, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator shall not award any party punitive or exemplary multiplied consequential damages, and each party hereby irrevocably waives any right to seek such damages in arbitration or in judicial proceedings.
9. **Execution.** This Agreement will not be considered valid until all required signatures as indicated on the Cover Page have been affixed.
10. **Renegotiations Clause.** The parties shall renegotiate the continuance of this Agreement upon mutual consent.