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LSU BOARD OF SUPERVISORS MEETING

*Telephonically via Zoom Webinar*

*Monday, September 21, 2020 | Time: 4:00 p.m. CT*

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- I. Call to Order and Roll Call
- II. Pledge of Allegiance and Invocation
- III. Public Comment
- IV. Request from LSU A&M to Approve Employment Contract with Jeffery J. Clark, Head Gymnastics Coach
- V. Request from LSU A&M to Authorize the Board of Supervisors to Enter Into a Contract for Pharmacy Benefit Manager Services for the LSU First Health Plan
- VI. Adjournment



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## Board of Supervisors

# ATHLETICS CONTRACTS

BOARD OF SUPERVISORS MEETING | SEPTEMBER 21, 2020



**Board of Supervisors**

**Request from LSU A&M to Approve Employment Contract with Jeffery J. Clark,  
Head Gymnastics Coach**

**Date: September 21, 2020**

**1. Bylaw Citation**

Pursuant to Article VII, Section 1

K.3. Appointments and all other personnel actions relating to Head Coaches and Athletic Directors

**2. Summary of Matter**

This resolution seeks approval of the proposed employment contract with Jeffrey J. Clark, effective 8/5/2020. The key terms of the proposed contracted are summarized below:

| <u>Contract Action</u> | <u>Term</u>             |                          | <u>Total Certain Compensation<sup>a</sup></u> |                 | <u>Overall Increase</u> |
|------------------------|-------------------------|--------------------------|---|-----------------|-------------------------|
|                        | <u>Current End Date</u> | <u>Proposed End Date</u> | <u>Current</u>                                | <u>Proposed</u> |                         |
| Promotion & Extension  | 6/30/2024               | 6/30/2025                | \$210,000                                     | \$280,000       | 33%                     |

Notes:

- (a) Total Certain Compensation includes all compensation which the coach is contractually guaranteed to receive annually. It does not include the value of any fringe benefits, such as car and cell phone allowances, nor any one-time amounts, such as contract buy-outs or relocation allowances.

**3. Review of Business Plan**

Not Applicable

**4. Fiscal Impact**

The Athletic Department currently expects that all funds relating to this employment contract will be paid from revenues generated by the Athletic Department. While authorized by the contract, it is not expected that any foundation dollars will be needed to provide for any of the supplemental compensation. No state general fund or tuition dollars are used.

**5. Description of Competitive Process**

Not Applicable

**6. Review of Legal Documents**

The Office of General Counsel has reviewed the proposed contract.

**7. Parties of Interest**

LSU and Coach Jeffrey J. Clark

**8. Related Transactions**

Not Applicable

**9. Conflicts of Interest**

None known

**10. Attachments**

1. Memorandum of Agreement: Jeffrey J. Clark , Head Gymnastics Coach

**RESOLUTION**

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural & Mechanical College authorizes the President, or his or her designee, to sign the contract with Jeffrey J. Clark as described in this item, and to include in such amendments any terms and conditions as he, in consultation with the General Counsel, deems to be in the best interests of LSU.

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

**EMPLOYMENT AGREEMENT**

This Employment Agreement (“Agreement”) is made and entered into as of the 16th day of September, 2020, by and between BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE (“LSU” or “University”), a body corporate existing under the Constitution and laws of the State of Louisiana, herein represented by Thomas C. Galligan, Jr., its duly authorized Interim President, and JEFFREY J. CLARK (“EMPLOYEE”):

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meaning shown:
  - A. “President”: The President or Interim President of LSU.
  - B. “Athletic Director”: The Director of Athletics at LSU.
  - C. “Base Salary Amount”: The annual sum of \$275,000.
  - D. “Position”: Head Coach of the Team.
  - E. “Start Date”: August 5, 2020.
  - F. “End Date”: June 30, 2025.
  - G. “Program”: The intercollegiate Women’s Gymnastics program at LSU A&M.
  - H. “Team”: The intercollegiate athletic team which is a part of the Program.
2. **Term.** The term (“Term”) of this Agreement shall be for a definite term, commencing on the Start Date and ending on the End Date unless terminated sooner in accordance with Sections 11 or 12 of this Agreement.
3. **Employment.** LSU does hereby employ EMPLOYEE in the Position for the Term. EMPLOYEE will report directly to the Head Coach of the Team and through the Head Coach to the Athletic Director. It is the goal of the parties that Employee will serve in the Position for the entirety of the Term. EMPLOYEE hereby agrees and promises that EMPLOYEE shall, within 30 days of employment by LSU, provide proof to LSU that EMPLOYEE has been issued a Louisiana driver’s license and that all vehicles registered in EMPLOYEE’s name are registered in Louisiana, all pursuant to the requirements of La. R.S. 42:31.
4. **Duties and Responsibilities.** EMPLOYEE’s duties and responsibilities shall include the following, all subject to law, LSU policy, and the directives, input, and advice of the President and the Athletic Director:

- A. Administering, managing, and leading the Program in a professionally appropriate and competent manner;
- B. Administering, managing, and leading the Program in an effort to effectively compete in National Collegiate Athletic Association (NCAA) play;
- C. Hiring and firing (subject to appropriate budget approvals, such approvals not to be unreasonably withheld or delayed) and managing the assistant coaches and other athletic staff necessary and appropriate to assist EMPLOYEE in meeting the responsibilities herein;
- D. Performing all duties reasonably assigned to EMPLOYEE by the Athletic Director so long as such duties are consistent with those duties typically assigned to Head Coaches at colleges or universities at the same competitive level as LSU;
- E. Promoting and monitoring the success of the Team and its student-athletes both athletically and academically;
- F. Directing the Team, including management of staff, budget, and other resources;
- G. Understanding and agreeing that EMPLOYEE and EMPLOYEE's staff, with the reasonable assistance of LSU, are bound by and must be reasonably knowledgeable of and comply with: (1) all applicable federal and state laws governing intercollegiate athletics; and (2) all governing constitutions, by-laws, rules, policies, interpretations, and regulations of the NCAA, the Southeastern Conference ("SEC") and/or LSU (hereinafter collectively referred to as "Governing Athletics Regulations");
- H. Promptly reporting any known or reasonably suspected violation of Governing Athletics Regulations to the Athletic Director and the Senior Associate Athletic Director for Compliance;
- I. Understanding and complying with Title IX of the Education Amendments of 1972 and LSU policies on Title IX and sexual misconduct, including but not limited to Permanent Memorandum 73 ("PM-73") and, as a Responsible Person under PM-73, understanding and complying with the obligation to report incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct of which EMPLOYEE has knowledge or receives notice to LSU's Title IX Coordinator and other appropriate designee as required by PM-73.
- J. Cooperating fully in any investigation of possible violations of any Governing Athletic Regulations conducted or authorized by LSU, the SEC, or the NCAA at any time, and cooperating fully in any LSU internal investigation or inquiry;
- K. Reasonably observing, respecting, and promoting the principles of institutional control in the Program;

- L. Reasonably understanding, observing, upholding, and promoting LSU's written academic standards, requirements, and policies, and reasonably promoting an environment in which admissions, financial aid, academic services for student-athletes, and recruiting can be conducted consistent with LSU's mission;
  - M. Cultivating and maintaining reasonable interaction with the Board of Supervisors, affiliated foundations, athletic conferences, institutional alumni, the media, the public, students, faculty, staff and other members of the LSU community, in accordance with the policies and instructions of the Athletic Director;
  - N. Performing all duties in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, and academic standards of the Department of Athletics and LSU;
  - O. Using reasonable efforts, through due care and supervision, to ensure that all student-athletes and other individuals under or subject to EMPLOYEE's control, authority, or supervision comply with all Governing Athletics Regulations and act in accordance with the high moral, ethical, and academic standards of the Program and LSU;
  - P. Using reasonable efforts to promote the goal of LSU that every student-athlete obtains an undergraduate degree, and reasonably cooperating with academic counselors or similar persons designated by LSU to assist student-athletes and the faculty and administrators of LSU in connection with the academic pursuits of student-athletes;
  - Q. Understanding and complying with NCAA Bylaw 11.1.1.1, which provides: "An institution's head coach is presumed to be responsible for the actions of all institutional staff members who report, directly or indirectly, to the head coach. An institution's head coach shall promote an atmosphere of compliance within his or her program and shall monitor the activities of all institutional staff members involved with the program who report, directly or indirectly, to the coach;" and
  - R. Performing all other reasonable duties customarily performed by head coaches I similar programs at colleges or universities competing at the same level as LSU.
5. **Sports Camps.** EMPLOYEE, subject to Governing Athletics Regulations and Athletic Department guidelines, rules and regulations, may operate or work at sports camps or clinics at LSU. LSU does not guarantee or provide any supplemental compensation or additional revenue from operation of sports camps or clinics. EMPLOYEE shall not be permitted to sell, assign, lease, donate or otherwise transfer any ownership, assets or interests in such a camp or clinic to any other person or entity without the prior written approval of the President. Use of University facilities by sports camps must comply with University policy.
6. **Base Salary.** LSU agrees to pay EMPLOYEE the Base Salary Amount annually, in 12 equal monthly installments, on LSU's regular monthly payroll date. The Base Salary Amount shall be reviewed at the end of each season of Program and may be adjusted at

that time by the Athletic Director, subject to recommendation, review, and approval pursuant to LSU personnel policies and LSU Bylaws and Regulations. However, in no event will EMPLOYEE's Base Salary Amount be reduced as a result of any such review.

7. **Supplemental Compensation.** EMPLOYEE shall be entitled to Supplemental Compensation as provided on Schedule A, which is attached to and made a part of this Agreement. Supplemental Compensation may be payable, in whole or in part, from affiliated foundation funds.
8. **Incentive Compensation.** EMPLOYEE may be entitled to Incentive Compensation in the amounts and for meeting the goals set forth in Schedule A, which is attached to and made a part of this Agreement. Incentive Compensation may be payable, in whole or in part, from affiliated foundation funds.
9. **Retirement and Fringe Benefits.** EMPLOYEE shall be entitled to the following benefits, part of which may be paid from affiliated foundation funds:
  - A. Retirement and fringe benefit programs available to all unclassified professional LSU employees, with contributions and benefit amounts as defined by law. EMPLOYEE understands and agrees that no contributions for purposes of any State of Louisiana retirement program will be made by LSU or withheld from EMPLOYEE's compensation except as to the Base Salary Amount and any earned Post-Season Incentive Compensation, and EMPLOYEE shall not be entitled to any retirement benefits that may otherwise be attributable to any other compensation paid pursuant to this Agreement. EMPLOYEE further acknowledges that sums paid under Sections 5 (Sports Camps), 7 (Supplemental Compensation) and 10 (Additional Revenue) shall not be considered "base pay," "earned compensation," or "earnable compensation" as such terms are defined under Louisiana law, and shall not be included as compensation for the purpose of computation of retirement benefits. Retirement contributions are subject to the limitations of federal law and Louisiana law.
  - B. Membership(s) in a country club, such as the University Club of Baton Rouge, provided that: (1) LSU business-related (non-personal) expenses incurred in accordance with LSU and foundation policy will be reimbursed from affiliated foundation funds; and (2) EMPLOYEE shall be responsible for payment of all personal charges and charges unrelated to LSU business.
  - C. Mobile communications device and service for business purposes.
  - D. An automobile entitlement of (1) an annual automobile allowance in an amount not to exceed \$1,000 per month, or (2) to the extent consistent with state ethics law, use of courtesy vehicle provided by a dealership and related automobile insurance.
  - E. EMPLOYEE will be allowed to invite guest(s) for travel to athletic events as per the LSU Travel Handbook. Any guest(s) must be approved for travel on



chartered or commercial transportation by the Athletic Director or the Athletic Director's designee.

- F. As part of any third-party apparel and/or equipment related contract with LSU, EMPLOYEE acknowledges and agrees that team may be provided and/or allocated apparel and/or equipment from and by LSU, which apparel and equipment shall be used exclusively and solely by EMPLOYEE in furtherance of EMPLOYEE'S employment duties and team-related activities as applicable to EMPLOYEE'S employment with LSU.

**10. Additional Revenue.**

- A. Subject to compliance with Governing Athletics Regulations, including but not limited to current NCAA Bylaw 11.2.2 and 11.3.2, and LSU Permanent Memorandum 11 ("PM-11"), EMPLOYEE may earn or receive other revenue ("Additional Revenue") while employed by LSU, including working with sports camps or clinics, provided, however, that EMPLOYEE shall obtain prior written approval from the President before engaging in any commercial or private venture, including the use of EMPLOYEE's name by any commercial, public or private entity, which approval shall not be unreasonably withheld. EMPLOYEE shall report annually to the President and the Athletic Director, in writing, in compliance with NCAA Bylaws 11.2.2, 11.3.2.1, and 11.3.2.1.1, and any applicable LSU policy, all athletically-related income or benefits received by EMPLOYEE from sources outside LSU, and LSU shall have reasonable access to all records of EMPLOYEE to verify this report. LSU does not guarantee any amount of Additional Revenue.
- B. EMPLOYEE shall not, without written approval of the President and the Athletic Director and compliance with PM-11, arrange for or agree to the receipt by any other employee of any supplemental pay, bonus, or other form of payment from any outside source.
- C. Without the prior written approval of the President, EMPLOYEE shall not appear on, or in, any radio, television, or internet programs or other electronic medium other than those produced or sponsored by LSU, except routine news media interviews for which no compensation is received. EMPLOYEE shall not appear in or make any advertisement or make any commercial endorsement without the prior written approval of the President and the Athletic Director.

**11. Termination and Suspension.**

- A. **Termination by LSU for Cause.** This Agreement may be terminated for "cause" by LSU, acting through the President, at any time prior to its expiration, upon written notice to EMPLOYEE.
  - 1. For purposes of this Section, "cause" for termination shall be defined particularly but not exclusively as:

- a. Commission of a material and substantial violation (including repeated secondary violations) of Governing Athletics Regulations, or failing promptly to report any such violation by another person to the President and the Senior Associate Athletic Director for Compliance, or committing a material and substantial violation of any LSU policies, rules, or procedures that are within the scope and/or meet the definition of Governing Athletics Regulations;
- b. Commission of a material and substantial violation of Governing Athletics Regulations involving any aspect of the Program by any other person if either: (i) the violation occurs or continues to occur after EMPLOYEE knew or had constructive knowledge that it was about to occur or was occurring, or (ii) EMPLOYEE failed to establish and maintain reasonable policies and procedures, or to follow reasonable policies and procedures established in writing by the Athletic Department for the Program to prevent violations of Governing Athletics Regulations from occurring and to detect promptly any such violations which may occur;
- c. Committing or being convicted of either: (i) any felony, or (ii) any misdemeanor involving gambling, drugs, or alcohol;
- d. Engaging in serious misconduct which either: (i) displays a continual, serious disrespect or continual, serious disregard for the mission of LSU; (ii) brings EMPLOYEE into substantial public disrepute sufficient to materially impair EMPLOYEE's ability to perform the obligations contained herein without material adverse impact on the Team or Program; or (iii) constitutes moral turpitude or breaches the high moral and ethical standards applicable to EMPLOYEE as a visible representative of LSU, including but not limited to, acts of dishonesty, misrepresentation, fraud, or violence that may or may not rise to level of warranting criminal prosecution by the relevant authorities;
- e. Unreasonable refusal or repeated failure to perform any duties imposed upon EMPLOYEE herein (including, but not limited to, those duties specified in this Agreement), or failing to perform the same to the best of EMPLOYEE's reasonable ability;
- f. Prolonged absence from LSU without consent, which will not be unreasonably withheld;
- g. Committing fraud in the performance of any duties and responsibilities herein, either with intent or reckless disregard for the truth, including but not limited to fraud or dishonesty in any written or verbal statements, including résumés, provided by EMPLOYEE to LSU in the application process or fraud in the

preparation, falsification, or alteration of documents or records of LSU, the NCAA, or the SEC, or documents or records pertaining to any recruit or student athlete, including without limitation transcripts, eligibility forms, and compliance reports; or knowingly permitting any other person to commit such fraud;

- h. Failure to respond reasonably accurately and fully within a reasonable time to any reasonable requests or inquiry relating to the performance of any duties herein or at any prior employment at any other institution of higher learning propounded by LSU, the NCAA, the SEC or any other governing body having supervision over the athletic programs of LSU or such other institution of higher education, or required by law or Governing Athletics Regulations; or knowingly permitting any other person to fail to so respond;
- i. Participation in any gambling, bookmaking, wagering, or betting involving any athletic contest whether by soliciting, placing, or accepting a bet or wager or through a bookmaker, a pool, or any other method of gambling; or knowingly permitting any student athlete or other individual under EMPLOYEE's control, authority, or supervision to participate in such activity;
- j. Providing information or data, other than information or data provided to the general public through public presentation, relating in any manner to any intercollegiate sport or to any student athlete to any individual whom EMPLOYEE knows (or has constructive knowledge) to be a gambler, better, or bookmaker, or an agent of any such person; or knowingly permitting any student athlete or other individual under EMPLOYEE's control, authority, or supervision to furnish such information or data;
- k. Use or consumption of alcoholic beverages or controlled substances, steroids, or other drugs or chemicals to such degree and for such appreciable period as to substantially impair EMPLOYEE's ability to perform the duties herein;
- l. Sale, purchase, use or possession of any controlled substances, steroids, or other drugs or chemicals, the sale, purchase, use, or possession of which by EMPLOYEE is prohibited by law or Governing Athletics Rules. The provisions of this subsection do not prohibit the use or possession of substances or drugs lawfully prescribed by a healthcare provider, and used in accordance therewith.
- m. Knowingly encouraging or allowing the sale, purchase, use, or possession by any student athlete or other individual under

EMPLOYEE's control, authority, or supervision of any controlled substances, steroids, or other drugs or chemicals, the sale, purchase, use, or possession of which by such person is prohibited by law or Governing Athletics Rules;

- n. Failing reasonably to cooperate in the investigation and enforcement of Governing Athletics Regulations or in any LSU internal investigation or inquiry; or knowingly permitting any other person to fail to cooperate in such investigation and enforcement;
- o. Subject to any right of administrative appeal permitted or granted to EMPLOYEE by the NCAA or SEC, any finding or determination by the NCAA, SEC, or any commission, committee, council, or tribunal of the same, of any major or repetitive violations by EMPLOYEE of NCAA or SEC rules, or of any such major or repetitive violations by others under the direct supervision of EMPLOYEE which were knowingly and intentionally permitted, encouraged, or condoned by EMPLOYEE, or about which violations EMPLOYEE knew or should have known and should have acted reasonably to prevent, limit, or mitigate (it is recognized that this subsection includes findings or determinations of violations during employment of EMPLOYEE at any other institution of higher education);
- p. Failing to report promptly to the Senior Associate Athletic Director for Compliance any violations of Governing Athletics Regulations involving the Team of which EMPLOYEE has actual knowledge;
- q. Failure by EMPLOYEE to engage in, and use best efforts to ensure that personnel under EMPLOYEE's direct or indirect supervision engage in, safe and responsible treatment of student athletes on the Team, including without limitation failure to comply with any requirement pertaining to medical clearance for participation, or any other act or omission (including but not limited to physical and/or emotional abuse of student athletes) that creates, or could reasonably be expected to create, an unreasonable risk of harm to a student athlete;
- r. Failure to comply with LSU policies, rules and regulations concerning Title IX, including specifically but not exclusively the reporting of any incident of sexual misconduct in accordance with LSU's Title IX policy and PM-73; or
- s. Knowingly committing material violation(s) of the terms of this Agreement.

2. In the event of termination for cause, EMPLOYEE's Base Salary Amount, Supplemental Compensation (if any), and all other compensation and benefits provided for in this Agreement shall terminate on the termination date, and LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than compensation (including Incentive Compensation) earned prior to the termination date. The termination date shall be the date on which the initial notice of termination is given, or on such later date as may be set forth by LSU in the notice of termination. Should the EMPLOYEE be reinstated following a hearing, EMPLOYEE shall be paid any lost compensation and benefits, retroactive to the date of the initial notice of termination.
3. Any judgment as to whether the criteria contained in this Section have been met shall not be made arbitrarily or capriciously by LSU. Prior to termination for cause, EMPLOYEE shall be provided with written notice of contemplated termination and a statement of the grounds and facts in support thereof and shall have five calendar days from receipt of such notice to respond in writing and/or present documents or other written evidence to the Athletic Director.

After review any such response the Athletic Director or the Athletic Director's designee will provide EMPLOYEE written notice of a decision. Within five calendar days of receipt of the decision, EMPLOYEE may make a written request for a hearing to the President. If no such request is made, the decision of the Athletic Director is final. If a request for hearing is made, the President or the President's designee(s) will conduct the hearing. The hearing and related proceedings will not be open to the public. EMPLOYEE has the right to an advisor, including legal counsel, at the hearing but the advisor or counsel may not participate in the hearing, question witnesses or address the President or President's designee(s).

4. Within five calendar days of the hearing, EMPLOYEE will be provided written notice of the decision of the President, which will be final.
5. As required by NCAA Bylaw 11.2.1, EMPLOYEE is hereby notified that in addition to the actions LSU may take in accordance with this Agreement, EMPLOYEE is also subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures if EMPLOYEE is found by the NCAA or LSU to be in violation of NCAA Bylaws. EMPLOYEE agrees that LSU shall implement any such disciplinary or corrective actions imposed by the NCAA. EMPLOYEE further understands that EMPLOYEE has an affirmative obligation to cooperate fully in the NCAA infractions process, including the investigation and adjudication of a case, pursuant to this Agreement and NCAA Bylaw 11.2.1, and that such obligation continues in effect during and beyond the termination of this Agreement for any violations alleged to have occurred during EMPLOYEE's employment by LSU.

**B. Termination by LSU without Cause.**

1. LSU shall have the right to terminate this Agreement without cause upon written notice to EMPLOYEE. In such event, LSU will pay EMPLOYEE liquidated damages in lieu of any and all other legal remedies or equitable relief as detailed below.
2. Liquidated damages under this Section will be the total Base Salary Amount, Supplemental Compensation and any earned but unpaid Post-Season Incentive Compensation remaining in the Term at the time of termination.
3. In the event of termination by LSU without cause, EMPLOYEE's Base Salary, Supplemental Compensation (if any), Fringe Benefits, and all other compensation and benefits provided for in this Agreement shall terminate on the termination date, and LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than the liquidated damages provided for herein and any compensation earned pursuant to this Agreement prior to the termination date. The termination date shall be the date on which notice of termination is given, or on such later date as may be set forth by LSU in the notice of termination.
4. Liquidated damages under this Section will be paid in equal monthly installments over a period of time equal to the amount of time then remaining in the Term, including any extended term.
5. In the event of termination by LSU without cause, the amount of liquidated damages owed by LSU under this Section shall be reduced and extinguished by and to the extent of any compensation EMPLOYEE earns, receives, or is entitled to receive for athletics-related employment from any third party from the termination date until LSU's obligation pursuant to this Section to EMPLOYEE terminates or ceases to exist. EMPLOYEE shall exercise due diligence and good faith in seeking other athletically-related employment. In the event EMPLOYEE obtains such other employment, EMPLOYEE must notify LSU and provide any and all documentation requested by LSU to determine the amount of compensation received by EMPLOYEE and the amount of offset due to LSU.
6. The parties have bargained for this liquidated damages provision. This is an agreement for personal services. The parties recognize that termination of this Agreement by LSU prior to its expiration by lapse of term would cause EMPLOYEE to lose the salary, supplemental compensation, fringe benefits, certain other LSU-provided benefits, and possibly other income and benefits provided by third parties, which damages are impossible to determine with certainty. As such, the damages that may be suffered by EMPLOYEE in the event of a termination of this Agreement by LSU

without cause are difficult to presently and accurately estimate. In addition, the parties expressly agree that the liquidated damages herein are not in any way a penalty.

**C. Termination by EMPLOYEE Without Cause.**

1. EMPLOYEE shall have the right to terminate this Agreement without cause upon written notice to LSU. In the event EMPLOYEE terminates this Agreement without cause, EMPLOYEE will pay LSU liquidated damages, in lieu of any and all other legal remedies or equitable relief. In the event of termination by EMPLOYEE without cause, EMPLOYEE's Base Salary, Supplemental Compensation (if any), Fringe Benefits, and all other compensation and benefits provided for in this Agreement shall terminate on the termination date, which, unless otherwise agreed to in writing by LSU on one hand and EMPLOYEE on the other hand, shall be the earlier of: (a) the date on which EMPLOYEE provides notice of termination to LSU; (b) the date on which EMPLOYEE accepts employment from another employer; or (c) the date on which EMPLOYEE performs any work or services of any kind or nature whatsoever on behalf of or for the benefit of another employer. LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than any compensation earned pursuant to this Agreement prior to the termination date, other than any earned by unpaid Incentive Compensation. The Parties acknowledge that this provision is intended to obligate EMPLOYEE to repay unearned compensation and fees previously received under the premise that EMPLOYEE would fulfill the Term of this Agreement.
2. If EMPLOYEE terminates employment during the Term, EMPLOYEE will pay to LSU liquidated damages as provided on Schedule A. EMPLOYEE shall have the option to pay such amount in a lump sum or in equal monthly installments over a period of time equal to the amount of time then remaining in the Agreement, including any extended term.
3. Liquidated damages under this Section may be waived, in the sole discretion of the President, if EMPLOYEE is not in breach of any provision of this Agreement and LSU determines that such a waiver would serve the best interests of LSU, considering factors such as, but not limited to, EMPLOYEE's length of service with LSU, whether EMPLOYEE is taking another athletically-related job, the impact the timing of EMPLOYEE notice has on the Team (whether it is given before, during, or after the Team's season and recruiting period), EMPLOYEE's ability and willingness to assist LSU if requested during any transition period (such as during post-season play after giving notice at the end of the regular season), ease of recruiting a replacement for EMPLOYEE, and the impact that the payment of liquidated damages would have on recruiting and retaining other similarly-situated coaches.

4. The parties have bargained for this liquidated damages provision. This is an agreement for personal services. The parties recognize that termination of this Agreement by EMPLOYEE prior to its expiration by lapse of term would cause LSU to incur administrative, recruiting, and resettlement costs in obtaining a replacement coach for Team, in addition to potentially increased compensation costs and loss of ticket revenues, which damages are impossible to determine with any certainty.
5. Unless notice of termination under this Section has been given by either party, neither EMPLOYEE nor EMPLOYEE's agent shall, under any circumstances, discuss or negotiate directly or indirectly prospective employment for EMPLOYEE with any other institution of higher education, professional athletic team, or other athletically-related (including media and sports marketing) prospective employer without giving prior written notice (which written notice shall for the purposes of this Section include electronic mail) to the President and the Athletic Director.

**D. Suspension or Other Disciplinary Action.**

1. In lieu of termination for cause, and apart from any rights it may have under this Agreement, LSU may impose disciplinary sanctions less severe than termination upon EMPLOYEE, up to and including suspension or leave without pay for a period no longer than 90 days for any act or omission which would be grounds for discipline or termination for cause. Imposition of such sanctions shall be at the discretion of LSU, which shall not be exercised arbitrarily or capriciously. Prior to suspension without pay under this provision, EMPLOYEE shall be provided written notice of the grounds for the suspension and shall have five calendar days from receipt of such notice to respond in writing to the Athletic Director. After review of any such response, the Athletic Director or the Athletic Director's designee(s) will provide EMPLOYEE with written notice of a decision and/or suspension.
2. Upon written notice and after reasonable opportunity to respond in writing, LSU may suspend EMPLOYEE for an indefinite period during any investigation by LSU, another governmental entity, or the NCAA or SEC to determine whether EMPLOYEE has violated any laws or Governing Athletics Regulations. During such suspension, EMPLOYEE shall receive only the Base Salary and any compensation earned but not yet paid as of the date of the suspension, along with fringe benefits provided under Section 9 of this Agreement, and shall not be entitled to receive any other benefits, compensation or remuneration set forth in this Agreement for the period of such suspension. If the matter giving rise to the suspension is finally resolved completely in favor of EMPLOYEE, and does not otherwise represent an independent basis for termination herein for cause, LSU shall pay or make available to EMPLOYEE the benefits



and other compensation herein otherwise payable to EMPLOYEE during the period of suspension. Any such benefits which are payable pursuant to this Agreement by an affiliated foundation shall only be paid by such foundation, subject to its approval. Suspension under this subsection shall not limit any rights of LSU to terminate EMPLOYEE for cause.

3. EMPLOYEE shall be subject to disciplinary or corrective action by the NCAA or SEC for any violation of NCAA and SEC regulations, respectively. Such action by the NCAA or the SEC shall not preclude or in any manner affect LSU's right to take such other corrective or disciplinary action as it deems necessary or proper, including termination for cause.
4. Notwithstanding any other provision of this Agreement to the contrary, if EMPLOYEE is suspended by the SEC or NCAA, EMPLOYEE shall automatically be suspended by LSU for the duration of the SEC or NCAA imposed suspension without further notice or process. During such suspension, EMPLOYEE shall not be entitled to receive any compensation, benefits or any other payments under this Agreement except for fringe benefits provided under Section 9 of this Agreement.

E. **Termination by Death or Disability.** In the event of the death of EMPLOYEE or the inability of EMPLOYEE to perform the obligations described in this Agreement with or without accommodation by reason of disability or some other occurrence beyond the control of either party, and such inability to perform has continued or will continue beyond a reasonable period of time, but not less than 60 days, this Agreement shall terminate as a termination with cause and all future obligations between the parties shall cease upon the termination date reasonably established by LSU, unless otherwise required by law.

F. **Waiver of Claims.** The financial consequences of termination of this Agreement or suspension herein are exclusively set forth herein. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause, or suspension or other disciplinary sanction effected in accordance with the procedures established in this Agreement, neither EMPLOYEE nor LSU shall be entitled to receive, and each hereby waives any claim against the other, and their respective board members, officers, directors, agents, employees, successors, and personal representatives for consequential damages by reason of any alleged economic loss, including without limitation loss of collateral income, deferred income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of fees from speaking, camps or other outside activity, or damages allegedly sustained by reason of alleged humiliation or defamation or other non-compensatory and compensatory damages and attorney's fees resulting from the fact of termination, the public announcement thereof, or the release by LSU or EMPLOYEE of information or documents required by law. EMPLOYEE acknowledges that in the event of either termination of this Agreement for cause, without cause, or otherwise, or suspension or other disciplinary sanction effected in accordance with the procedures established in

this Agreement, EMPLOYEE shall have no right to occupy the Position and that EMPLOYEE's sole remedies are provided herein and shall not extend to injunctive relief. EMPLOYEE further acknowledges and agrees that EMPLOYEE is not eligible for and will not be considered for or granted tenure by LSU.

12. **Discontinuation of the Program by the University.** Notwithstanding any provision to the contrary, in the event the University determines for any reason within its sole discretion to discontinue the Program as a Division I sport, LSU shall have the right to terminate this Agreement without further obligation to EMPLOYEE. Notice of termination under this Section shall be in writing and shall establish a date of termination no less than 90 days from the date of the notice or upon the End Date, whichever occurs first. In the event the right to terminate pursuant to this Section is exercised, all obligations between the parties shall cease effective on the date of termination.
13. **Retention and Return of all Materials, Records, and Other Items.** All documents, records, or materials, including without limitation personnel records, recruiting records, team information, films, statistics, or any other material or data furnished to EMPLOYEE by LSU or developed by EMPLOYEE on behalf of or at the expense of LSU or otherwise in connection with the employment of EMPLOYEE are and shall remain the sole and confidential property of LSU. Within 10 days of the expiration or termination of this Agreement, EMPLOYEE shall cause any such materials in EMPLOYEE's possession or control to be delivered to LSU. At the same time, EMPLOYEE shall return to LSU all credit cards, keys, computers, automobiles, mobile communication devices and other items belonging to LSU which were issued to or are in the possession of EMPLOYEE.
14. **Leave and Overtime.**
  - A. **No Annual Leave.** Because of the specific nature of EMPLOYEE's job duties and the irregular times during which EMPLOYEE will be required to perform those job duties (for example, working in excess of 40 hours per week during Team's season, post-season, and recruiting period, while having fewer responsibilities in the off-season), EMPLOYEE acknowledges and agrees that EMPLOYEE will not earn or accrue annual leave.
    1. EMPLOYEE's Base Salary Amount has been mutually negotiated with this understanding, and both EMPLOYEE and LSU agree that the Base Salary Amount would be less if EMPLOYEE were entitled to earn annual leave.
    2. If any administrative tribunal, statewide elected official, or state board or commission with jurisdiction over such matters, or any court of competent jurisdiction, rules or publishes a formal written opinion or decision that Louisiana law requires EMPLOYEE to earn annual leave, and such rule or opinion is binding on LSU or LSU otherwise determines to comply with the opinion or ruling, then EMPLOYEE's Base Salary shall be reduced by the dollar value of the annual leave for which EMPLOYEE is credited (using the dollar value of such annual leave as of the date on which the

opinion or ruling is published). This reduction shall be retroactive to the date on which EMPLOYEE's earning of annual leave is calculated to begin, and EMPLOYEE shall repay to LSU the amount of the reduction. EMPLOYEE shall pay LSU any amount owed as a result of this retroactive reduction in equal monthly installments for a period of 12 months (or such longer or shorter period as may be mutually agreed in writing by EMPLOYEE and LSU) from the date on which the EMPLOYEE is given notice that EMPLOYEE will be credited with annual leave pursuant to this Section. In the alternative, if not prohibited by the ruling or otherwise disallowed by law, EMPLOYEE may waive EMPLOYEE's right to annual leave (both retroactively and/or prospectively) in lieu of making the payments that would otherwise be required under this Section.

- B. **No Overtime.** EMPLOYEE qualifies and is designated as exempt under the Fair Labor Standards Act and is not be entitled to any overtime pay or compensatory leave for work in excess of 40 hours in any workweek.
  - C. **Sick Leave.** EMPLOYEE will accrue and use sick leave in accordance with LSU policy.
  - D. **Notice of Absence.** EMPLOYEE is required to receive authorization from the Athletic Director or the Athletic Director's designee prior to being absent from EMPLOYEE's usual duties and responsibilities, not to be unreasonably withheld.
15. **Non-Assignment.** Neither party may assign, transfer, alienate, or encumber any of its rights or obligations hereunder without the express written consent of the other party, except as otherwise specifically set forth in this Agreement.
16. **Entire Agreement.** This Agreement constitutes and expresses the entire agreement and understanding of the parties concerning the employment of EMPLOYEE by LSU and shall, upon the effective date hereof, supersede any other oral and written agreements between the parties. There are no oral or other agreements, understandings, promises, or representations between the parties affecting this Agreement. Both parties have relied solely on their own respective judgments in entering into this Agreement, with full opportunity to seek advice of competent counsel. It shall be construed, if necessary, without reference to the party that was the principal drafter of the Agreement.
17. **Indirect Actions Prohibited.** Any act which EMPLOYEE is prohibited from doing directly in this Agreement may not be done indirectly by EMPLOYEE or another person on EMPLOYEE's behalf or at EMPLOYEE's behest.
18. **Amendments to Agreement.** This Agreement may be amended only by a written instrument duly approved by LSU through its designated representatives and accepted by EMPLOYEE, such approval and acceptance to be acknowledged in writing.
19. **Severability.** If any provision of this Agreement shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to

delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.

20. **No Waiver of Default.** No waiver by the parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein.
21. **No Waiver of Sovereign Immunity.** It is expressly agreed and understood between the parties that nothing contained herein shall be construed to constitute a waiver or relinquishment by LSU of any rights to claim such exemptions, privileges and immunities as may be provided by law.
22. **“Force Majeure” Clause.** Neither party shall be considered in default of performance of any obligations under this Agreement if such performance is prevented or delayed by Force Majeure. “Force Majeure” shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil unrest, strike, lockout, epidemic or pandemic, government-ordered restriction or cessation of activity, accident, fire, natural disaster, wind or flood or any requirements of law, or an act of God.
23. **Governing Law and Venue.** This Agreement shall be enforced and construed in accordance with the laws of Louisiana. Any civil action to enforce this Agreement shall be brought in a state or federal court having jurisdiction and domiciled in East Baton Rouge Parish, Louisiana.

**[SIGNATURES ON FOLLOWING PAGE]**

THE PARTIES hereto, acknowledging that this Agreement is subject to approval of the Board of Supervisors, have executed this Agreement on the day, month and year first above written.

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE

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

Thomas C. Galligan, Jr. Date  
Interim President  
Louisiana State University and  
Agricultural and Mechanical College

DocuSigned by:  
*Jeffrey J. Clark* 9/15/2020  
\_\_\_\_\_  
Jeffrey J. Clark Date

RECOMMENDED:

DocuSigned by:  
*Scott Woodward* 9/15/2020  
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Scott Woodward  
Director of Athletics  
Louisiana State University and  
Agricultural and Mechanical College

DocuSigned by:  
*Dan Layzell* 9/15/2020  
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Daniel T. Layzell  
Executive Vice President for Finance and Administration/CFO  
Louisiana State University and  
Agricultural and Mechanical College

**SCHEDULE A**  
**SUPPLEMENTAL TERMS FOR JEFFREY J. CLARK**

This Schedule A supplements and further defines the provisions of the Employment Agreement entered into between LSU and EMPLOYEE to which it is attached (the “Agreement”). In the event of a direct and clear conflict between the other provisions of the Agreement and this Schedule A, the provisions of this Schedule A shall control.

**1. Supplemental Compensation.** Pursuant to Section 7 of the Agreement, Supplemental Compensation is payable as follows.

- A. **Media Participation.** While employed under this Agreement, EMPLOYEE will earn and receive Supplemental Compensation of \$5,000 during each calendar year of this Agreement payable in 12 equal monthly installments on LSU’s regular monthly payroll date and pro-rated appropriately for partial years and months. This compensation to EMPLOYEE is for being available for, appearing on or participating in, as requested, University sanctioned television, radio and internet programming concerning LSU and the Team.
- B. **Retention.** If EMPLOYEE maintains employment through June 30, 2025, EMPLOYEE shall be entitled to Supplemental Compensation in the amount of \$100,000. This compensation to EMPLOYEE shall be considered earned on June 30, 2025 if EMPLOYEE has maintained uninterrupted employment with LSU. This compensation is for additional stability and value brought to the Team and Program and is payable within 60 days of achievement.

**2. Incentive Compensation Schedule.** Pursuant to Section 8 of the Agreement, Incentive Compensation is payable as follows.

- A. **Post-Season Incentive Compensation.** Subject to the terms and conditions set forth in the Agreement, EMPLOYEE shall receive Post-Season Incentive Compensation in the amounts and based on attaining the goals shown below. The maximum amount of Post-Season Incentive Compensation payable in a contract year shall be \$130,000.

1. Post-Season SEC Incentive Compensation Goals (maximum of \$40,000 per year):
  - a. SEC Meet Champion \$ 25,000 OR
  - b. SEC Season Champion \$ 25,000 OR
  - c. Both SEC Meet Champion AND  
SEC Season Champion \$ 40,000
2. Post-Season NCAA Incentive Compensation Goals (maximum of \$90,000 per year):

- a. Appearance in NCAA Tournament \$ 5,000 OR
- b. NCAA Final 16 \$ 10,000 OR
- c. NCAA Final 8 \$ 25,000 OR
- d. NCAA Final 4 \$ 50,000

AND

- e. NCAA National Champion \$ 40,000

- 3. Post-Season Incentive Compensation is additional compensation for the extra services required of EMPLOYEE in the preparation for and participation in post-season play. If payable, Post-Season Incentive Compensation shall be paid within 60 days following the final postseason game in which Team participates.
- 4. If EMPLOYEE does not actively coach the Team in the Position for any post-season game for any reason, including but not limited to termination or re-assignment of position, EMPLOYEE shall not be entitled to Post-Season Incentive Compensation.

**B. Coaching Recognition Incentive Compensation.** EMPLOYEE may earn Coaching Recognition Incentive Compensation for receiving the following recognition. Coaching Recognition Incentive Compensation, if payable, shall be considered earned as of the first date any of the listed honors is named and shall be paid within 60 days of that date. The maximum amount of Coaching Recognition Incentive Compensation payable in a contract year shall be \$40,000.

- 1. SEC Coach of the Year \$15,000 AND
- 2. National Coach of the Year \$25,000

**C. Academic Incentive Compensation.** In the event the multi-year Academic Performance Rate "APR" (as defined by the NCAA) for the Program is the minimum APR multi-year score established by the NCAA (current minimum score is 930) in any one contract year, LSU agrees to pay EMPLOYEE Academic Incentive Compensation in the amount of \$5,000 for that contract year. The Academic Incentive Compensation, if payable, shall be considered earned on the date on which the APR for LSU is released while EMPLOYEE is employed at LSU and shall be paid within 60 days of such date. To be eligible for such compensation, EMPLOYEE must be employed by LSU as of the date on which the incentives are earned.

- 3. **Liquidated Damages for Termination by EMPLOYEE Without Cause.** Pursuant to Section 11(C)(2) of the Agreement, if EMPLOYEE terminates Employment during the

Term to accept other employment, EMPLOYEE will pay LSU liquidated damages of 25 percent of the Base Salary Amount for the remaining term of this Agreement.

**4. Supplemental Provisions.**

A. Section 14(A) of the Agreement is deleted in its entirety.

*Approved:*

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

Thomas C. Galligan, Jr. Date  
Interim President  
Louisiana State University and  
Agricultural and Mechanical College

DocuSigned by:  
Jeffrey J. Clark 9/15/2020  
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Jeffrey J. Clark Date

**RECOMMENDED:**

DocuSigned by:  
Scott Woodward 9/15/2020  
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Scott Woodward  
Director of Athletics  
Louisiana State University and  
Agricultural and Mechanical College

DocuSigned by:  
Dan Layzell 9/15/2020  
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Daniel T. Layzell  
Executive Vice President for Finance and Administration/CFO  
Louisiana State University and  
Agricultural and Mechanical College





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## Board of Supervisors

# PHARMACY BENEFITS MANAGER

BOARD OF SUPERVISORS MEETING | SEPTEMBER 21, 2020



## Board of Supervisors

### **Request from LSU A&M to Authorize the Board of Supervisors to Enter Into a Contract for Pharmacy Benefit Manager Services for the LSU First Health Plan**

**Date:** September 16, 2020

#### **1. Bylaw Citation**

Pursuant to Article VII, Section 1

A. Any matter having a significant or long term impact, directly or indirectly, on the finances or the academic, educational, research, and service missions of the University or any of its campuses.

#### **2. Summary of Matter**

LSU First is the university's self-funded health insurance program. It covers approximately 18,000 lives. The plan partners with a pharmacy benefit manager (PBM) to administer the pharmacy benefits in a manner consistent with the plan design. The contract with the current PBM partner ends December 31, 2020, so the university recently solicited proposals for the PBM partnership to begin with the new Plan Year on January 1, 2020.

After a competitive process, MedImpact Healthcare Systems, Inc. (MedImpact) was selected as the most qualified respondent. This approval would give the President the authorization to execute a contract with MedImpact that would have a term of three years. Upon execution of the contract, the LSU First team will begin working with the vendor to integrate with the health plan.

#### **3. Review of Business Plan**

Not Applicable

#### **4. Fiscal Impact**

It is expected that a contract with MedImpact based on their proposal will lead to cost savings for the LSU First health plan in future years. The extent of the savings will be based on actual claims in future years.

#### **5. Description of Competitive Process**

LSU Human Resource Management began collaborating with the Office of Procurement Services on the specification for the Request for Proposal (RFP) more than a year ago. An RFP was advertised on May 5, 2020. Proposals were evaluated on a number of criteria, including the respondent's qualifications and experience, the technical proposal, and the financial proposal. A summary of the evaluation criteria is included as Attachment 1.

The RFP solicited proposals for a pass-through PBM model. In this model, the health plan pays the actual drug costs and the PBM does not use "spread pricing" in which it retains the difference between what it pays to the manufacturer and what it charges the health plan. In addition, the

PBM shares 100% of any manufacturer rebates that it receives to the university. The pass-through model is a transparent approach to PBM pricing.

A comprehensive evaluation team of from university units and other campuses reviewed responses to the RFP, selecting MedImpact as the most advantageous proposal to the university.

## **6. Review of Legal Documents**

LSU Human Resource Management, LSU Procurement Services, and Office of General Counsel are currently reviewing and finalizing details of the PBM contract based on the proposal submitted in response to the RFP and subsequent BAFO presentation. A draft of the contract is included as Attachment 2.

## **7. Parties of Interest**

Louisiana State University and MedImpact Healthcare Systems, Inc.

## **8. Related Transactions**

Not Applicable

## **9. Conflicts of Interest**

None known.

## **10. Attachments**

1. Summary of PBM RFP Evaluation Criteria
2. Draft Contract with MedImpact Healthcare Systems, Inc.

## **RESOLUTION**

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby authorize the President, or his or her designee, acting on behalf and in the name of the Board, and in consultation with general counsel, to execute an agreement with MedImpact Healthcare System, Inc. as determined by a competitive bid and evaluation process, with all such agreements and documents as well as any subsequent amendments thereto, to contain the terms and conditions, that the President deems in the best interest of LSU.

**Attachment 1: Summary of PBM RFP Evaluation Criteria**

| Evaluation Criteria  | Possible Points |
|--|-----------------|
| Respondent Qualifications and Experience   | 5 points        |
| Technical Proposal <ul style="list-style-type: none"> <li>• Formulary Disruption Analysis (7.5 points)</li> <li>• Network Disruption Analysis (5 points)</li> <li>• Additional Information (10 points)</li> <li>• Performance Guarantees and Other Contracting Items (7.5 points)</li> </ul>   | 30 points       |
| Financial Proposal <ul style="list-style-type: none"> <li>• Projected Gross Drug Cost</li> <li>• Retail Network Pricing</li> <li>• Mail Pricing</li> <li>• Specialty Pricing</li> <li>• Minimum Rebate Guarantees</li> <li>• Projected Administrative Fees</li> <li>• Base Administrative Fee</li> <li>• Administrative Ancillary Fee</li> </ul> | 53 points       |
| Veteran and Hudson Initiative  | 12 points       |
| Total Possible Points  | 100             |



**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND  
MECHANICAL COLLEGE,  
PARISH OF EAST BATON ROUGE**

Be it known, that on this **DATE** day of **MONTH YEAR**, the **Board of Supervisors of Louisiana State University and A&M College** (hereinafter sometimes referred to as the "University" or "LSU") and **MedImpact Healthcare Systems, Inc., 10181 Scripps Gateway Court, San Diego, CA 92131** (hereinafter sometimes referred to as "Supplier") do hereby enter into contract under the following terms and conditions.

**ARTICLE I  
TERM**

- 1.0** The term of this Agreement shall be for three (3) years, commencing on January 1, 2021 ("Implementation Date") and ending on the day immediately preceding the 3rd anniversary of the Effective Date ("End date"). This Agreement may be extended for 2 additional 12 month periods, subject to the mutual Agreement of LSU and Supplier. The Effective Date is upon full execution of this agreement.

**ARTICLE II  
SCOPE OF SERVICES**

- 2.0** The Supplier shall provide Pharmacy Benefit Management services with a pass-through model for plan participants enrolled in the LSU First Health plan. LSU expects to pay competitive prescription wholesale drug prices, highly competitive administrative fees, and to have minimal disruption to the enrolled members of the LSU First plan. LSU further expects the Supplier's only revenue source to be within the disclosed administrative fees and expects the Supplier to disclose to LSU all sources of revenue earned by administering the LSU plan. The Supplier will be responsible for all facets of the day to day operational administration of LSU's pharmacy benefit plan including, but not limited to adjudications and payment of pharmacy claims, network and rebate management, formulary management, call center operations, clinical management programs, auditing of pharmacies, implementation of cost-savings programs, and general and advisory services regarding pharmacy benefit design and implementation.

Also, the Supplier will provide services in processing and reconciliation of the Retiree Drug Subsidy (RDS) claims for retiree drug cost. It is expected that the Supplier will support LSU's variety of program offerings and initiatives. The Supplier will work with LSU, LSU appointed plan Suppliers and actuaries which are responsible for managing the LSU First Health plan. LSU reserves the right to change its health plan at any time during the period of the contract.

**ARTICLE III  
DEFINITIONS**

- 3.0** **Account Management Team:** Supplier's staff for PBM services assigned to LSU which shall include an Account Executive, Implementation Manager, Clinical Program Manager, Clinical Pharmacy Manager, and Customer Service Manager.

**Agreement or Contract:** The written Agreement, if any, executed by the authorized representatives of the University and the Supplier that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in the RFP, of the respective parties to the arrangement for provision of services.

**Average Wholesale Price (AWP):** The average wholesale price for a given pharmaceutical product as published by drug pricing services such as Medi-Span or other third-party pricing sources which MedImpact may select ("Pricing Source"). As of the Effective Date, MedImpact uses Medi-Span as its Pricing Source for AWP. AWP will be updated in MedImpact's online claims adjudication system on at least a weekly basis with data received from the Pricing Source, which if not received timely could result in delays. The applicable AWP for prescriptions dispensed shall be based on the actual NDC submitted by the pharmacy. AWP does not represent a true wholesale price, but rather is a fluctuating benchmark provided by third-party pricing sources.

**Benefit Plan:** The benefit plan(s) pursuant to which Covered Benefits are provided to Eligible Members.

**Benefit Plan Information:** The information required by MedImpact to process Claims and provide Services under this Agreement, including processing parameters, coverage rules, and other information, provided to MedImpact in accordance with this Agreement.

**Business Associate Agreement:** A privacy agreement amongst parties

**Business Day:** All days except Saturdays, Sundays, and federal holidays. All references to "day" or "days" in this Agreement are to calendar days unless "Business Day" is specified.

**Brand:** a product that is being marketed post patent expiration by the original manufacturer and is subject to the generic competition.

**Brand Drug:** a prescription drug that is protected by a patent, supplied by one company and marketed under the manufacturer's brand name or a multi-source brand product which was once a Brand product. A prescription drug identified as a "brand" by Medi-Span with a code of ("M", "N", or "O") on the date dispensed.

**Campus:** Louisiana State University and Agricultural & Mechanical College (LSU), a component of the Board of Supervisors of Louisiana State University System under the management of the Louisiana State University and Agricultural & Mechanical College located in Baton Rouge.

**Claim:** Those requests for payment for prescription services, drugs, devices, supplies, or other related items that are processed through MedImpact's online claims adjudication system or otherwise sent to and/or processed by or through MedImpact in accordance with the terms of this Agreement, including requests for payment from Participating Pharmacies, Member Submitted Claims, and Subrogation Claims.

**Claims Processing Fee:** The per Claim fee identified in Exhibit A of this Agreement.

**Copayment:** That portion of the cost for each Covered Benefit dispensed to an Eligible Member that is the responsibility of the Eligible Member (e.g., copayment as a fixed dollar amount, coinsurance percentage, deductible, and/or other ancillary charges for which an Eligible Member may be responsible), as set forth in the Benefit Plan Information.

**Covered Benefits:** Those outpatient drugs, products, services, testing and/or diagnostics, or supplies that are prescribed by a prescriber and/or covered under a Benefit Plan as set forth in the Benefit Plan Information.

**Direct Member Reimbursement (“DMR”) Claims:** A Claim submitted by an individual (not a pharmacy) for coverage under a Benefit Plan for a prescription that was dispensed by a pharmacy for which the individual paid the full amount of the cost of the drug.

**Dispensing Fee:** The fee billed to The University for the filling of a single prescription order for an Eligible Member as set forth in Exhibit A.

**Effective Date:** The date of which this Agreement is fully executed by both parties.

**Eligible Members:** Those individuals and their dependents who are entitled to Covered Benefits under a Benefit Plan as identified in the Eligible Member List in effect with MedImpact as of the date the Covered Benefit is provided.

**Eligible Members List:** The list of Eligible Members provided to MedImpact in accordance with this Agreement. The Eligible Members List shall be prepared, maintained, and updated by The University, and delivered to MedImpact in accordance with this Agreement.

**Entity:** An association, corporation, partnership, limited liability company, or any other legal entity individual that has legal standing under State Law.

**ERISA:** The Employee Retirement Income Security Act, as amended, 29 U.S.C. 1001 et seq., and the regulations promulgated thereunder.

**Fiscal Year:** July 1 through June 30.

**Formulary:** The list of outpatient prescription drugs, devices, and supplies that are covered by the Benefit Plan according to the Benefit Plan Information.

**Generic Drug:** any drug that is not a Brand. A prescription drug identified as a “generic” by a Medi-Span code of “Y” on the date dispensed.

**Government Agency(ies):** Government agencies, including but not limited to the Centers for Medicare & Medicaid Services (“CMS”), Office of Inspector General (“OIG”), Health and Human Services (“HHS”), state Medicaid agencies, Veteran’s Administration (“VA”) facilities, Indian Health Services and Bureau of Indian Affairs (“IHS”), and Department of Defense (“DOD”) military treatment facilities (or other similar facilities) (“MTF”), or the agencies’ or facilities’ third-party representatives.

**Higher Education Procurement Code:** The rules adopted pursuant to the authority granted by R.S. 17:3139.5.5.c.i, for use by the initial qualifying institution and those institutions operating under the auspices of a shared services model managed by the qualifying institution, in lieu of state procurement statutes when the university procures goods or services or enters other contracts.

**HIPAA/HITECH:** Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and the regulations promulgated thereunder

**Identification Cards or ID Cards:** Printed identification cards containing information about the Benefit Plan and Covered Benefits to which the Eligible Members are entitled.

**Implementation Date:** January 1, 2021.

**Law:** All applicable federal, state, and local laws, rules, regulations, acts, statutes, ordinances, codes, constitutions, charters, or orders of a Government Agency.

**LSU Board of Supervisors:** The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

**MAC:** The then current maximum allowable cost payable for products on the applicable MAC List pursuant to the applicable maximum allowable cost pricing schedule(s) developed, selected, and/or updated by MedImpact from time to time.

**MAC List:** A list of products subject to maximum allowable cost pricing schedules, which such list(s) is developed, selected, and/or updated (including the addition to or removal of products) by MedImpact from time to time.

**Mail Order Pharmacy:** A MID licensed pharmacy authorized to provide mail order pharmacy services.

**MID:** MedImpact Direct, LLC, a wholly-owned subsidiary of MedImpact.

**Multisource:** a drug that is manufactured by more than one labeler.

**Participating Pharmacies:** Those pharmacies that have contracted directly with MedImpact or an affiliate of MedImpact to provide Covered Benefits for Eligible Members, and may include retail, long-term care, home infusion, ITU, mail order, and/or specialty pharmacies, and shall also mean and refer to The University-Contracted Participating Pharmacies (if applicable) unless otherwise stated.

**Plan Members:** Individuals covered under the LSU First health plan.

**Rebates:** Revenue received from outside sources related to the Plan’s utilization or enrollment in programs. These would include, but are not limited to access fees, market share fees, rebates, formulary access fees, inflation protection/penalty payments, administrative fees, and marketing grants from pharmaceutical manufacturers, wholesalers and data warehouse Suppliers.

**Request for Proposal (RFP):** Referred to as the “Solicitation” or the “RFP” in this document. A solicitation for Proposals to supply services or a combination of services and goods where weighted criteria are the basis for award.

**Services:** The furnishing of labor, time or effort by a Supplier which may involve, to a lesser degree, the delivery or supply of a product, incidental to the required performance.

**Single Source:** a drug that is manufactured by one labeler



**Specialty Drug:** a drug that treats chronic, complex, or life-threatening conditions usually manufactured through biologic processes and/or targeting a specific gene. Typically, these medications are costly and require intensive clinical monitoring, complex patient actions, and/or special handling by the dispensing pharmacy.

**Specialty Drug List:** MedImpact’s list of Specialty Drugs that identifies standard Specialty Drugs and is available upon request.

**Specialty Pharmacy:** MID if and when it operates a specialty pharmacy, otherwise it shall mean such licensed closed door specialty pharmacies with which MID or MedImpact contracts for the provision of MID specialty pharmacy services, or both.

**State:** The State of Louisiana.

**Subcontractors:** Providers under contract to Supplier as approved by the University.

**Subrogation Claim:** Those claims submitted by any Government Agency (or any person or entity acting on behalf of a Government Agency) on behalf of or in the name of an Eligible Member for which The University is responsible as a third-party payer by operation of applicable Laws

**Supplier:** Any person having a contract with a governmental body. The Pharmacy Benefit Manager (PBM) will be the Supplier.

**University or LSU:** Louisiana State University and Agricultural & Mechanical College (LSU), located at Baton Rouge and designated as the premier flagship University for the State, an institution of the Louisiana State University System and under the supervision and management of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

## **ARTICLE IV**

### **SUPPLIER OBLIGATIONS**

#### **4.0 SATISFACTION GUARANTEE/ACCOUNT SATISFACTION**

**4.0.1** Supplier will provide an Implementation Satisfaction guarantee that is separate from all other performance guarantees.

- The Implementation Satisfaction guarantee will be at the sole discretion of LSU, in that LSU can determine, in good faith, between responses such as:
  - Completely Satisfied (5)
  - Very Satisfied (4)
  - Satisfied (3)
  - Dissatisfied (2)
  - Very Dissatisfied (1)
- The average results will be 3 or better on a 5-point scale. Survey results will be calculated and presented to the University in a timely manner.

**4.0.2** Supplier will provide an annual Account Management Satisfaction guarantee.

- The Account Management Satisfaction guarantee will be at the sole discretion of LSU, in that LSU can conduct a satisfaction survey, in good faith, between responses such as:

- Completely Satisfied (5)
- Very Satisfied (4)
- Satisfied (3)
- Dissatisfied (2)
- Very Dissatisfied (1)

Satisfaction is defined as an average rating of 3 or higher on the following 5-point scale.

- Supplier is responsible for survey design, data collection, analysis and costs associated with conducting the online survey. A minimum of 4 surveys must be completed by the University contacts.
- An average score of less than 3 will result in a discussion between the University and MedImpact to ensure the survey results represent an accurate cross-segment of the University stakeholders and to ensure the survey results represent PBM's understanding of the University's level of satisfaction during the time period that is surveyed.

**4.0.3** Supplier will provide a survey with the account management survey, but it will not be offered as a separate performance guarantee.

- At least 85% of members surveyed will be satisfied with MedImpact's service (covering retail, mail order, and specialty as applicable). The survey tool defines satisfaction as:
  - Completely Satisfied (5)
  - Very Satisfied (4)
  - Satisfied (3)
  - Dissatisfied (2)
  - Very Dissatisfied (1)
- MedImpact is responsible for survey design, data collection, analysis, and costs associated with conducting the online survey.
- At least 500 surveys must be completed to report data at a 95% confidence interval with a margin of error of  $\pm 5$  points. The University is responsible for providing member respondent email addresses.

**4.0.4** Supplier will provide a Termination Satisfaction guarantee that is separate from all other performance guarantees.

- The Termination Satisfaction guarantee will be at the sole discretion of LSU to complete a termination satisfaction survey, in that the university can determine, in good faith, between responses such as:
  - Completely Satisfied (5)
  - Very Satisfied (4)
  - Satisfied (3)
  - Dissatisfied (2)
  - Very Dissatisfied (1)
- Supplier is responsible for survey design, data collection, analysis and costs associated with conducting the online survey. A minimum of 4 surveys must

be completed by the University contacts.

- An average score of less than 3 will result in a discussion between the University and MedImpact to ensure the survey results represent an accurate cross-segment of the University stakeholders and to ensure the survey results represent PBM's understanding of the University's level of satisfaction during the time period that is surveyed.

#### **4.1 COMMUNICATION REQUIREMENTS**

- 4.1.1** Supplier agrees to four (4) in person meetings with LSU annually, and weekly calls via phone (at LSU's discretion). Additionally, meeting materials delivered electronically to LSU at least three (3) business days in advance of the meeting and will follow-up on all open issues within three (3) business days after the meeting.
- 4.1.2** Supplier will guarantee that all inquiries and issues sent to the Account Management team will be responded to within 1 business day.
  - For inquiries and issues that cannot be resolved within 1 business day, the Account Team will add them to an issue tracking log and provide an update on weekly call (or more frequently via email is at LSU request).
  - Updates will be made at least every 7 calendar days.
- 4.1.3** Supplier will guarantee that all responses to LSU contract inquiries, redlines, etc. will be provided within 10 business days of receipt, and all open issues will be resolved in good faith within 14 business days.
- 4.1.4** Supplier will conduct an annual benefit plan review 45 days prior to effective date of any plan benefit changes, i.e. copayments, co-insurance, clinical rules, etc.
- 4.1.5** Supplier guarantees that the University will be provided a report of affected members and member template letters 60 days prior to the formulary change effective date.
  - Members who are affected by the change are grandfathered for 90 days after the formulary change effective date, providing advance notice of the negative change in their pharmacy benefit.
- 4.1.6** Supplier will guarantee to issue at least 99% of all new member ID cards and replacement ID cards within 5 business days following receipt of a clean and accurate eligibility file from the University.
- 4.1.7** Supplier will guarantee that 100% of member calls that are transferred to a pharmacist or supervisor will be answered within 5 minutes.
- 4.1.8** Supplier will guarantee that, on average, 100% of calls will be answered by a live agent within 30 seconds or less.
  - This is measured as the amount of time that elapses between the time a call is received into a member service queue to the time the phone is answered by a Customer Service Representative. Measurement excludes calls routed to IVR
- 4.1.9** Supplier will guarantee that 2% or less of calls will be abandoned before the call is answered by Customer Service Representative.
- 4.1.10** Supplier will guarantee that at least 95% of all calls will be resolved at the first point of contact.
- 4.1.11** Supplier guarantees access to MedAccess with established security levels that comply with HIPAA PHI (personal health information) standards of minimal necessary information to complete a task. The University does not have access to CSR call notes and must request

access to any member, pharmacist, or prescriber recording. MedImpact shares call recordings relevant to plan performance. If necessary, all PHI information is deleted from call recordings before it is sent to the University for review.

- 4.1.12** Supplier will promptly review and respond to requests for prior approval for specific drugs following receipt of all required information.
- 4.1.13** Supplier will guarantee that 98% of prior authorization requests will be processed within 2 business days upon receipt of complete and accurate information.
  - Requires that MedImpact is fully delegated for all coverage determinations and a minimum of 500 prior authorizations per quarter. Cases managed by the the University but reported as late would not be included in the numerator.
- 4.1.14** Supplier will guarantee that 98% of all e-mailed member inquires will be responded to and resolved within 48 hours.

## **4.2 PAYMENT/CLAIMS PROCESSING REQUIREMENTS**

- 4.2.1** Supplier will charge all base and ancillary administration fees on a per net paid claim basis.
- 4.2.2** Pass-through rates are defined as charging LSU the same amount that is paid to the retail pharmacies and to mail order pharmacies (if not wholly owned).
- 4.2.3** Supplier will use Medi-Span as the source of AWP.
  - The AWP price will be based on the actual 11-digit National Drug Code (NDC) of the package size dispensed on the date dispensed.
  - Supplier will use the NDC of the original packaging manufacturer rather than repackaged NDC.
  - Supplier's definitions of "Brand" and "Generic" will be based on the following:
    - A drug with a Medi-Span code of "Y" on the date dispensed will be considered a generic; all other Medi-Span codes ("M", "N", "O") will be considered brands.
  - Supplier will not exclude single-source generics, dual-source generics or triple-source generics and will not reclassify generics to brands.
- 4.2.4** Supplier will guarantee that 98% of retail direct reimbursement claims will be processed for payment or rejected and responded to within 14 business days
- 4.2.5** Supplier will guarantee that clean prescriptions received by 5:00p.m. CST will be shipped within 2 business days (measured in business days from the date the prescription drug claim is received by the Supplier either paper, phone, fax or e-prescribed).
  - A minimum number of 1,500 claims per quarter are required for the performance guarantee to apply.
- 4.2.6** Supplier will guarantee that 99% of direct reimbursement claims will be processed and shipped within 14 business days for mail order turnaround.
- 4.2.7** Supplier will calculate, report, and pay all financial settlements (including but not limited to formulary guarantee true-up, discount and dispensing fee guarantees for retail/mail/specialty, clinical program guarantees, etc.) to LSU within 90 days from the close of each reporting period.
  - For rebates, MedImpact can only report the estimated rebate amount based on the guarantee, the guarantee will be fully reconciled around 180 days after

the close of the period, as 100% of all funds are not received until around 150 days after the period.

- MedImpact does not agree to a stand alone guarantee.

**4.2.8** Upon termination, Supplier agrees to pay LSU all rebates received within 180 days after the end of the agreement.

- Rebates received after 180-days after termination will be paid to LSU in full.
- All pricing guarantees will be trued up and any shortfalls will be paid to LSU within 90 days after termination.

**4.2.9** Supplier can reject or add a prior authorization to Compound Drugs at point of sale at no additional cost.

### **4.3 REPORTING REQUIREMENTS**

**4.3.1** Supplier acknowledges that data captured in the administration of the pharmacy plan belongs to LSU and will deliver ad hoc data request to LSU within 10 business days of request.

**4.3.2** Supplier will guarantee delivery of standard financial and clinical reports within 30 days from the close of each reporting period

**4.3.3** Supplier will guarantee that each quarterly report will be provided to LSU 5 business days prior to the meeting.

**4.3.4** Supplier will provide Quarterly Rebate Reporting within 90 days of the end of the quarter showing Billing/Invoiced/Collected/Paid amounts.

### **4.4 ACCUMULATOR REQUIREMENTS**

**4.4.1** Supplier acknowledges LSU requirements for the Health Reimbursement account, remaining deductible, and out of pocket maximum accumulators.

**4.4.2** Supplier will support any deductible or out of pocket maximum cross accumulation in LSU format to ensure compliance with the Summary Plan Document and with the Patient Protection and Affordable Care Act (PPACA).

**4.4.3** Supplier will integrate with selected contractor(s) as defined by LSU for the administration of the Plan, including the health claims administrator for the purposes of health reimbursement account, deductible, and out of pocket maximum accumulation.

### **4.5 RETAIL NETWORK PRICING REQUIREMENTS**

**4.5.1** Supplier's adjudication system will reflect the below claim billing formula:

- Lower of AWP-X%+dispensing fee, MAC + dispensing fee, or U&C.
- AWP-X% represents your organization's most aggressive retail pharmacy contract rate with each pharmacy.

**4.5.2** Supplier guarantees that both the plan sponsor and member will receive the financial benefit of Usual & Customary (U&C) pricing.

**4.5.3** Supplier guarantees that the member will always pay the "lowest of 3" (discounted price, copay, U&C) and that any excess copay from the member will not be retained by your organization.

**4.5.4** Supplier guarantees that there is no minimum charge at retail for any transaction at any retail network store.

- 4.5.5 Supplier guarantees that member contributions (copays, coinsurance, selection penalties, ancillary charges, etc.) will not be included in any calculations:
  - Calculations include adjudication, billing, guarantee reconciliation, etc.
- 4.5.6 Supplier guarantees that no other monies [audit/clinical/therapeutic interchange, Drug Utilization Review (DUR) savings] will be included in any calculations:
- 4.5.7 Supplier guarantees that the AWP and AWP discount on the date of service will be used for billing and guarantee reconciliation.
- 4.5.8 Supplier will confirm if a dispensing fee should be included in the U&C Price.
- 4.5.9 Supplier guarantees that there is no minimum charge at mail for any transaction.
- 4.5.10 Supplier offer includes separate rebate guarantees for Mail, Retail, Retail 90, Specialty, and Retail Specialty. (Retail 90 only when such network is specifically requested.)
- 4.5.11 Supplier agrees that all brand claims (single source, multi-source, formulary, non-formulary etc.) will be included in the minimum rebate guarantee, regardless of Dispense as Written (DAW) penalty. Minimum rebate guarantee cannot exclude any brand claim that is filled as brand claim, regardless of how the claim is billed.
- 4.5.12 Supplier guarantees that brand claims where the member paid 50% of the claim (Zero Balance Due from plan) outside of the deductible are excluded from rebate guarantees.
- 4.5.13 Supplier ensures that rebate guarantees are for actual rebates received from pharmaceutical manufacturers and do not include other amounts including, but not limited to, therapeutic interchange savings.
- 4.5.14 Supplier will use the NDC of the original packaging manufacturer rather than repackaged NDC.
- 4.5.15 Supplier's definitions of "Brand" and "Generic" will be based on the following:
  - A drug with a Medi-Span code of "Y" on the date dispensed will be considered a generic; all other Medi-Span codes ("M", "N", "O") will be considered brands.
- 4.5.16 Supplier will not exclude single-source generics, dual-source generics or triple-source generics and will not reclassify generics to brands.

#### **4.6 FORMULARY REBATE REQUIREMENTS**

- 4.6.1 Supplier will pass through 100% of all rebates including, but not limited to:
  - Base rebates, incentive rebates, manufacturer administrative fees, inflation price protection and all other monies received from pharmaceutical manufacturers.
- 4.6.2 Supplier guarantees a minimum rebate guarantee per brand claim, measured and reconciled annually to the percent share.

#### **4.7 MAIL PRICING REQUIREMENTS**

- 4.7.1 Supplier guarantees MAC pricing at mail.
  - The Mail MAC list and price schedule will be the same (or better) as the Retail MAC list and pricing schedule.
- 4.7.2 Supplier's adjudication system will reflect the below claim billing formula:
  - Lower of AWP-X%+dispensing fee or MAC + dispensing fee.
  - AWP-X% represents a minimum fixed discount for all claims should the MAC price be less aggressive.
- 4.7.3 Supplier guarantees that the member will always pay the lowest of discounted price or copay.
  - Any excess copay from the member will not be retained.

- 4.7.4 Supplier guarantees that the mail service dispensing fee will be \$0.00 and not increased during the contract period for reasons such as: Postage increases, Shipping & Handling increases, etc.
- 4.7.5 Supplier will use the NDC of the original packaging manufacturer rather than repackaged NDC.
- 4.7.6 Supplier's definitions of "Brand" and "Generic" will be based on the following:
  - A drug with a Medi-Span code of "Y" on the date dispensed will be considered a generic; all other Medi-Span codes ("M", "N", "O") will be considered brands.
- 4.7.7 Supplier will not exclude single-source generics, dual-source generics or triple-source generics and will not reclassify generics to brands.

#### **4.8 FINANCIAL GUARANTEE REQUIREMENTS**

- 4.8.1 All financial guarantees, per Exhibit A from Supplier's financial proposal will be guaranteed on a contract year basis.
- 4.8.2 All guarantees will be trued up individually; no guarantees can be cross-subsidized (surplus offsetting shortfalls, etc.) between delivery channels or within a delivery channel (Retail 30 and Retail 90 are considered separate delivery channels); however, rebate guarantees are reconciled in the aggregate across channels.
- 4.8.3 Surplus on any financial guarantee is retained by LSU.

#### **4.9 RISK REQUIREMENTS**

- 4.9.1 Risk on guarantees shall be dollar for dollar on any shortfall with no limit to the amount at risk.

#### **4.10 MARKET CHECK REQUIREMENTS**

- 4.10.1 Supplier will allow fair and flexible market checks throughout the initial agreement to preserve competitiveness of financial terms.
  - Such market checks annually and will be conducted by LSU's third-party consultant of their choosing.
- 4.10.2 Supplier guarantees that if market check audit report indicates current market conditions can yield a 1% or more savings of net plan costs, the parties will reach mutual agreement on revised pricing terms and other applicable provisions.
- 4.10.3 Supplier guarantees that if mutual agreement cannot be reached within 60 days from the date of the Market check audit report, LSU has the right to terminate the agreement upon 30 days prior written notice.

### **ARTICLE V UNIVERSITY OBLIGATIONS**

- 5.0 **IMPLEMENTATION FORMS:** University will cooperate with MedImpact in completing implementation form(s), which contain University information related to benefit structure, system requirements, operational requirements, services selected, and/or other information required by MedImpact with respect to Services to be provided hereunder. University shall promptly review and confirm that the information on the implementation form(s) is accurate and complete and notify MedImpact in writing of any errors and/or inaccuracies on the implementation form(s) within the earlier of thirty (30) days from receipt of the implementation form or ten (10) days prior to the Implementation Date, otherwise all information contained therein will be deemed accurate, complete, and acceptable to University,

and MedImpact shall have the right to rely on all such information contained in the implementation form(s). Failure of University to sign the implementation form confirming its accuracy does not alter MedImpact's right to rely on the information contained therein and does not relieve University of its responsibility for notifying MedImpact in writing of any errors or inaccuracies in the implementation form(s).

- 5.1 PROVISION OF REQUIRED INFORMATION:** Throughout the Term of this Agreement, University shall provide to MedImpact information in a format and at a frequency required by MedImpact for MedImpact to perform the Services, including but not limited to, regular and timely Eligible Member Lists and Benefit Plan Information. University shall be solely responsible for ensuring the accuracy and completeness of its Eligible Members List and Benefit Plan Information provided to MedImpact and shall be obligated to pay for Claims accepted by MedImpact based on that information. Retroactive modification of the Eligible Members List and/or Benefit Plan Information will not relieve University of liability for those Claims processed prior to such modifications being implemented in MedImpact systems.
- 5.2 RELIANCE ON UNIVERSITY INFORMATION:** University acknowledges and agrees that MedImpact shall have the right to rely on the information and instructions provided by University in connection with this Agreement and the Services provided hereunder. Failure of University to timely provide the required information under Articles 5.0 and 5.1 in a format acceptable to MedImpact may result in postponement of the scheduled Implementation Date (or change date for updated information). University acknowledges and agrees that MedImpact may provide Participating Pharmacies and/or subcontractors with access to Eligible Member List information, Benefit Plan Information, and Claims data, and that MedImpact and the Participating Pharmacies and/or subcontractors are entitled to rely on the accuracy and completeness of the information provided by University, whether provided electronically, manually, or otherwise. Further, MedImpact shall have the right to rely on instructions from University in connection with the provision of Services hereunder. This does not give University the right to impose requirements on MedImpact beyond those specified in this Agreement.
- 5.3 ELIGIBLE MEMBER ID CARDS:** All ID Cards shall include information necessary for proper prescription drug claims adjudication following then current National Council for Prescription Drug Program (NCPDP) standards and MedImpact requirements, including identification of MedImpact's pharmacy network logo or other method acceptable to MedImpact of identifying MedImpact as the contracted prescription benefits manager.
- 5.4 MODIFICATIONS/APPROVALS OF COMMUNICATIONS:** University shall not modify any of the content of any communication prepared by MedImpact for University, Participating Pharmacies, Eligible Members, physicians, or other third parties without the prior written approval of MedImpact. Further, University shall not alter, remove, or impair any copyright, trademark, and/or similar notices on any communication prepared by MedImpact. All external communications prepared by University regarding MedImpact must be approved by MedImpact in writing prior to distribution.
- 5.5 REVIEW OF REPORTS, STATEMENTS, AND OTHER MATERIALS:** Upon University's or its designee's(s') receipt of reports (including but not limited to all pharmacy network guarantee reports, Rebate reports, and quarterly and annual Performance Guarantee reports, etc., as applicable), Statements, and other materials (including but not limited to all service requests (SRs), benefit change requests



(BCRs), pharmacy operations change requests, acceptance tests, statements of work (SOWs), etc., as applicable), University shall be responsible for promptly reviewing and confirming that the reports, Statements, and other materials are accurate and complete and for promptly notifying MedImpact in writing of any errors or objections to such reports, Statements, and/or other materials. Unless University notifies MedImpact in writing of any errors or objections within ninety (90) days from receipt of such report, Statement, and/or other materials, all the information contained therein will be deemed accurate, complete, and acceptable to University.

- 5.6 NON-ROUTINE INQUIRIES:** University shall promptly notify MedImpact in writing in accordance with Article 23 of this Agreement about all non-routine inquiries by Government Agencies (including insurance departments and other regulatory bodies), attorneys, Eligible Members, and/or others regarding this Agreement or Services provided hereunder. Any response to such inquiries by University is subject to the confidentiality provisions contained in Article 19 of this Agreement.

## **ARTICLE VI PAYMENTS**

- 6.0 FEES:** In consideration of the Services provided by MedImpact, University will pay the Claim amounts, Claims Processing Fees, fees set forth in Exhibit A, Taxes, and any other applicable charge or fee pursuant to the terms set forth in Article 4.2 and Exhibit A, or listed elsewhere in this Agreement or in a corresponding attachment, addendum, work order, or amendment (including letter amendments) to this Agreement, all of which are incorporated by reference into this Agreement (collectively “Fees”).
- 6.1 PAYMENT TO MEDIMPACT FOR FEES:** The monthly administration fee will be paid no later than the 10th of the current month. The employee count will be based on the employee count report produced by the third party administrator at the beginning of each month. LSU will pay MedImpact by ACH.
- 6.2 PAYMENT OF CLAIMS:** Upon receipt of each Statement, University shall wire the full amount of Fees included in the Statement within five (5) Business Days to the bank account(s) designated by MedImpact. The University will authorize MedImpact to withdraw electronic funds transfers for pharmacy claims for the University’s designated account after executing MedImpact’s Electronic Fund Transfer Agreement. MedImpact will send LSU detail statement of claims that will be processed from its account at least three (5) days in advance. In the event University has questions regarding any amounts included on the Statement, it still shall be obligated to pay the full amount of the Fees due on the Statement within the time period set forth herein, and then the parties shall work together in good faith to resolve any such questions.
- 6.3 PROMPT PAY AND OTHER DEPOSITS:** In the event any Law requires payment of Claims (whether paper or electronic) to pharmacies and/or Eligible Members in less than thirty (30) days, then MedImpact may, in its sole discretion, require a deposit reasonably sufficient to cover such payments. University will provide MedImpact with the deposit(s) required under this Agreement within seven (7) days of such request, which MedImpact may retain until termination of this Agreement and/or use to make payments due pursuant to this Agreement or prompt payment Laws. Upon termination of this Agreement such deposit shall be reduced by any offsets for payment defaults, interest, and collection costs, and thereafter will be returned, without interest, to University within one hundred eighty (180) days following the later of termination of this Agreement or cessation of Services.
- 6.3 FAILURE OF UNIVERSITY TO PAY TIMELY:** In the event University fails to pay any amount due under

this Agreement as set forth herein, in addition to all other rights and remedies under this Agreement and at law and in equity, MedImpact shall have the following rights and remedies:

- 6.3.1 Interest and Other Charges.** Interest due by the University for Late Payments shall be in accordance with R.S. 39:1695 and 13:4202.
- 6.3.2 Suspension of Services.** Should an offset not cure a payment default of any undisputed amounts or the cumulative amount for Claims payments and services provided under this Contract exceeds the maximum fee set forth herein, Supplier shall give written notice to the University of Supplier's intent to suspend services and system operations for the University. If within five (5) business days after receiving such a notice of Supplier's intent to suspend, the University does not remit to Supplier said undisputed amount, Supplier may suspend its services and pursue any other rights or remedies available to Supplier under this Contract. In the event a suspension of services occurs, Supplier will direct all inquiries relating to the processing of the University's Claims to the University for response. The suspension of services and Claims payments shall remain in full effect until all outstanding and due fees and Claims reimbursements are paid in full by the University.
- 6.3.3 Offsets.** In the event of any uncured payment default, University authorizes MedImpact to offset the amount of such payment defaults, interest, and collection costs against any University related amounts otherwise payable to University (including, without limitation, any Rebate amounts or University's deposit, if any).
- 6.3.4 Status of Payments to Participating Pharmacies and Eligible Members.** MedImpact is not required to render payments to Participating Pharmacies or Eligible Members for Claims unless and until MedImpact has received payment for the Claims from University. In the event MedImpact renders Claims payments to Participating Pharmacies and/or Eligible Members prior to receipt of Claims payment from University, such payments shall not constitute a waiver of any of MedImpact's remedies with respect to non-payment and shall not establish a course of dealing between MedImpact and University.

## **ARTICLE VII**

### **TAXES**

- 7.0** Supplier shall be responsible for the remission of all taxes including but not limited to income, employment, use and sales taxes (Federal, State and local) and all license fees, or any other necessary expense to the operation under the Agreement with the University, and shall conform to all laws, regulations, and ordinances applicable to the performance of this contract and any subsequent agreement between the University and Supplier.

## **ARTICLE VIII**

### **ASSIGNMENT**

- 8.0** This contract or any portion thereof, or any interest therein, shall not be assigned, transferred, conveyed, sublet, or disposed of without receiving prior written consent of the University. All Agreements and stipulations herein contained, and all obligations assumed in the contract shall be binding upon the heirs, successor and assigns of the parties thereto.

**ARTICLE VIX**  
**AUDIT/RETENTION OF RECORDS**

- 9.0 AUDIT OF PERSONS SUBMITTING COST OR PRICING DATA:** The University may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data.
- 9.1 RIGHT TO AUDIT:** The University shall be entitled to audit the books and records of a Supplier or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the Supplier for a period of five (5) years from the date of final payment under the contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract.
- 9.2 THIRD PARTY AUDIT:** LSU has the right to hire an independent third-party auditor, if LSU deems necessary, to review all accounts, procedures, matters, and records, and Supplier and/or subcontractor/Supplier shall provide access to all files, information systems access, and space access upon request of LSU for the third-party selected to perform such audit.

In the event that an examination of records results in a determination that previously paid invoices included charges which were improper or beyond the scope of the Contract, Supplier agrees that the amount paid to the Supplier shall be adjusted accordingly, and that the Supplier shall within thirty (30) days thereafter issue a remittance to LSU of any payment declared to be improper or beyond the scope of the contract. In combination therewith, or alternatively, LSU may offset the amounts deemed improper or beyond the scope of the contract against Supplier's outstanding or subsequent invoices, if any.

**ARTICLE X**  
**DIVERSITY**

- 10.0** Supplier understands that LSU, as the state's flagship university, has an interest in providing entrepreneurial opportunities to diversity-owned businesses. The university is dedicated to promoting the growth and development of minority, women, and small and historically underutilized businesses ("Diverse Businesses") by providing opportunities to participate in university contracts.
- 10.0.1** In support of this commitment, the Supplier shall use good faith and best efforts to provide opportunities to Diverse Businesses that are either certified by the state or another certifying entity in a diverse category, as a subcontractor or Supplier under this agreement.
- 10.0.2** If applicable, Supplier shall provide LSU with a list of diversity-owned businesses during each contract year, the list of businesses should identify: (1) the name of the business; (2) its principal office or address; (3) the owner(s); and (4) the services or goods that it may provide or supply and the value of the goods or services procured from the businesses included on Supplier's list.
- 10.0.3** To the extent that any federal or state law, rule, or regulation would require that this Article be modified or voided, the parties agree that such provision can be amended or severed from the agreement without affecting any of the other terms of the agreement.

**ARTICLE XI**  
**DISCRIMINATION CLAUSE**

**11.0** The Supplier agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and Supplier agrees to abide by the requirements of the Americans with Disabilities Act of 1990. Supplier agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, veteran status, political affiliation, disability, or age in any matter relating to employment. Any act of discrimination committed by Supplier, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

**ARTICLE XII**  
**COMPLIANCE WITH LAW**

**12.0 COMPLIANCE WITH LAW:** Each party will comply with all Laws applicable to it related to its obligations hereunder. MedImpact shall have no obligation to advise the University about the University's compliance with any applicable Law, including, without limitation, HIPAA/HITECH, ERISA, ACA, ADA, and state Laws applicable to insurers and/or benefit plans. Without limiting the generality of the foregoing, the University has obtained, or will obtain, all Eligible Member authorizations required by Law for MedImpact to perform the Services provided for in this Agreement or in any amendment or addendum hereto, as well as for MedImpact to contact Eligible Members, their physicians, and Participating Pharmacies in order to perform any of the activities contemplated by this Agreement. The University will disclose to Eligible Members and others as required by Law, any and all matters that are required by Law to be disclosed by the University as applicable, including matters relating to the Benefit Plan or the Services provided hereunder; information relating to the calculation of Copayments or any other amounts that are payable by an Eligible Member in connection with the Benefit Plan; information about Rebates or other discounts on pharmaceutical products, irrespective of whether the University retains or allows MedImpact or others to retain all or a portion of any Rebates or discounts; and information about commissions, revenue sharing, fees, allowances, incentives, adjustments, discounts, and/or spread based pricing, as applicable. If this Agreement, or any part hereof, is found not to be in compliance with applicable Law, then the parties shall renegotiate this Agreement for the sole purpose of correcting the non-compliance.

**12.1 ESCHEATMENT/UNCLAIMED PROPERTY:** The University, as the "holder" (as defined under unclaimed property Laws) of uncashed checks made out to Eligible Members for DMR Claims, shall be responsible for any required due diligence activities and escheating such amounts to the applicable states. As such, MedImpact will provide the University with reports, in MedImpact's standard format, containing sufficient information to allow the University to perform the escheatment activities as required under each state's respective unclaimed property Laws related to these uncashed DMR checks. Such reports will be provided to the University twice a year on or about January 31st and July 31st for such DMR checks that have remained uncashed for at least six (6) months post issuance. In addition, MedImpact will remit a check to the University in an amount equal to the aggregate amount as reflected in each

such report and MedImpact shall have no further obligations related to any due diligence or escheatment requirements for such DMR Claim payments.

**ARTICLE XIII**  
**ACCESSIBILITY**

- 13.0** Supplier represents they are committed to promoting and improving accessibility of all their products as required in the Louisiana State University Policy Statement 31 ([https://lsu.edu/policies/ps/ps\\_31.pdf](https://lsu.edu/policies/ps/ps_31.pdf)), and will remain committed throughout the term of this agreement. If the products and/or services are not in conformance with all applicable federal and state disability laws, policies, and regulations, Supplier shall use reasonable efforts to update the products and/or services to ensure conformance as soon as possible. In the event any issues arise regarding Supplier's compliance with applicable federal or state disability laws, policies, and regulations, the University will send communications to the Supplier regarding the complaint, and Supplier shall assign a person with accessibility expertise to reply to the University within two business days. Failure to confirm with this requirement shall be justification to cancel agreement/contract for cause.

**ARTICLE XIV**  
**OWNERSHIP**

- 14.0** All records, reports, documents and other material delivered or transmitted to Supplier by University shall remain the property of University, and shall be returned by Supplier to University, at Supplier's expense, at termination or expiration of this contract. All records, reports, documents, or other material related to this contract and/or obtained or prepared by Supplier in connection with the performance of the services contracted for herein shall become the property of University, and shall, upon request, be returned by Supplier to University, at Supplier's expense, at termination or expiration of this contract.

**ARTICLE XV**  
**USE OF NAME AND LOGO**

- 15.0** Neither party shall use the name, trade names, trademarks, service marks, or logos of the other party or any affiliated company of the other party in any materials, presently existing or hereafter established, except in the manner and to the extent permitted by prior written consent of the other party.

**ARTICLE XVI**  
**CONTRACT CHANGES**

- 16.0** No additional changes, enhancements, or modifications to any contract resulting from this Agreement shall be made without the prior approval of LSU Procurement Services. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

Changes to the contract include any change in compensation; beginning/ ending date of the contract; scope of work; and/or Supplier change through the Assignment of Contract process. Any such changes, once approved, will result in the issuance of an amendment to the contract.

**ARTICLE XVII**  
**GOVERNING LAW**

- 17.0** All activities associated with this Agreement shall be interpreted under Louisiana Law. All Proposals and contracts submitted are subject to provisions of the laws of the State of Louisiana, the Higher Education Procurement Code (LAC 34:XIII), purchasing rules and regulations; executive orders; standard terms and conditions; special terms and conditions; and specifications listed in this Agreement.

**ARTICLE XVIII**  
**TERMINATION**

- 18.0** **TERMINATION FOR CAUSE:** The University may terminate this contract for cause based upon the failure of the Supplier to comply with the terms and/or conditions of the Contract, provided that the University shall give the Supplier written notice specifying the Suppliers failure. If within thirty (30) days after receipt of such notice, the Supplier shall not have either corrected such failure or, in the case which cannot be corrected in thirty (30) days, begun in good faith to correct said failure and thereafter proceeded diligently to complete such correction, then the University may, at its option, place the Supplier in default and the contract shall terminate on the date specified in such notice. The Supplier may exercise any rights available to it under Louisiana law to terminate for cause upon the failure of the University to comply with the terms and conditions of this contract; provided that the Supplier shall give the University written notice specifying the University's failure and a reasonable opportunity for the University to cure the defect.
- 18.1** **TERMINATION FOR CONVENIENCE:** The University may terminate the contract at any time by giving thirty (30) days written notice to the Supplier. The Supplier shall be entitled to payment for deliverables in progress, to the extent work has been performed satisfactorily.
- 18.2** **TERMINATION FOR NON-APPROPRIATION OF FUNDS:** The continuance of the contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

**ARTICLE XXIX**  
**CONFIDENTIALITY**

- 19.0** All financial, statistical, personal, technical and other data and information relating to the University's operations which are designated confidential by the University and made available to the Supplier in order to carry out this contract, shall be protected by the Supplier from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the University. The identification of all such confidential data and information as well as the University's procedural requirements for protection of such data and information from

unauthorized use and disclosure shall be provided by the University in writing to the Supplier. If the methods and procedures employed by the Supplier for the protection of the Supplier's data and information are deemed by the University to be adequate for the protection of the University's confidential information, such methods and procedures may be used, with the written consent of the University, to carry out the intent of this paragraph. The Supplier shall not be required under the provisions of the paragraph to keep confidential any data or information, which is or becomes publicly available, is already rightfully in the Supplier's possession, is independently developed by the Supplier outside the scope of the contract, or is rightfully obtained from third parties.

- 19.1 NO THIRD-PARTY BENEFICIARIES:** This Agreement is solely for the benefit of each party hereto and their respective successors or permitted assigns. This Agreement is not a third-party beneficiary contract and does not confer any such rights upon any third-party (including, without limitation, any Eligible Member or Benefit Plan).

## **ARTICLE XX** **INFORMATION SECURITY**

- 20.0** All data, including personally identifying information, financial account information, or other personal information collected, obtained or transmitted to Supplier or subcontractor in connection with this Contract shall be protected and secured in accordance with federal, state and local law. Supplier agrees to comply with all applicable laws, regulations, and University policies, including, but not limited to, PS-30 (Student Privacy Rights), PS-113 (Social Security Number Policy), PS-114 (Security of Computing Resources Policy) and the Louisiana Database Breach Notification Law [Act 499]. In addition, Supplier shall implement appropriate measures designed to ensure the confidentiality and security of protected information, protect against any anticipated hazards or threats to the integrity or security of such information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience. Supplier also agrees that security breaches, or incidents shall be reported immediately to the University.

*"Protected information" shall be defined as data or information that has been designated as private, protected, or confidential by law or by the University. Protected information includes, but is not limited to, employment records, medical records, student records, education records, personal financial records (or other individually identifiable information), research data, trade secrets and classified government information. Protected information shall not include public records that by law must be made available to the general public. To the extent there is any uncertainty as to whether any data constitutes protected information, the data in question shall be treated as protected information until a determination is made by the University.*

- The obligations of Supplier or subcontractor under this Article shall survive the termination of this contract.
- Supplier agrees that the requirements of this Article shall be incorporated into all subcontractor agreements entered into by Supplier. It is further agreed that a violation of this Article shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Article may result in immediate termination of this contract without notice.

- 20.1 MEDIMPACT PROPRIETARY SOFTWARE AND INFORMATION:** University acknowledges that MedImpact owns, licenses, or otherwise holds the rights to the entire proprietary software system

used by MedImpact in processing Claims and preparing reports, including, without limitation, computer programs and applications, system and program documentation, and other documentation relating thereto (collectively the "MedImpact Software System"), and the MedImpact Software System is the exclusive and sole property of MedImpact. University further acknowledges that MedImpact owns, licenses, or otherwise holds all rights to its programs, reports, MAC Lists, pricing schedules, Formularies, and other services provided to University under this Agreement (collectively "MedImpact Business Information"), and the MedImpact Business Information is the exclusive and sole property of MedImpact. MedImpact grants University (and University's third-party vendors, if applicable, in accordance with Article 20.2) a limited, non-exclusive, non-transferable license to MedImpact Software System applications, as applicable to University. MedImpact retains all license rights not expressly granted by this license grant. University disclaims any rights to the MedImpact Software System (including access to any applicable source codes), the MedImpact Business Information, and any resultant reports, procedures, or forms developed by MedImpact, any development or modification of the MedImpact Software System and/or MedImpact Business Information as a result of any customization performed by any party, as well as any program, report, MedImpact Formulary, or service provided hereunder, all of which shall be the property of MedImpact and are protected by copyright which shall be owned by MedImpact. In addition, University acknowledges and agrees that use of the MedImpact Software System is subject to the respective terms of use, disclaimer, and privacy policy and University hereby agrees with those terms and conditions prior to using the MedImpact Software System. If a conflict exists between terms and conditions of this Agreement and terms and conditions of another agreement between University and MedImpact specific to a particular MedImpact Software System application, the specific term or condition in the other agreement that is in conflict with this Agreement shall supersede and control as it relates to the particular software or application. MedImpact may provide hyperlinks to other websites for the convenience of University. University understands and agrees that by clicking on the links they will be taken to websites that may not be owned or operated by MedImpact and are subject to the terms of use of those respective sites. When using the MedImpact Software System, these hyperlinks and related sites are for informational purposes only and should not be solely relied on when using the MedImpact Software System.

MedImpact may, in its sole discretion, make changes to the MedImpact Software System including adding or removing software applications or reports provided through the MedImpact Software System. University acknowledges and agrees that MedImpact may, in its sole discretion, eliminate or remove certain reports, software application, or MedImpact Software System components. In the event MedImpact removes, eliminates, or discontinues a report, software application, or component from the MedImpact Software System, MedImpact will provide University ninety (90) days prior written notice of such change. MedImpact will provide University information about MedImpact alternatives to replace the removed report, software application, or component, if available.

Notwithstanding anything in this Agreement to the contrary, the parties acknowledge that in the event of any breach or threatened breach of this Article, any remedy at law is inadequate and MedImpact will suffer irreparable injury if such conduct is not prohibited, and therefore MedImpact is entitled, among other rights and remedies, to injunctive relief, enjoining or restraining such breach or threatened breach. The parties further agree that the existence of this remedy will not preclude MedImpact from seeking or receiving other relief. In no event will University have the right to access



the MedImpact Software System and/or MedImpact Business Information after termination of this Agreement.

- 20.2 THIRD PARTY DATA ACCESS:** The University acknowledges and agrees that MedImpact may provide the University's third-party vendors with access to University Claims and other information (e.g., via access to MedAccess® or secure email file submissions) upon the University's request or direction. MedImpact shall require such third-party vendors of the University to execute a non-disclosure/confidentiality and/or license agreement prior to providing such data access. The University acknowledges and agrees that MedImpact will not share either party's confidential information with the University's third-party vendors until such non-disclosure/confidentiality and/or license agreement is executed. The University represents and warrants that it shall have and maintain a business associate agreement and confidentiality agreement in connection herewith with such third-party vendors.

**ARTICLE XXI**  
**INDEMNIFICATION AND LIMITATIONS OF LIABILITY**

- 21.0 INDEMNIFICATION:** Supplier shall defend, indemnify, and hold harmless the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and its members, officers, employees and agents (collectively, "LSU Parties") from and against all suits, actions, claims, judgments, damages, losses or other liabilities, and all cost and expenses, including without limitation reasonable attorney fees, ("Claims") incurred by LSU Parties in connection therewith, arising out of or relating to Supplier's: (i) breach of any material term of this Agreement; or (ii) acts or omissions of Supplier, or those of its employees and/or agents. Supplier shall give prompt written notice to LSU of any such Claim. In any instance to which the foregoing indemnities pertain, LSU Parties shall cooperate fully with and assist Supplier in all respects in connection with any such defense, and no LSU Party shall enter into a settlement of such Claim or admit liability or fault on the part of Supplier without Supplier's prior written approval.

LSU Parties shall defend, indemnify and hold harmless Supplier, its directors, officers, employees, agents and assigns, from and against all Claims incurred by Supplier in connection therewith, arising out of or relating to the gross negligence or willful misconduct of any LSU Party. Supplier shall give prompt written notice to LSU of any such Claim. In any instance to which the foregoing indemnities pertain, Supplier shall cooperate fully with and assist LSU in all respects in connection with any such defense, and Supplier shall not enter into a settlement of such Claim or admit liability or fault on the part of LSU without LSU's prior written approval.

- 21.1 FORCE MAJEURE:** Except for payment obligations set forth in this Agreement, the obligations of the parties hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes which are outside the reasonable control of a party and could not be avoided by the exercise of due care, including but not limited to acts of God, acts of a public enemy, acts of a sovereign nation or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in a subversive or terrorist activity or sabotage, fires, floods, earthquakes, explosions, strikes, slow-downs, lockouts or labor stoppage, freight embargoes, failures or fluctuations in electrical power or telecommunications equipment, epidemics, pandemics or outbreak of communicable disease (whether arising from known or unknown pathogens), government imposed quarantines, national or regional declared state of emergencies, or

by any enforceable Law, regulation, or order. As soon as the force majeure conditions cease, the parties shall resume their respective obligations as set forth under this Agreement.

- 21.2 DATABASE LIMITATION:** MedImpact relies on Medi-Span, First Databank, and/or other industry comparable databases in providing the University with claims adjudication, drug utilization review, and other Services under this Agreement. The data available from MedImpact through such databases and the Services provided hereunder are limited by the amount, type, and accuracy of information made available to MedImpact by the databases, the University, Participating Pharmacies, Eligible Members, and prescribers. MedImpact has no obligation to acquire information about an Eligible Member beyond that provided as part of the Eligible Members List and Claims information submitted by Participating Pharmacies. MedImpact does not warrant the accuracy of reports, alerts, codes, prices, or other data contained in such databases. The clinical information contained in these databases and the Formulary is intended as a supplement to, and not a substitute for, the knowledge, expertise, skill, and judgment of physicians, pharmacists, and/or other healthcare professionals involved in Eligible Members' care. The absence of a warning for a given drug or drug combination shall not be construed to indicate that the drug or drug combination is safe, appropriate, or effective for any Eligible Member. EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, MEDIMPACT DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE SUITABILITY FOR ANY PARTICULAR PURPOSE OF THE DATA GENERATED THROUGH THE MEDIMPACT SOFTWARE SYSTEM.

## **ARTICLE XXII INSURANCE**

- 22.0** The Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (henceforth referred to as "University") requires Suppliers/vendors to procure the below minimum limits. The insurance must be maintained for the duration of work performed for or on behalf of the University, and for the length of any agreement with the University. Failure to maintain the required insurance throughout the term of the Agreement shall be a material breach and shall entitle University to all remedies provided for in the Agreement, or by operation of law. The minimum insurance requirements described herein do not in any way limit the Supplier /vendors' financial responsibilities as outlined in the agreement's Indemnification requirements. Therefore, the Supplier/vendor may opt to have broader coverage and limits to satisfy its financial obligations.

### **Workers' Compensation**

Workers' Compensation insurance shall be in compliance with the laws of the state in which the company is domiciled. Employer's Liability shall be included with a minimum limit of \$1,000,000 per accident/per disease/per employee. If Supplier/Contractor is exempt from workers' compensation or fails to provide appropriate coverage, then the Supplier /Contractor is or agrees to be solely responsible and hold harmless the University for the Injuries of any owners, agents, volunteers, or employees during the course of the agreement.

### **Commercial General Liability (CGL)**

Commercial General Liability insurance shall be maintained on an "occurrence" basis, including property damage, bodily injury, products & completed operations, and personal & advertising injury

with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate on Insurance Services Office Form CG 00 01, ISO 2007 edition or equivalent.

### **Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000 on ISO form number CA 00 01 or equivalent. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned vehicles.

### **Excess Insurance**

Umbrella or Excess insurance may be used to meet the minimum limit requirements for liability insurance.

### **Other Insurance Requirements**

#### ***Additional Insured Status***

The University is to be listed as an Additional Insured on the Commercial General Liability (must use an endorsement at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms with edition date 2004 if later revisions used). See *Verification of Coverage* on how the University should be listed as an Additional Insured.

#### ***Waiver of Subrogation/Recovery***

All insurances shall include a waiver of subrogation/recovery in favor of the University.

#### ***Primary Coverage and Limits of Insurance***

For any claims related to work performed for or on behalf of the University or related to an agreement/purchase order, the Supplier /Contractor's insurance coverage shall be primary insurance as respects to the University. Any applicable insurance or self-insurance maintained by the University shall be excess of the Supplier /Contractor's insurance and shall not contribute with it.

#### ***Subcontractors***

Subcontractors of the Supplier/Contractor shall be subject to all of the requirements stated herein. Supplier/Contractor shall include all subcontractors as insureds under its policies or shall be responsible for verifying insurance coverages and limits and maintaining Certificates of Insurance for each subcontractor. The University reserves the right to receive from the Supplier /Contractor copies of subcontractors' certificates.

#### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions above \$25,000 must be approved by the University or reduced prior to the commencement of work. The University may require the Supplier/Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise approved by the University.

**Verification of Coverage**

The University shall be listed as Additional Insured and Certificate Holder as follows:

**The Board of Supervisors of Louisiana State University  
and Agricultural & Mechanical College  
213 Thomas Boyd Hall  
Baton Rouge, LA 70803**

Certificates of Insurance shall be furnished to the University evidencing the insurance required herein including amendatory endorsements. The University's failure to obtain the required documents prior to the work beginning or acceptance of a non-compliant certificate shall not waive the Supplier/Contractor's obligation to have in place the required insurances or to provide the certificate. The University reserves the right to require certified copies of all the insurance policies, including endorsements.

**Special Risks or Circumstances**

LSU reserves the right to consider alternate coverage or limits and to modify these requirements, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**ARTICLE XXIII  
NOTICE**

**23.0** All notices, statements and payments provided for herein shall be in writing and deemed given if given in person or sent postage paid via registered or certified mail, return receipt requested, or by a nationally recognized overnight delivery service, including without limitation courier delivery, all fees prepaid, to the parties at the addresses given below or such other addresses as either party may designate to the other, and shall be deemed to have been given at the time it is sent addressed to the parties as set forth below:

**If to LSU:**

Sally McKechnie, CPO  
Assistant Vice President for Procurement & Property Management  
LSU Procurement  
213 Thomas Boyd Hall  
Baton Rouge, Louisiana 70803  
Telephone: 225-578-2176  
Fax: 225-578-2292

With copy to:

Sheantel Baker  
Director of Benefits and Retirement  
LSU Human Resources  
110 Thomas Boyd Hall  
Baton Rouge, Louisiana 70803

Telephone: 225-578-8397

Email: [Sbaker6@lsu.edu](mailto:Sbaker6@lsu.edu)

**If to MedImpact:**

President  
MedImpact Healthcare Systems, Inc.  
10181 Scripps Gateway Court  
San Diego, CA 92131

With a copy to:

Senior Vice President, Corporate Services and General Counsel  
MedImpact Healthcare Systems, Inc.  
10181 Scripps Gateway Court  
San Diego, CA 92131

**ARTICLE XXIV**  
**CODE OF ETHICS**

- 24.0** The Supplier acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the Contracting Party in the performance of services called for in this contract. The Supplier agrees to immediately notify the University if potential violations of the Code of Governmental Ethics arise at any time during the term of this contract.

**ARTICLE XXV**  
**RELATIONSHIP OF THE PARTIES**

- 25.0** **EXCLUSIVITY:** During the Term of this Agreement, University agrees that MedImpact shall be the sole and exclusive agent for University for each of the types of services described in this Agreement.
- 25.1** **MEDIMPACT STATUS:** The parties acknowledge that MedImpact is a service provider of University and is acting in a ministerial capacity in the performance of its obligations under this Agreement. Nothing in this Agreement shall be construed or deemed to confer upon MedImpact any responsibility for or control over the terms or validity of any Benefit Plan, and MedImpact shall have no discretionary authority over or responsibility for any Benefit Plan, but rather MedImpact provides administrative services for University. University acknowledges and agrees that neither it nor any Benefit Plan intends MedImpact to be a fiduciary (as defined under state or federal Law, including ERISA), and neither will name MedImpact or any of MedImpact's affiliates as a plan fiduciary. MedImpact is not an insurer, plan sponsor, provider of health services, or a fiduciary, and MedImpact shall have no responsibility for: (i) any funding of University benefits; (ii) any insurance coverage relating to University, any Benefit Plan, or Eligible Members; (iii) the nature or quality of professional health services rendered to Eligible Members; or (iv) management or disposition of assets of the Benefit Plan, if any exist. Upon reasonable notice, MedImpact will have the right to terminate Services with respect to any Benefit Plan (or, if applicable, Eligible Members) located in a state requiring a pharmacy benefit manager to be a fiduciary to University, a Benefit Plan, or an Eligible Member, in any capacity.

**25.2 RELATIONSHIP TO PARTICIPATING PHARMACIES:** Participating Pharmacies are independent Suppliers and not subcontractors or agents of MedImpact, and MedImpact does not exercise any control over the professional judgment of any pharmacist dispensing prescriptions or otherwise providing pharmaceutical related services at a Participating Pharmacy. As a result, MedImpact shall have no liability to University or any Eligible Member for a claim resulting from any act or omission of any Participating Pharmacy or its agents or employees.

**ARTICLE XXVI**  
**ANTI-KICKBACK CLAUSE**

**26.0** The Supplier hereby agrees to adhere to the mandate dictated by the Copeland "Anti-Kickback" Act which provides that each Supplier or sub grantee shall be prohibited from inducing, by any means, any person employed in the completion of work, to give up any part of the compensation to which he is otherwise entitled.

**ARTICLE XXVII**  
**CLEAN AIR ACT**

**27.0** The Supplier hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders or requirements issued under Article 306 of the Clean Air Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA list of Violating Facilities.

**ARTICLE XXIII**  
**ENERGY POLICY AND CONSERVATION ACT**

**28.0** The Supplier hereby recognizes the mandatory standards and policies relating to energy efficiency which are contained in the University energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

**ARTICLE XXIX**  
**CLEAN WATER ACT**

**29.0** The Supplier hereby agrees to adhere to the provisions which require compliance with all applicable standards, orders, or requirements issued under Article 508 of the Clean Water Act which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

**ARTICLE XXX**  
**ANTI-LOBBYING AND DEBARMENT ACT**

**30.0** The Supplier will be expected to comply with Federal statutes required in the Anti-Lobbying Act and the Debarment Act.

**ARTICLE XXXI**  
**JURISDICTION AND VENUE**

**31.0** This Contract shall be governed by and interpreted in accordance with the laws of the State of Louisiana. Venue of any action brought with regard to this Contract shall be in the Nineteenth Judicial District Court, parish of East Baton Rouge, State of Louisiana

**ARTICLE XXXII**  
**SEVERABILITY**

**32.0** If any term or condition of this contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application; to this end the terms and conditions of this contract are declared severable.

**ARTICLE XXXIII**  
**COMMENCEMENT OF WORK**

**33.0** No work shall be performed by Supplier and the University shall not be bound until such time as this Contract is fully executed between the University and the Supplier and all required approvals are obtained.

**ARTICLE XXXIV**  
**FURTHER ASSURANCES**

**34.0** Each party represents and warrants that it has the necessary power and authority to enter into this Agreement and to consummate the transactions contemplated herein. Each party agrees to execute and deliver to the other party any instruments and other documents, and to take such other actions as the other party may reasonably request at any time during the Term of this Agreement for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

**ARTICLE XXXV**  
**CONTRACT CONTROVERSIES**

**35.0** Any claim or controversy arising out of this contract shall be resolved by the University Pilot Procurement Code, LAC 34:XIII.1503.

**ARTICLE XXXVI**  
**ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

**36.0** This Agreement (together with any attachments and any exhibits specifically incorporated herein by reference) constitutes the entire Agreement between the parties with respect to the subject matter.

This Agreement; LSU's Solicitation for Offers, Solicitation No. 0000001181, and any addenda; Supplier's Best and Final Offer submitted to the LSU Procurement Office on Monday, August 24, 2020; and Supplier's Response to LSU's Solicitation for Offers and other supplemental submissions, represent the entire agreement between the parties and supersede any and all prior agreements. In the event of any conflict between the documents that constitute this Agreement, the following order of precedence shall apply:

- a) This Agreement;
- b) Supplier's Best and Final Offer submitted to the LSU Procurement Office on Monday, August 24, 2020;
- c) Supplier's Response to LSU's Solicitation for Offers and other supplemental submissions;  
and
- d) LSU's Solicitation for Offers, Solicitation No. 0000001181 and any addenda.

THUS DONE AND SIGNED AT \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

\_\_\_\_\_  
\_\_\_\_\_

SUPPLIER SIGNATURE:

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

Title: \_\_\_\_\_

THUS, DONE AND SIGNED AT Baton Rouge, Louisiana on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and, IN WITNESS WHEREOF, the parties have executed this Contract.

WITNESSES' SIGNATURES:

\_\_\_\_\_  
\_\_\_\_\_

**Board of Supervisors of Louisiana State University and  
AGRICULTURAL & MECHANICAL College**

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

Title: \_\_\_\_\_



## EXHIBIT A

### **Claims Processing Fee, Network Guarantees, Rebate Guarantees, and Credits**

*All pricing in this Exhibit is subject to the terms and conditions as stated in the 2020 LSU RFP and MedImpact's Response*

#### **Fee**

##### **1. Claims Processing Fee.**

\$1.35 per employee per month ("Claims Processing Fee")

- Ad Hoc Reports
- Pharmacy Call Center - 24/7 Support by Vendor
- Member Call Center - 24/7 Support by Vendor
- Pharmacy Call Center - After Hour Only Support by Vendor
- Member Call Center - After Hour Only Support by Vendor
- Welcome Kits including ID cards (For both production and shipping by Vendor)
- Coordination of Benefits
- Eligibility - Direct Access
- Manual Eligibility Maintenance
- Paid Claims Tape via FTP (Daily)
- Claims data transmission to third party vendors (daily/real-time)
- Systems Access Fee
- Concurrent DUR Programs
- Retrospective DUR Programs
- Other Drug Utilization Review Programs
- Step Therapy Programs
- Formulary Management Services - Standard
- ePrescribing - Implementation Fee
- ePrescribing - Additional Fees (Please list all)
- Clinical program member letters (production and shipping to members/LSU)
- Prior Authorization - Administrative Overrides
- Fraud, Waste, and Abuse Program
- Direct Reimbursement (paper claims)
- ePrescribing - Cost for Prescription Benefit transaction (including Patient Eligibility Data and Patient Formulary Data)
- RDS Support Services
- Prior Authorization - Clinical Overrides
- Pharmacy Auditing
- Medicaid Subrogation

## Pharmacy Network Pricing

### 1. Claim Rates.

MedImpact shall pass through the amount paid to the Participating Pharmacy, which shall be the same amount that MedImpact will bill University. The pharmacy network guarantees specified below in this [Exhibit A](#) are representative pharmacy discounts and Dispensing Fees. However, University will pay hereunder, the actual reimbursement rate (AWP discount or MAC, plus Dispensing Fee) paid to each applicable Participating Pharmacy. The actual reimbursement paid to a Participating Pharmacy may be greater or less than the guarantees identified in this [Exhibit A](#).

### 2. Pharmacy Network Guarantees.

#### **Retail Broad (excludes specialty at retail):**

January 1, 2021 – December 31, 2021

Brand Effective Rate: AWP – 18.75% + \$0.60 Dispensing Fee

Generic Effective Rate: AWP – 84.75% + \$0.60 Dispensing Fee

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 18.75% + \$0.60 Dispensing Fee

Generic Effective Rate: AWP – 85.00% + \$0.60 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 18.75% + \$0.60 Dispensing Fee

Generic Effective Rate: AWP – 85.25% + \$0.60 Dispensing Fee

#### **Specialty at Retail:**

January 1, 2021 – December 31, 2021

Brand Effective Rate: AWP – 18.50% + \$0.60 Dispensing Fee

Generic Effective Rate: AWP – 60.00% + \$0.60 Dispensing Fee

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 18.50% + \$0.60 Dispensing Fee

Generic Effective Rate: AWP – 60.00% + \$0.60 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 18.50% + \$0.60 Dispensing Fee

Generic Effective Rate: AWP – 60.00% + \$0.60 Dispensing Fee

#### **†Choice90<sup>Rx</sup> (Retail 84+ days' supply) Broad:**

†Copyright © 2012-2020 MedImpact Healthcare Systems, Inc.

January 1, 2021 – December 31, 2021

Brand Effective Rate: AWP – 24.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 87.50% + \$0.00 Dispensing Fee

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 24.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 87.75% + \$0.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 24.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.00% + \$0.00 Dispensing Fee

**Mail Order (MID):**

Mail order will be arranged and/or provided through the MedImpact Direct Mail Order Pharmacy Program. Mail pricing is based on a minimum average days' supply of eighty-four (84) or greater.

January 1, 2021 – December 31, 2021

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 87.50% + \$0.00 Dispensing Fee

January 1, 2022 – December 31, 2022

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 87.75% + \$0.00 Dispensing Fee

January 1, 2023 – December 31, 2023

Brand Effective Rate: AWP – 25.00% + \$0.00 Dispensing Fee

Generic Effective Rate: AWP – 88.00% + \$0.00 Dispensing Fee

**Specialty Pharmacy (MID):**

Specialty will be arranged and/or provided through the MedImpact Direct Specialty Pharmacy Program. MedImpact will maintain a price list of specialty rates for Specialty Pharmacies. MedImpact will update such price lists on at least a monthly basis, including the addition of any newly introduced specialty products to the market or any national drug code (“NDC”) additions for existing specialty products. Such price list shall be made available to University upon request.

**MedImpact Direct Specialty Pharmacy Program - Exclusive Network Guarantee:**

January 1, 2021 – December 31, 2023

Overall Effective Rate: AWP – 20% + \$0.00 Dispensing Fee

**MedImpact Direct Specialty Pharmacy Program– Open Network Guarantee:**

January 1, 2021 – December 31, 2023

Overall Effective Rate: AWP – 19.50% + \$0.00 Dispensing Fee

**Specialty Limited Distribution Drugs (LDD) Participating Pharmacies:**

Specialty LDD will be arranged and/or provided through the Limited Distribution Drugs (LDD) Program. MedImpact will make available those Participating Pharmacies that dispense LDD, which are certain specialty medications that can only be dispensed by specific specialty pharmacies. The discount from AWP for each of the LDD Participating Pharmacies may be different for each LDD product.

January 1, 2021 – December 31, 2023

Overall Effective Rate: AWP – 19.5% + \$0.00 Dispensing Fee

**New to Market:**

New to market Specialty Drugs

January 1, 2021 – December 31, 2023

Overall Effective Rate: AWP – 19.5% + \$0.00 Dispensing Fee

## Rebates

### Minimum Rebate Guarantee

#### MEDIMPACT STANDARD MEDPERFORM FORMULARY WITH MEDIUM EDIT PACKAGE REBATE GUARANTEES

| Year | Retail 30 | Retail 90 | Mail Order | Specialty  |
|------|-----------|-----------|------------|------------|
| 2021 | \$202.00  | \$606.00  | \$606.00   | \$1,919.00 |
| 2022 | \$212.00  | \$636.00  | \$636.00   | \$2,015.00 |
| 2023 | \$223.00  | \$668.00  | \$668.00   | \$2,116.00 |

Minimum Rebate Guarantees are subject to the following:

1. Rebate guarantees are based on University's use of MedImpact's standard MedPerform Formulary with medium edit package and Copayment design provided at the time of the 2020 RFP.
2. Rebate guarantees may be adjusted if University's utilization is less than ninety-five percent (95%) compliant with Formulary preferred Brand Drugs (defined below).
3. Rebate guarantees are contingent upon University's use of the MedImpact Direct Mail Order Pharmacy Program and MedImpact Direct Specialty Pharmacy Program. Guarantees may be adjusted if a different vendor is selected by University for mail and/or specialty networks.
4. MedImpact may adjust the Rebate guarantees if there is a decrease of more than ten percent (10%) in specialty volume during the Term of this Agreement as compared to University's utilization prior to this Agreement.
5. Specialty guarantees are based on standard Specialty Drugs as identified on MedImpact's Specialty Drug List.
6. Notwithstanding any Brand Drug definition in this Agreement to the contrary, Rebate guarantees are per federal legend Brand Drug as identified by using Medi-Span indicators and MedImpact's standard policies for products that are approved by the U.S. Food and Drug Administration (FDA) in which federal or state Law requires to be dispensed to the public on prescription of a licensed physician or other licensed provider.
7. The following are excluded from the Rebate guarantees: compound drug Claims, Eligible Member submitted (DMR) Claims, over the counter (OTC) drug Claims, vaccine Claims, limited distribution drug (LDD) Claims, subrogation Claims, biosimilar Claims, multi-source brand Claims not having a DAW 1 or 2, Claims older than one hundred eighty (180) days, 340B pharmacies, repackaged NDC Claims, secondary payer Claims, Indian Health Services and/or Tribal Claims, Long Term Care (LTC) Claims, Home Infusion Claims, Claims from entities eligible for federal supply schedule prices, Claims where the Eligible Member pays more than fifty percent (50%) of the cost of the Claim outside of the deductible, one hundred percent (100%) Eligible Member Copayment Claims, non-drug Claims (excluding insulin and diabetic test strips), Claims filled outside the National Pharmacy Network, and Claims in which University implements any exception logic to allow Formulary excluded or non-preferred Claims to process.
8. In the event market factors outside of MedImpact's control (i) cause brand name medications to become available as a generic, authorized generic, or biosimilar, (ii) cause a significant price decline of a brand name medication, or (iii) University prefers a generic at a higher net cost than the brand, MedImpact may adjust the Rebate guarantees.

*Any deviations from the above criteria may result in alternative Rebate guarantees.*

## Credits/Allowances

### **Implementation Allowance**

One-time \$5.00 per Eligible Member (measured as of the Implementation Date) implementation credit to be used within ninety (90) days of the Implementation Date

### **Pharmacy Management Fund**

One-time \$5.00 Per Eligible Member (measured as of the Implementation Date) pharmacy management fund to be used during the initial term of the Service Agreement.

DRAFT



# PHARMACY BENEFIT MANAGEMENT SERVICES

PRESENTED BY:

**DAN LAYZELL**

*Executive Vice President and CFO*

**SHEANTEL BAKER, MPA**

*Director of Benefits and Retirement*

**SALLY MCKECHNIE, CPO**

*Assistant Vice President of Procurement and Property Management*



## PBM OVERVIEW

- LSU First Health Plan
- Pharmacy Supply Chain
- Pass-through Pricing Model
- Administrative Fees
- Pharmacy Spend

## PROCUREMENT PROCESS

- RFP Timeline
- Scoring Methodology
- Formulary Disruption Summary
- Financial Summary
- Score Sheet | Notice of Intent
- Next Steps

**Sally McKechnie**

*Assistant Vice President of Procurement & Property Management*

**Michele Montero**

*Director of Procurement & Contracts*

**Jene Ledet**

*Procurement Commodity Manager*

**Stefanie Kirkwood**

*Executive Administrative Assistant*

**Tyler Kearney (ex-officio)**

*Associate Vice President of Finance and Administration*

**Sheantel Baker**

*Director of Benefits and Retirement*

**Katti Galatas**

*Assistant Plan Administrator*

**Stephanie Rhodes (ex-officio)**

*Director of Operations and Enterprise Risk Management*

**Kristin Fiser**

*LSUS - Associate Director of Human Resource Management*

**Ryan Barnette**

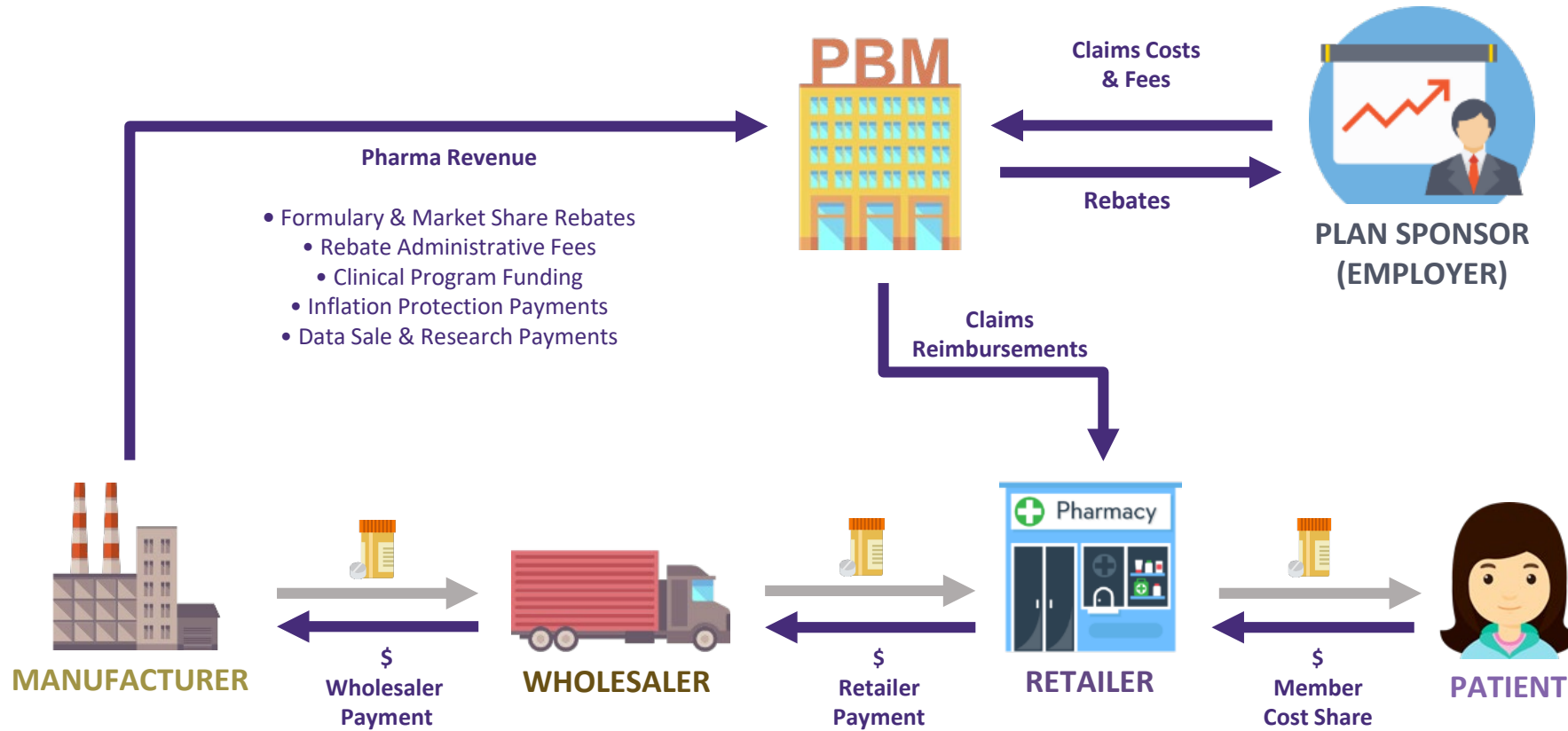
*LSU AgCenter - Manager - Human Resource Management*





- LSU Pharmacy Benefit Management RFP:
  - Secure qualified PBM to administer the LSU First Health plan according to the Summary Plan Document. LSU expects to pay competitive prescription wholesale drug prices, highly competitive administrative fees, and to have minimal disruption to the enrolled members of the LSU First Health plan.
- Active and Retired employees of the LSU System campuses as well as the House, Senate, Legislative Budget Office, Legislative Auditors, and employees covered under participating successor agreements are eligible for the LSU First Health Plan
  - # of Employees: 9,015 as of Aug 2020
  - # of Lives Covered: 17,823 as of Aug 2020

# LSU | Pharmacy Supply Chain



## Explanation

- PBM charges an administration fee. This is the PBM's only source of revenue
- The Pass-Through quotes represent a "minimum" discount. If they achieve better results these are passed on to the client.
- Transparency: Pass-Through arrangements are more transparent since the PBM only has one revenue stream and passes back all additional revenue generated back to the client.
- The client pays the actual contracted discounts and dispensing fees that the PBM has negotiated with the retail pharmacy network.

## Example

- Average Wholesale Price (AWP) is \$100.00
- The PBM has a negotiated discount of AWP minus 20% with the pharmacy.
- The amount charged to Client:
  - $\$100 \times (1-0.2) = \$80$
- The amount paid to the pharmacy:
  - $\$100 \times (1-0.2) = \$80$
- The PBM charges Employer an administration fee for their services

# LSU | Administrative Fees

## Ad Hoc Reports

Pharmacy Call Center - 24/7 Support by Vendor

Member Call Center - 24/7 Support by Vendor

Pharmacy Call Center - After Hour Only Support by Vendor

Member Call Center - After Hour Only Support by Vendor

Welcome Kits including ID cards

*(For both production and shipping by Vendor)*

## Coordination of Benefits

Eligibility - Direct Access

Manual Eligibility Maintenance

Paid Claims Tape via FTP (Daily)

Claims data transmission to third party vendors (daily/real-time)

Systems Access Fee

Concurrent Drug Utilization Review Programs

Retrospective Drug Utilization Review Programs

Other Drug Utilization Review Programs

Step Therapy Programs

Formulary Management Services - Standard

ePrescribing - Implementation Fee

ePrescribing - Additional Fees (Please list all)

Clinical program member letters (production and shipping to members/LSU)

Prior Authorization - Administrative Overrides

Fraud, Waste, and Abuse Program

Direct Reimbursement (paper claims)

ePrescribing - Cost for Prescription Benefit transaction

*(including Patient Eligibility Data and Patient Formulary Data)*

RDS Support Services

Prior Authorization - Clinical Overrides

Pharmacy Auditing

Medicaid Subrogation

# LSU | Pharmacy Spend

| LSU First Pharmacy Cost | 2020 YTD <sup>1</sup>  | 2019                   | 2018                   | 2017                   |
|-------------------------|------------------------|------------------------|------------------------|------------------------|
| Claims                  | \$18,780,373.12        | \$30,896,834.91        | \$29,996,497.98        | \$29,530,099.67        |
| Administrative Fees     | \$279,477.00           | \$517,107.00           | \$532,077.60           | \$549,580.80           |
| <b>Total Spend*</b>     | <b>\$19,059,850.12</b> | <b>\$31,413,938.91</b> | <b>\$30,528,575.58</b> | <b>\$30,079,680.47</b> |

<sup>1</sup> 2020 spend through July 31, 2020.

\*Total spend included in chart does not include rebates received on pharmacy claims

\*\*Pharmacy spend accounts for approximately 25% of plan cost.

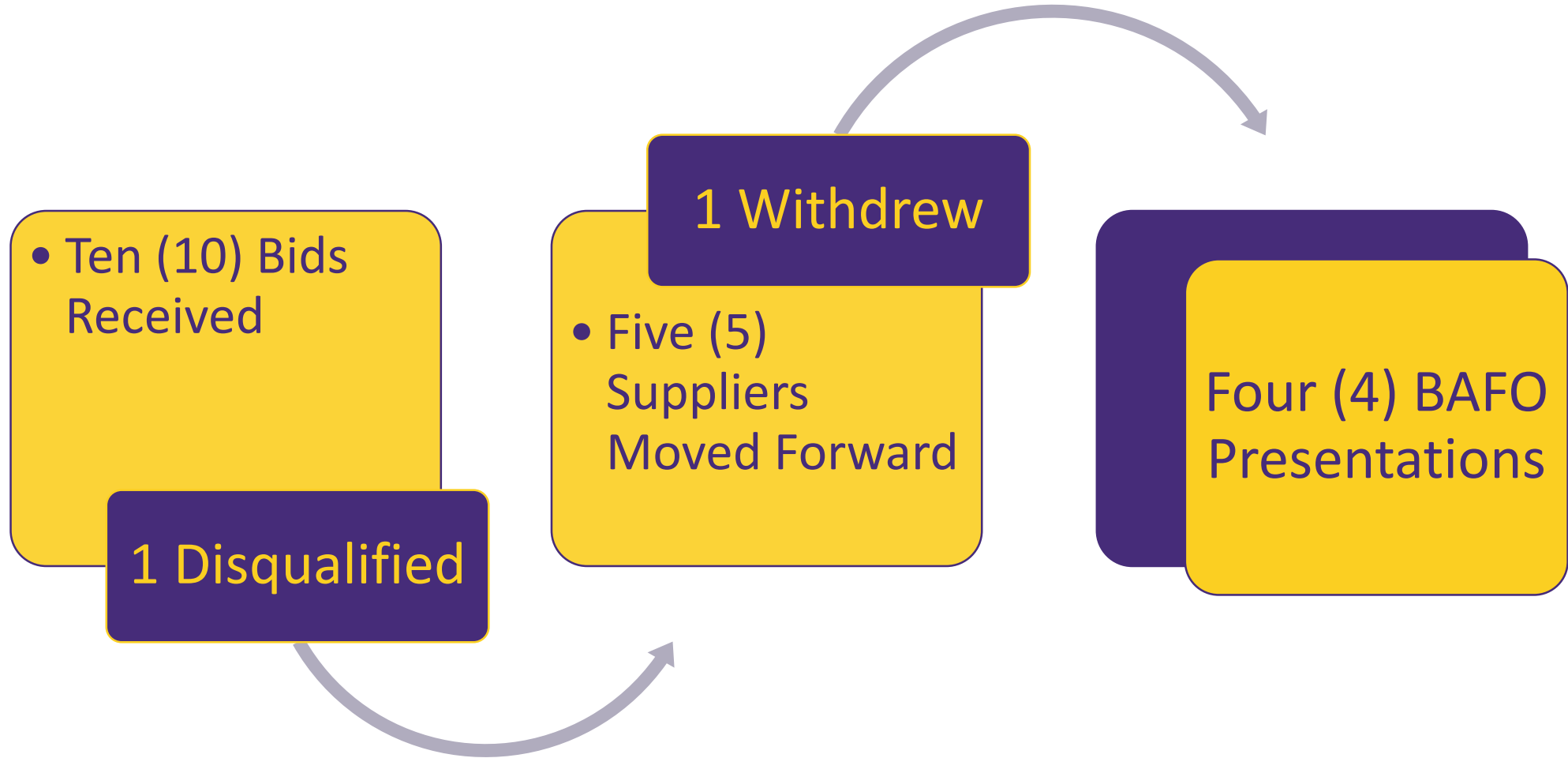
# PROCUREMENT PROCESS





## RFP Timeline









## | Scoring Methodology

| Evaluation Criteria   | Possible Points   |
|---|-------------------|
| <b>RESPONDENT QUALIFICATIONS AND EXPERIENCE (Section 4)</b>   | 5 points          |
| <b>TECHNICAL PROPOSAL (Section 5)</b> <ul style="list-style-type: none"><li>• 5.1 Formulary Disruption Analysis (7.5 points)</li><li>• 5.2 Network Disruption Analysis (5 points)</li><li>• 5.3 Financial and Additional Requirements (10 points)</li><li>• 5.4 Performance Guarantees and Other Contracting Items (7.5 points)</li></ul> | 30 points         |
| <b>FINANCIAL PROPOSAL (Section 6)</b> <ul style="list-style-type: none"><li>• 6.1.1 Administrative Fee</li><li>• 6.1.2 Retail Network Pricing</li><li>• 6.1.3 Mail Pricing</li><li>• 6.1.4 Minimum Rebate Guarantees</li><li>• 6.1.5 Specialty Pricing</li><li>• 6.1.6 Administrative Ancillary Fee</li></ul>                             | 53 points         |
| <b>VETERAN AND HUDSON INITIATIVE (Section 7)</b>  | 12 points         |
| <b>Total Possible Points</b>  | <b>100 points</b> |



## | Scoring Methodology (continued)

- The financial analysis is using Louisiana State University's (LSU) actual claims utilization from 1/1/2019 – 12/31/2019
- Claims were broken out by delivery channel
  - Retail
  - Mail
  - Specialty
- Drug cost projections were based on minimum discounts and maximum dispensing fees, and do not reflect potential over-performance or under-performance against those guarantees
- Rebates were based on minimum guarantees per brand claim, and do not reflect potential over-performance or under-performance against those guarantees. Rebate values were estimated for the year they are earned.



# LSU Formulary Disruption Summary

(Exhibit G)  
Scoring Section 5.1

- The chart illustrates disruption to the members on the plan for the bidding vendors.
- Only maintenance prescriptions are included in the evaluation.
- The chart identifies the number of members that would be affected by formulary changes.
- Some of the drugs that are currently covered would be excluded, but all have alternatives.
- A shift from tier 3 to tier 2 is a Down-Tier to members, while a shift from tier 2 to tier 3 is a Up-Tier to members.

| PBM or Health Plan                           | Down-Tier | Up-Tier | Exclusions |
|--|-----------|---------|------------|
| CitizensRx (Preferred Formulary)             | 0         | 0       | 0          |
| HealthSmartRx (National Preferred Formulary) | 22        | 6       | 133        |
| MedImpact (MedPerform Formulary)             | 537       | 170     | 912        |
| Southern Scripts (Core Formulary)            | 565       | 93      | 0          |

# LSU | Financial Proposal – Year 1

## Scoring Section 6

| Year 1: 1/1/2021 - 12/31/2021        |                              | CitizensRx<br>Pass Through<br>National<br>Preferred | CitizensRx<br>Pass Through<br>National<br>Preferred - BAFO | Health Smart<br>Pass Through<br>National<br>Natl Pref | Health Smart<br>Pass Through<br>National<br>Natl Pref - BAFO | MedImpact<br>Pass Through<br>Broad<br>MedPerform | MedImpact<br>Pass Through<br>Broad<br>MedPerform | Southern Scripts<br>Pass Through<br>Broad<br>Core | Southern Scripts<br>Pass Through<br>Broad<br>Core |
|--------------------------------------|------------------------------|---|--|---|--|--|--|---|---|
| Drug Costs                           | Retail (6.1.2)               | \$13,866,222  | \$13,866,222   | \$13,693,645  | \$13,693,645   | \$13,784,421                                     | \$13,742,976                                     | \$14,383,353                                      | \$14,383,353                                      |
|                                      | Mail (6.1.3)                 | \$2,248,552   | \$2,208,653  | \$2,191,341   | \$2,191,341  | \$2,114,510                                      | \$2,114,510                                      | \$2,149,216                                       | \$2,149,216                                       |
|                                      | Specialty (6.1.5)            | \$12,035,596  | \$11,902,936   | \$11,773,710  | \$11,773,711   | \$11,701,637                                     | \$11,701,631                                     | \$11,881,632                                      | \$11,881,632                                      |
|                                      | <b>Total Drug Costs</b>      | <b>\$28,150,370</b>                                 | <b>\$27,977,810</b>  | <b>\$27,658,697</b>                                   | <b>\$27,658,697</b>  | <b>\$27,600,569</b>                              | <b>\$27,559,117</b>                              | <b>\$28,414,201</b>                               | <b>\$28,414,201</b>                               |
| Rebates                              | Retail                       | (\$1,919,118)                                       | (\$1,919,118)  | (\$2,862,497)   | (\$2,927,508)  | (\$3,974,832)                                    | (\$4,956,272)                                    | (\$5,506,369)                                     | (\$5,506,369)                                     |
|                                      | Mail                         | (\$251,742)   | (\$251,742)  | (\$476,076)   | (\$486,906)  | (\$766,908)                                      | (\$956,268)                                      | (\$1,218,753)                                     | (\$1,218,753)                                     |
|                                      | Specialty                    | (\$1,359,003)                                       | (\$1,359,003)  | (\$2,382,956)   | (\$2,509,709)  | (\$2,064,292)                                    | (\$2,698,706)                                    | (\$2,439,696)                                     | (\$2,439,696)                                     |
|                                      | <b>Total Rebates (6.1.4)</b> | <b>(\$3,529,863)</b>                                | <b>(\$3,529,863)</b>                                       | <b>(\$5,721,529)</b>                                  | <b>(\$5,924,123)</b>   | <b>(\$6,806,033)</b>                             | <b>(\$8,611,246)</b>                             | <b>(\$9,164,818)</b>                              | <b>(\$9,164,818)</b>                              |
| Administrative Fee (6.1.1)           |                              | \$527,250   | \$249,750  | \$360,750   | \$360,750  | \$180,930  | \$149,850  | \$2,536,350                                       | \$2,480,850                                       |
| Ancillary Administrative Fee (6.1.6) |                              | \$0   | \$0  | \$0   | \$0  | \$124,626  | \$44,400   | \$306   | \$0   |
| <b>Total Administrative Fee</b>      |                              | <b>\$527,250</b>                                    | <b>\$249,750</b>   | <b>\$360,750</b>                                      | <b>\$360,750</b>   | <b>\$305,556</b>                                 | <b>\$194,250</b>                                 | <b>\$2,536,656</b>                                | <b>\$2,480,850</b>                                |
| <b>Total Net Cost</b>                |                              | <b>\$25,147,757</b>                                 | <b>\$24,697,697</b>  | <b>\$22,297,918</b>                                   | <b>\$22,095,323</b>  | <b>\$21,100,092</b>                              | <b>\$19,142,122</b>                              | <b>\$21,786,039</b>                               | <b>\$21,730,233</b>                               |

Total Net Cost is equal the Total Drug Cost minus Total Rebates plus Total Administrative Fees.

# LSU | Score Sheet

| Evaluation Criteria  | Possible Points   | Citizens   | HealthSmart   | Med Impact   | Southern Scripts  |
|--|---|--|---|--|---|
| <b>RESPONDENT QUALIFICATIONS AND EXPERIENCE (Section 4)</b>  | <b>5 points</b>   | <b>4</b>   | <b>2</b>  | <b>3.83</b>  | <b>2.27</b>   |
| <b>TECHNICAL PROPOSAL (Section 5)</b>  | <b>30 points</b>  | <b>24.75</b>   | <b>24.25</b>  | <b>21.17</b>   | <b>23.07</b>  |
| <ul style="list-style-type: none"> <li>5.1 Formulary Disruption Analysis (7.5 points) (Exhibit G)</li> <li>5.2 Network Disruption Analysis (5 points) (Exhibit H)</li> <li>5.3 Additional Information (10 points) (Exhibit I)</li> <li>5.4 Performance Guarantees and Other Contracting Items (7.5 points) (Exhibit M)</li> </ul>  | <ul style="list-style-type: none"> <li>7.5 points</li> <li>5 points</li> <li>10 points</li> <li>7.5 points</li> </ul> | <ul style="list-style-type: none"> <li>7.5</li> <li>5</li> <li>6.92</li> <li>5.33</li> </ul> | <ul style="list-style-type: none"> <li>6</li> <li>4.5</li> <li>7.5</li> <li>6.25</li> </ul> | <ul style="list-style-type: none"> <li>4</li> <li>3</li> <li>7.75</li> <li>6.42</li> </ul> | <ul style="list-style-type: none"> <li>7.5</li> <li>4.07</li> <li>6.92</li> <li>4.58</li> </ul> |
| <b>FINANCIAL PROPOSAL (Section 6)</b>  | <b>53 points</b>  | <b>41.08</b>   | <b>45.92</b>  | <b>53.00</b>   | <b>46.69</b>  |
| Projected Gross Drug Cost <ul style="list-style-type: none"> <li>Retail Network Pricing (Exhibit J)</li> <li>Mail Pricing (Exhibit J)</li> <li>Specialty Pricing (Exhibit K)</li> </ul> Minimum Rebate Guarantees (Exhibit J)<br>Projected Administrative Fees <ul style="list-style-type: none"> <li>Base Administrative Fee (Exhibit J)</li> <li>Administrative Ancillary Fee (Exhibit L)</li> </ul> |   |  |   |  |   |
| <b>VETERAN AND HUDSON INITIATIVE (Section 7)</b>   | <b>12 points</b>  | <b>0</b>   | <b>0</b>  | <b>0</b>   | <b>0</b>  |
| <b>Total Points Awarded</b>  |   | <b>69.83</b>   | <b>72.17</b>  | <b>78.00</b>   | <b>72.03</b>  |



**25 MILLION**  
Lives Covered

**BUSINESS REFERENCES**

Oschner Health System | Arkansas State System | Office Group Benefits

**LONGEVITY**  
30+ Years

## **NEXT STEPS**

Notice of Intent to Award Issued  
Finalize Contract  
Open Enrollment – October 1



# **QUESTIONS**