



Pharmaceutical Wholesaler Services Contract

Minnesota Multistate Contracting Alliance for Pharmacy

SWIFT Contract No. :

This Contract is between the State of Minnesota, acting through its Minnesota Multistate Contracting Alliance for Pharmacy ("State" or "MMCAP") and *Cardinal Health 110, LLC, Cardinal Health 411, Inc. and Cardinal Health 107, LLC, whose designated business address is 7000 Cardinal Place, Dublin, Ohio 43017 (collectively, "WHOLESALE")*.

Recitals

1. Under Minn. Stat. § 16C.03 and § 471.59, the Commissioner of Administration, on behalf of MMCAP, is empowered to engage such assistance as deemed necessary.
2. MMCAP, a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c), is in need of pharmaceutical wholesaler to distribute pharmaceuticals, OTCs, nutritionals, vaccines (other than influenza vaccines), and other products to its members.
3. The WHOLESALER represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of MMCAP.

Contract

1. Term of Contract and Exhibits

- 1.1 **Effective date:** November 1, 2014, or the date MMCAP obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. **The WHOLESALER must not begin work hereunder until this Contract is fully executed and the WHOLESALER has been notified by MMCAP's Authorized Representative to begin the work. Further, the pricing and benefits offered hereunder will not be available until the effective date as set forth above.**
- 1.2 **Expiration date:** October 31, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The Contract may be extended for up to an additional three (3) years, at increments determined by MMCAP, on written acceptance by both parties, for a total term not to exceed five (5) years.
- 1.3 **Survival of terms.** The following clauses survive the expiration or cancellation of this Contract: 2. Definitions; 5. Fees and Payment; 6. Conditions of Payment; 8. Notices; 10. Indemnification; 11. Audits; 12. Government data practices; 13. Intellectual Property and Data Rights; 17. Publicity and endorsement; 18. Governing law, jurisdiction, and venue; 19. Data disclosure; 30. Severability; and 36. State Terms and Participation.
- 1.4 **Attachments.** The following Attachments are attached and incorporated into this Contract, and are set forth in their order of precedence:

- 1.4.1 *Attachment A, Scope of Work*
- 1.4.2 *Attachment B, Discounts and Fees*
- 1.4.3 *Attachment C, Service Fee Discount Matrix*
- 1.4.4 *Attachment D, Wholesaler's Returned Goods Policy*
- 1.4.5 *Attachment E, Member Participating Agreements (MPA), and its Exhibits, if applicable*

2. Definitions

To the extent that they do not diminish, derogate, or otherwise modify the express language set forth in this Contract, the definitions set forth in any exhibits or attachments, as attached and incorporated herein, shall apply to the Contract document.

3. Time

The WHOLESALER must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4. Wholesaler's duties

The WHOLESALER, who is not a State employee, will perform the duties specified in *Attachment A, Scope of Work*, which is attached and incorporated into this Contract.

5. Fees and Payment

5.1 **Additional Fees.** Subject to *Attachment B, Discounts and Fees* no fee, percentage, or other cost may be added to the products purchased under this Contract unless the fee, percentage, or cost is defined and approved in writing by MMCAP and a formal amendment is executed by the parties.

5.2 **Fees.** Subject to *Attachment C, Service Fee Discount Matrix* as attached and incorporated herein, all changes to the MMCAP Service Fee Matrix will be communicated to MMCAP in writing with a minimum of five (5) business days' notice prior to the effective date of the changes. WHOLESALER service fees may only change on a quarterly or less frequent basis.

5.3 **Federal funds.** Payments under this Contract may be made from federal funds. The WHOLESALER is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the WHOLESALER's failure to comply with federal requirements.

6. Conditions of payment

All services provided by the WHOLESALER under this Contract must be performed to the reasonable satisfaction of MMCAP and the MMCAP Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The WHOLESALER will not receive payment for work found by MMCAP (as directed by the MMCAP Member) to be unsatisfactory or performed in violation of federal, state, or local law.

7. Authorized Representative

MMCAP's Authorized Representative is Ms. Debra López-Burandt, MMCAP Wholesaler Coordinator, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, 651-201-3053, debra.lopez-burandt@state.mn.us or her successor or designee, and has the responsibility to monitor the WHOLESALER's performance and the authority to accept the services provided under this Contract. If MMCAP's Authorized Representative changes at any time during this Contract, MMCAP must immediately notify the Wholesaler.

The WHOLESALER's Authorized Representative is Lisa Penn Director, National Accounts at the following business address and telephone number: 7000 Cardinal Place, Dublin, OH 43017, 614-553-3604 lisa.penn@cardinalhealth.com, or his/her successor or designee. If the WHOLESALER's Authorized Representative changes at any time during this Contract, the WHOLESALER must immediately notify MMCAP.

8. Notices

If one party is required to provide legal notice or notice under the terms of the Contract to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices should be addressed as follows:

MMCAP Wholesaler Coordinator
Minnesota Multistate Contracting Alliance for
Pharmacy
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651-201-3053

VP, National Accounts
With a copy to: General Counsel
Cardinal Health 110, LLC
Cardinal Health 411, Inc.
Cardinal Health 107, LLC
7000 Cardinal Place
Dublin, OH 43017

9. Assignment, amendments, waiver, and Contract complete

9.1 **Assignment.** The WHOLESALER may neither assign nor transfer any rights or obligations under this Contract without the prior consent of MMCAP and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office. MMCAP may not assign or transfer any rights or obligations under this Contract to any entity outside the State of Minnesota executive branch, without the prior consent of WHOLESALER and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

9.2 **Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

9.3 **Extraneous Agreements.** The WHOLESALER shall not enter into any additional agreement, with any MMCAP Member, arising from this Contract for similar services, or amend this Contract in any way, without the written authorization of MMCAP's managing director.

9.4 **Waiver.** If either party fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

9.5 **Contract complete.** This Contract contains all negotiations and agreements between MMCAP and the WHOLESALER. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

10. Indemnification; Warranty

The WHOLESALER must indemnify, save, and hold MMCAP and MMCAP Member, including their agents, and employees harmless from any third party claims or causes of action, including attorneys' fees incurred by MMCAP or its MMCAP Member, arising out of the performance of this Contract by the WHOLESALER or the WHOLESALER's agents or employees. This clause will not be construed to bar any legal remedies the WHOLESALER may have for MMCAP's or the MMCAP Member's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI, Section 1, MMCAP is not permitted to indemnify the WHOLESALER.

WHOLESALE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL WHOLESALE BE LIABLE TO THE STATE, MMCAP, ANY MMCAP MEMBER OR ANY MMCAP PARTICIPATING FACILITY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL CLAIMS, LIABILITIES OR DAMAGES.

WHOLESALE will transfer to MMCAP and MMCAP Member (on a non-exclusive basis) any representations and warranties made by the manufacturers of the products to the extent that such representations and warranties are assignable by WHOLESALE, and will cooperate with all reasonable requests made by MMCAP and/or MMCAP Member to enforce such representations and warranties against such manufacturers. Notwithstanding anything to the contrary herein, WHOLESALE reserves its own rights under such representations and warranties made by such manufacturers and the remedies available to it for any breach of such representations and warranties by the manufacturers.

11. Audits

- 11.1 **State Audit.** Under Minn. Stat. § 16C.05, subd. 5, the WHOLESALE's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, MMCAP, and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Contract.
- 11.2 **Invoice and Pricing Audit.** MMCAP and MMCAP Members served by this Contract may periodically audit WHOLESALE to determine the validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
- 11.3 **Costs.** WHOLESALE, MMCAP, and MMCAP Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.

12. Government data practices

- 12.1 **Data Practices Act.** The WHOLESALE and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the WHOLESALE under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the WHOLESALE or the State.
- 12.2 **Notification.** If the WHOLESALE receives a request to release the data referred to in this clause, the WHOLESALE must immediately notify and consult with MMCAP's Authorized Representative as to how the WHOLESALE should respond to the request. The WHOLESALE's response to the request shall comply with applicable law.
- 12.3 **Release of MMCAP data.** Except as may be required by Minnesota Data Practices Act, Minn. Stat. Ch. 13, or as provided in Section 13, WHOLESALE shall not release to any third party any MMCAP customer data, sales transaction data, DEA/HIN information, contract pricing, EDI transaction data, reverse distribution data, or payment data.

13. Intellectual Property and Data Rights.

- 13.1 **MMCAP Ownership.** MMCAP owns all rights, title, and interest in MMCAP customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP grants to WHOLESALE an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Contract, to (i) release state specific data

to an MMCAP Member's State primary contact; (ii) release any of the above data to product manufacturers, when necessary for the performance of this Contract or as required by WHOLESALER's agreements with such product manufacturers; (iii) to release any of the above data to other MMCAP-approved third parties, when necessary for the performance of this Contract; (iv) to provide MMCAP Member purchase data to aggregators, including IMS Health and NDC Health, subject to WHOLESALER's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (v) to provide MMCAP Member purchase data to other group purchasing organizations of which the MMCAP Member is also a member, provided such data will not include MMCAP-identifiable data. Any MMCAP identifiable data provided hereunder to a third party must identify the data as MMCAP data and subject to Minn. Stat. Ch. 13. WHOLESALER hereby agrees that in the event that MMCAP or an MMCAP Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.

- 13.2 **WHOLESALER Ownership.** WHOLESALER owns all rights, title, and interest to any aggregated data not identifiable as arising from this Contract and any other intellectual property created for or presented to MMCAP. WHOLESALER grants to MMCAP an unlimited, non-revocable, non-transferable, fully paid, perpetual license, to use all intellectual property created for or presented to MMCAP under this Contract.
- 13.3 **Pre-Existing Intellectual Property.** MMCAP and WHOLESALER shall each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. WHOLESALER grants to State an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, non-transferable license to use and modify any pre-existing WHOLESALER intellectual property, including marketing materials and materials contained in solicitation responses provided by WHOLESALER to MMCAP or an MMCAP Member. The aforementioned license is solely for use by MMCAP and MMCAP Members, and their agents related to an internal business or governmental purposes.
- 13.4 **Intellectual Property Warranty and Indemnification.** Except as otherwise set forth below, WHOLESALER warrants that any materials, software or products produced by WHOLESALER will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify WHOLESALER. WHOLESALER, at its own expense, will indemnify; defend to the extent permitted by the Minnesota Attorney General's Office, and hold harmless MMCAP against any loss, cost, expense, or liability (including reasonable legal fees) arising out of such a claim, whether or not such claim is successful against MMCAP.
- 13.4.1 If such a claim has occurred, or in the WHOLESALER's opinion is likely to occur, the WHOLESALER will either procure for MMCAP the right to continue using the materials or products or replacement or modified materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the WHOLESALER, upon written request of the WHOLESALER and at the WHOLESALER's expense. This remedy is in addition to any other remedy provided by law.
- 13.4.2 In the event of a third party claim of infringement by any material, software or product provided by WHOLESALER or utilized by WHOLESALER in the performance of this Contract, but produced by a third party, WHOLESALER's indemnification obligations set forth in Section 13.4 shall apply to the extent that the third party's indemnification obligation to the WHOLESALER is available to MMCAP or WHOLESALER will assist MMCAP in tender of such claim directly to the manufacturer of such material, software or product.

14. Insurance Requirements

- A. WHOLESALER shall not commence work under this Contract until they have obtained all the insurance described below and MMCAP has approved such insurance. WHOLESALER shall maintain such insurance in force and effect throughout the term of this Contract
- B. WHOLESALER is required to maintain and furnish satisfactory evidence of the following insurance policies:

- 1. **Workers' Compensation Insurance:** Except as provided below, WHOLESALER must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, WHOLESALER will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

- \$100,000 – Bodily Injury by Disease per employee
 - \$500,000 – Bodily Injury by Disease aggregate
 - \$100,000 – Bodily Injury by Accident

- If Minnesota Statute 176.041 exempts WHOLESALER from Workers' Compensation insurance or if the WHOLESALER has no employees in the State of Minnesota, WHOLESALER must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes WHOLESALER from the Minnesota Workers' Compensation requirements.

- If during the course of this Contract the WHOLESALER becomes eligible for Workers' Compensation, the WHOLESALER must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP with a certificate of insurance.

- 2. **Commercial General Liability Insurance:** WHOLESALER is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under this Contract whether the operations are by the WHOLESALER or by a subcontractor or by anyone directly or indirectly employed by the WHOLESALER under this Contract Insurance **minimum** limits are as follows:

- \$5,000,000 – per occurrence
 - \$5,000,000 – annual aggregate

- The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
 - Personal and Advertising Injury
 - Blanket Contractual Liability
 - Other; if applicable, please list _____
 - State of Minnesota named as an Additional Insured, to the extent permitted by law

- 3. **Products and Completed Operations Liability Insurance:** WHOLESALER is required to maintain Products/Completed Operations Liability insurance. WHOLESALER may self-insure or self-administer all or any portion of the required insurance, and to the extent WHOLESALER does self-insure, such insurance will not be deemed to exceed the scope of coverage and/or limits that would have been provided in an actual policy of insurance that satisfies this insurance requirement. Insurance minimum limits are \$5,000,000 annual aggregate.

4. **Security and Privacy Liability Insurance:** Wholesaler is required to maintain Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Wholesaler's computer systems which results in unauthorized access to MMCAP or MMCAP Member data. Wholesaler may self-insure and self-administer all or any portion of the required Security and Privacy Liability Insurance.

\$1,000,000 - per claim
\$1,000,000 - annual aggregate

5. **Commercial Automobile Liability Insurance:** WHOLESALER is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted WHOLESALER will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

C. Additional Insurance Conditions:

- Any deductible will be the sole responsibility of WHOLESALER..
- WHOLESALER's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of WHOLESALER's performance under this Contract;
- If WHOLESALER receives a cancellation notice from an insurance carrier affording coverage herein, WHOLESALER agrees to notify MMCAP within five (5) business days with a copy of the cancellation notice, unless WHOLESALER's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP;
- WHOLESALER is responsible for payment of related insurance premiums and deductibles;
- If WHOLESALER is self-insured for Workers' Compensation, a Certificate of Self-Insurance must be attached;
- WHOLESALER shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the WHOLESALER's policy limits to satisfy the full policy limits required by this Contract.

D. MMCAP reserves the right to immediately terminate this Contract if WHOLESALER is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against WHOLESALER.

E. The successful responder is required to submit Certificates of Insurance acceptable to MMCAP as evidence of insurance coverage requirements prior to commencing work under this Contract.

15. Debarment by State, its departments, commissions, agencies, or political subdivisions

WHOLESALE certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. WHOLESALER's certification is a material representation upon which this Contract award was based. WHOLESALER shall provide prompt written notice to MMCAP's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

16. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion

Federal money will be used or may potentially be used to pay for all or part of the work under this Contract, therefore WHOLESALER certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. WHOLESALER's certification is a material representation upon which this Contract award was based.

17. Publicity and endorsement

17.1 **Publicity.** Any publicity regarding the subject matter of this Contract must identify MMCAP as the sponsoring agency and must not be released without prior written approval from MMCAP's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the WHOLESALER individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

17.2 **Endorsement.** The WHOLESALER must not claim that MMCAP, the State of Minnesota, or any Member State endorses its products or services, nor may MMCAP claim that the WHOLESALER endorses its products or services.

18. Governing law, jurisdiction, and venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state court with competent jurisdiction in Ramsey County, Minnesota. Except to the extent that the provisions of this Contract are clearly inconsistent therewith, this Contract will be governed by the Minn. Stat. § 336, the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. Parties acknowledge that the predominant purpose of this Contract is for the provision of goods.

19. Data disclosure

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the WHOLESALER consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the WHOLESALER to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

20. Payment to subcontractors

To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the prime WHOLESALER must pay all subcontractors, less any retainage, within 10 calendar days of the prime WHOLESALER's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

21. Termination

21.1 **Termination by the State without cause.** The Commissioner of the Minnesota Department of Administration may cancel this Contract at any time, without cause, upon 90 days' written

notice to the WHOLESALER. Upon termination, the WHOLESALER will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

21.2 **Termination for cause.** Either party may cancel this Contract at any time, for cause, upon no less than ninety (90) days' written notice to the other party. Upon notice of termination, the noticed party shall have sixty (60) days to cure any defects.

21.3 **Termination for insufficient funding.** MMCAP may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the WHOLESALER. MMCAP is not obligated to pay for any services that are provided after notice and effective date of termination. However, the WHOLESALER will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if this Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP must provide the WHOLESALER notice of the lack of funding within a reasonable time of MMCAP receiving that notice.

22. Non-discrimination (In accordance with Minn. Stat. § 181.59)

The WHOLESALER will comply with the provisions of Minn. Stat. § 181.59 which require:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which WHOLESALER agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or WHOLESALER, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) that no contractor, material supplier, or WHOLESALER, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) that a violation of this section is a misdemeanor; and (4) that this Contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under this Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.

23. Affirmative action requirements for contracts in excess of \$100,000 and if the WHOLESALER has more than 40 full-time employees in Minnesota or its principal place of business

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

23.1 **Covered Contracts and Contractors.** If this Contract exceeds \$100,000 and the WHOLESALER employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the WHOLESALER must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

23.2 **Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the WHOLESALER to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of

compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

23.3 Minn. R. 5000.3400-5000.3600.

- (A) *General.* Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (B) *Disabled Workers.* The WHOLESALER must comply with the following affirmative action requirements for disabled workers.
 - (1) The WHOLESALER must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The WHOLESALER agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) The WHOLESALER agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the WHOLESALER's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The WHOLESALER agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the WHOLESALER's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (5) The WHOLESALER must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Wholesaler is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (C) *Consequences.* The consequences for the WHOLESALER's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.
- (D) *Certification.* The WHOLESALER hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

24. E-Verify certification (In accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, WHOLESALER certifies that as of the date of services performed on behalf of the State, WHOLESALER and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. WHOLESALER is responsible for collecting all subcontractor certifications and may do so utilizing the *E-Verify Subcontractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All

subcontractor certifications must be kept on file with WHOLESALER and made available to the State upon request.

25. GPO Representation. MMCAP represents and warrants that it is a “group purchasing organization” as that term is defined under 42 C.F.R. Section 1001.952(j) and that it shall comply with all applicable federal and state laws, rules and regulations, including, but not limited to, the provisions set forth in 42 U.S.C. Section 1320a-7b and the “safe harbor regulations” set forth in 42 C.F.R. Section 1001.952.

26. Contingency Fees Prohibited. Pursuant to Minnesota Statutes § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

27. Risk of Loss, Damage, and Shipping Terms. Shipments under this Contract shall be FOB Destination, freight prepaid and allowed, to the MMCAP Member’s receiving dock or pharmacy, unless otherwise agreed to by the parties in writing. Title to and risk of loss of the products transfers to the MMCAP Member upon delivery to the MMCAP Member, as set forth above.

28. Force Majeure. Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.

29. Default.

29.1 **General.** In the event of default, MMCAP and the MMCAP Member reserve the right to pursue any other remedy available by law. WHOLESALER may be removed from the WHOLESALER’s list, suspended or debarred from receiving a Contract for failure to comply with terms and conditions of this Contract.

29.2 **Failure to Perform.** Upon failure to perform the following services in the time and manner as set forth herein, the following fees shall be paid by WHOLESALER:

29.2.1 **Bid Roll.** MMCAP will notify Wholesaler within 30 days after manufacturer bid roll of any MMCAP Contract Products not loaded, stocked, and viewable by all MMCAP Members, consistent with process identified within Attachment A. 4.5. B. In the event that an MMCAP Contract Product(s) is not loaded, stocked, and viewable by all MMCAP Members when the new manufacturer contracts are in effect and have been received from the manufacturer(s), WHOLESALER shall pay the following fee to MMCAP: \$2,500/day, until resolved, not to exceed \$25,000 per bid roll cycle.

29.2.2 **Reports** In the event that any report and/or data provided by the WHOLESALER, pursuant to the terms of this Contract, is not received according to schedule, contains incorrect data, incomplete data, or no data, and is more than a minor defect or causes harm to MMCAP’s ability to conduct business or its governmental purpose, Wholesaler will be allowed a 3 business day cure period, or WHOLESALER shall pay the following fee to MMCAP: \$500/day, not to exceed \$5,000 per reporting instance, until resolved.

29.2.3 **Inventory Management and Management of MMCAP Contract Products.** If an MMCAP Contract Product is not loaded, stocked, and viewable by all MMCAP Members, as required pursuant to this Contract and within the timelines set forth herein, WHOLESALER shall credit to the MMCAP Member submitting the request an amount equal to two and one-half percent (2.5%) of such MMCAP Member’s

previous month's net purchases of the generically equivalent item in the same packaging size. WHOLESALER shall credit to the MMCAP Member within thirty (30) calendar days of the MMCAP Member's original request to stock the MMCAP Contract Product. WHOLESALER will be responsible for Inventory Management and Management of MMCAP Contract Products Failure to Perform claims for 90 calendar days from the date the Wholesaler is first unable to supply the Product to an MMCAP Member. This clause shall not apply when the Failure to Perform claim is attributable to a cause outside WHOLESALER's control, or where the alternative product purchased is a WHOLESALER Generic Drug Program product, so long as WHOLESALER is acting in good faith to stock the MMCAP Contract Product.

29.2.4 **Delivery Delays.** Deliveries shall be made by the WHOLESALER in accordance with the time schedules specified in Attachment A, or as otherwise agreed upon by the WHOLESALER and MMCAP Member. Where delivery is delayed, WHOLESALER shall credit to the Member a fee of forty five dollars (\$45.00) per delivery not delivered within 90 minutes of the delivery time scheduled, and for each day the delivery is not received, payable as a credit to the Member within fourteen (14) calendar days of the original delivery date. WHOLESALER shall not be responsible for paying the aforementioned fee for delays outside of its control, and where notification of the experienced delivery delay is not provided to the Wholesaler within 30 days of the event.

29.2.5 **Invoices.** Where WHOLESALER submits a current and/or subsequent invoice for any fees not related directly to Product cost or not specified in Attachment B, WHOLESALER shall reference the original invoice number or purchase order number. Should the WHOLESALER inappropriately charge a fee not related directly to Product cost or a fee not specified in Attachment B, Wholesaler shall credit the inappropriately charged amount back to the MMCAP Member. There is no annual limitation attached to the recovery of fees inappropriately charged that are not related directly to Product cost or not specified in Attachment B, Wholesaler will provide a monthly report to MMCAP of any miscellaneous fees charged to MMCAP Members which are not related directly to Product cost or not specified in Attachment B.

29.2.6 **Application of Fees.** The application of fees herein shall not excuse WHOLESALER's performance obligations as set forth in this agreement, nor shall it waive any rights of MMCAP or MMCAP Members to seek any and all available legal and equitable remedies.

29.2.7 **Acknowledgement.** WHOLESALER acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP and MMCAP Members whole for any failure of performance by the WHOLESALER, as based upon good faith estimates as agreed to by the parties.

30. Severability. If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP and the WHOLESALER will be relieved of all obligations arising under such provisions. If the remainder of this Contract is capable of performance, it will not be affected by such declaration or finding, and will be fully performed.

31. Dispute Resolution. WHOLESALER and MMCAP Members will handle dispute resolution for unresolved issues using the following procedure.

31.1 **Notification.** Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time.

31.2 **Documentation.** Both the MMCAP Member and the WHOLESALER will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties. The briefing document must be sent by the WHOLESALER to MMCAP, the MMCAP Member, and the WHOLESALER's MMCAP Primary Account Representative.

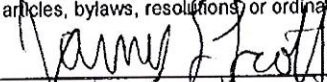
- 31.3 **Escalation.** If parties are unable to resolve the issue in a timely manner, as specified above, either the MMCAP Member or WHOLESALER may escalate the resolution of the issue to a higher level of management. Where escalation of the issue proves ineffective, either party may contact MMCAP and/or the WHOLESALER's MMCAP Representative for further resolution. When escalated to MMCAP, a teleconference will be scheduled with MMCAP and the WHOLESALER's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The plan and timeline must be agreed to by all parties – MMCAP, the MMCAP Member, and WHOLESALER.
- 31.4 **Performance while Dispute is Pending.** Notwithstanding the existence of a dispute the WHOLESALER must continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If the WHOLESALER fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP members as a result of such failure to proceed shall be borne by the WHOLESALER.
- 31.5 **Member Rights.** In the event an MMCAP Member cannot resolve a dispute with the WHOLESALER, and the MMCAP Member has worked with MMCAP to resolve the dispute, the MMCAP Member(s) may change its prime Wholesaler even if the rest of the MMCAP Member state does not wish to change its wholesaler.
- 31.6 **No Waiver.** This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.
- 32. Adding New Members.** If new states are added as MMCAP Members and opt to participate in this Contract, the new MMCAP Member state will select a wholesaler to service the MMCAP Members. In the event one or more of said facilities are currently using another MMCAP-contracted wholesaler, said facility will be allowed to choose if it will transition to WHOLESALER.
- 33. Required Licenses, Permits, and Registration.** WHOLESALER shall have in place prior to the start of this Contract, and must maintain for the life of this Contract, all current licenses, permits and registrations required by state, local and federal agencies. WHOLESALER must make such documentation available upon request by MMCAP.
- 34. DEA License/HIN.** WHOLESALER shall not require an MMCAP Member to have a DEA number in order to obtain products unless making orders for controlled substances. MMCAP Member facilities will have HIN numbers assigned by MMCAP.
- 35. Personnel Changes.** WHOLESALER shall notify MMCAP of changes in the Wholesaler's key personnel, in advance and in writing. Any employee of Wholesaler, who, in the opinion of MMCAP, is unacceptable, will be removed from the project upon written notice to the Wholesaler; provided, however, any such removal must be for lawful reasons. In the event that an employee is removed pursuant to a written request from MMCAP's authorized representative, the Wholesaler will have ten (10) working days in which to fill the role with an acceptable employee.
- 36. State Terms and Participation.**
- 36.1 WHOLESALER may be required to prepare an MMCAP "Member-requested Participation Agreement" ("MPA"), which is attached and incorporated as Attachment E, to amend this Contract to provide for laws specific to a state or local jurisdiction. If these circumstances exist, WHOLESALER must work with MMCAP and the MMCAP Member to prepare the MPA. An MPA must clearly apply only to the requesting location and will not affect the rights of the other MMCAP Members, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein, except in regard to the applicable named MMCAP Member. No verbal or written instructions from MMCAP Members, or any of their staff or officials may be used to


change any provision of this Contract. WHOLESALER will immediately report any such requests to the MMCAP Manager who will issue approval or denial in writing.

36.2 WHOLESALER will comply with all local, state, and federal laws, as applicable to each Member State, in the performance of this Contract. In the performance of this Contract, and to the extent applicable, all Parties will comply with the federal Drug Supply Chain Security Act (DSCSA). MMCAP will not be bound by non-Minnesota state-specific terms contained in an MPA when bringing any action. Nothing contained herein will be deemed a waiver of the State of Minnesota's sovereign immunity.


1. Cardinal Health 110, LLC, Cardinal Health 411, Inc. and Cardinal Health 107, LLC

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions or ordinances.


By: 
Title: James L. Scott
SVP, National Markets
Date: 11/3/14

By: 
Title: James L. Scott
SVP, National Markets
Date: 11/3/14

2. STATE OF MINNESOTA FOR MMCAP
In accordance with Minn. Stat. § 16C.03, subd. 3

By:  PharmD BCPS
Title: Pharmacist Sr.
Date: 11-4-14

3. COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. § 16C.05, subd. 2

By: 
Title: Negotiations Manager
Date: 11-5-14



**STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
NEW YORK STATE PROCUREMENT
PIGGYBACK CONTRACT FOR COMMODITIES**

New York State Contract #

PC66755

Group: 10200 Award: PGB 22881

Master Contract #

MMS15001

DESIGNATED CONTACTS:

Primary Contact: John Normile

E-mail address: john.normile@ogs.ny.gov

Secondary Contact: Kenneth Peek

E-mail address: kenneth.peek@ogs.ny.gov

THIS CONTRACT (hereinafter referred to as the "Piggyback Contract") is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter referred to as the "State" or the "OGS") whose principal place of business is the 41st Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to the authority granted under New York State Finance Law §163(10)(e), and Cardinal Health 411, Inc. (hereinafter referred to as the "Contractor" or the "Vendor" or the "Offerer"), with its principal place of business at 7000 Cardinal Place, Dublin, Ohio 43017. OGS and Contractor are hereby individually referred to as a "Party" and collectively referred to as "Parties."

WHEREAS, in accordance with New York State Finance Law §163(10) (e), the Commissioner of OGS (hereinafter referred to as the "Commissioner") may authorize purchases required by New York State agencies or other authorized purchasers (hereinafter referred to as the "Authorized Users") by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter referred to as the "Issuing Agency"); and

WHEREAS, OGS New York State Procurement Services (hereinafter referred to as "Procurement Services"), on behalf of the Commissioner, finds it necessary and desirable to enter into such a contract (hereinafter referred to as the "Piggyback Contract" or the "Contract"), with the Contractor for the purchase of specified products or services under the terms and conditions established pursuant to the Minnesota Multistate Contract

Alliance for Pharmacy's (hereinafter referred to as the "MMCAP") Contract No. MMS15001 (hereinafter referred to as the "Master Contract"); and

WHEREAS, OGS provided notification of its intention to enter into a single source contract with the Contractor by placing a notice in the February 02, 2015 edition of the New York State Contract Reporter.

THEREFORE, by completing and signing this Piggyback Contract, the Contractor agrees that it is willing and able to enter into a contract with the State and authorizes OGS to process the Piggyback Contract and provide notification regarding the availability of this Piggyback Contract to Authorized Users.

1. PIGGYBACK CONTRACT SCOPE

This Piggyback Contract sets forth the terms and conditions governing acquisitions of pharmaceutical products for use by Authorized Users. All the terms, conditions, covenants and representations contained herein and in the Master Contract, as that Master Contract is modified by this Piggyback Contract, are hereby incorporated by reference and deemed to be a part of this Piggyback Contract as if fully set forth at length herein. The terms and conditions of this Piggyback Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

Section 1.4 of the Master Contract is expressly amended as noted in Section 4, *Merger of Appendices/Conflict of Clauses*, below.

2. TERM

The term of this Piggyback Contract shall commence on the last date of execution by the Parties and end on the Expiration Date of the Master Contract, as that term is defined in Section 1.2 of the Master Contract. The foregoing is collectively referred to as the "Term."

3. CONTRACT MODIFICATIONS AND RENEWALS

Any modifications to this Piggyback Contract must be made by an instrument in writing executed by the Parties. The Contractor shall submit copies of any modifications to or renewals of the Master Contract, including new products, terms, or price changes, to OGS for review prior to their enactment. OGS may accept a modification to or renewal of the Master Contract in full. If a modification is not fully acceptable to OGS, either the Contractor or OGS may terminate the Piggyback Contract in accordance with its terms or amend the Piggyback Contract to accept the modification to the Master Contract in part.

However, in accordance with Appendix B, Section 28, *Modification of Contract Terms*, an Authorized User shall have the authority to accept an offer from the Contractor for more advantageous terms and pricing than those provided for pursuant to this Piggyback

Contract. An Authorized User shall not have the authority to accept any other requests for modifications to the Piggyback Contract, which must be handled as outlined herein.

4. MERGER OF APPENDICES/CONFLICT OF CLAUSES

This Piggyback Contract shall incorporate the following appendices as if set forth herein at length. Only the documents expressly enumerated below shall be deemed a part of this Piggyback Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence:

- I. Appendix A, *Standard Clauses for NYS Contracts*;
- II. Piggyback Contract (This Document);
- III. Appendix B, *OGS General Specifications*; and
- IV. Master Contract, MMCAP Contract No. MMS15001.

5. APPENDIX B AMENDMENTS

Section 64 of Appendix B Dated June 2014 is hereby deleted and replaced as follows:

64. DISPUTES

I. Policy

It is the policy of OGS to provide Interested Parties, as that term is defined herein, with an opportunity to administratively resolve disputes related to OGS bid solicitations, contract awards or contract administration. Interested Parties are encouraged, but not required, to seek resolution of disputes through consultation with OGS staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration. The OGS Dispute Resolution Procedures may be obtained by contacting the person identified in this Piggyback Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

II. Dispute Resolution Procedures

A. Informal Dispute Resolution Process

1. In the event there is a dispute under this Piggyback Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Piggyback Contract which are not affected by the dispute. Primary responsibility for resolving

any dispute arising under this Piggyback Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's products provided under this Piggyback Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of this Piggyback Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

3. If negotiation between the Contractor and Authorized User fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the informal dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

B. Formal Dispute Process

1. Definitions

- a. Filed means the complete receipt of any document by OGS before its close of business.

b. Interested Party for the purpose of filing a dispute relating to a solicitation, as used in this section, means an actual or prospective bidder or Offerer whose direct economic interest would be affected by the award of a Contract or by the failure to award a Contract.

c. Interested Party for the purpose of filing a dispute relating to a Contract award, as used in this section, means an actual bidder or Offerer for the subject Contract.

d. Interested Party for the purpose of filing a dispute relating to the administration of the Contract, as used in this section, means the awarded Contractor for the subject Contract.

e. Issuance of award means the Date of Issue identified on the Contract Award Notification transmitted by OGS.

f. A Formal Dispute means a written objection by an Interested Party to any of the following:

i. A solicitation or other request by OGS for offers for a contract for the procurement of commodities, services or technology.

ii. The cancellation of the solicitation or other request by OGS.

iii. An award or proposed award of the Contract by OGS.

iv. A termination or cancellation of an award of the Contract by OGS.

v. Changes in the scope of the Centralized Contract by the Commissioner.

vi. Determination of "materiality" in an instance of nonperformance or contractual breach.

vii. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Formal Disputes

a. A Formal Dispute must be filed in writing with the Director of Procurement Services by mail or facsimile, using the following contact information:

Director, Procurement Services
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

b. The Formal Dispute must include:

- i. Name, address, e-mail address, fax and telephone numbers of the filer.
- ii. Solicitation or Contract number.
- iii. Detailed statement of the legal and factual grounds for the Formal Dispute, including a description of resulting prejudice to the filer.
- iv. Copies of relevant documents.
- v. Request for a ruling by the agency.
- vi. Statement as to the form of relief requested.
- vii. All information establishing that the filer is an Interested Party for the purpose of filing a Formal Dispute.
- viii. All information establishing the timeliness of the Formal Dispute.

3. Formal Disputes concerning a solicitation shall be filed by an Interested Party (see II.B(1)(b)) with OGS no later than ten (10) business days before the date set in the solicitation for receipt of bids. If the date set in the solicitation for receipt of bids is less than ten (10) business days from the date of issue, Formal Disputes concerning the solicitation shall be filed with OGS at least twenty-four (24) hours before the time designated for receipt of bids.

4. Formal Disputes concerning a pending or awarded Contract must be filed within ten (10) business days by an Interested Party (see II.B(1)(c)) after the disputing party knew or should have known of the facts which form the basis of the Formal Dispute; however, a Formal Dispute may not be filed later than ten (10) business days after issuance of the Contract award.

5. Formal Disputes concerning the administration of the Contract after award (see II.B(1)(iv-vii)) must be filed within twenty (20) business days by an Interested Party (see II.B(1)(d)) after the disputing party knew or should have known of the facts which form the basis of the Dispute. However, if Contractor and Authorized User participate in the Informal Dispute Resolution Process, Formal Disputes concerning the administration of the Contract after award must be filed by Contractor within twenty (20) business days after the Contractor and Authorized User failed to reach resolution through the Informal Dispute Resolution Process set forth in Section II.A.

6. Agency Response

- a. OGS will consider all information relevant to the Formal Dispute, and may, in its discretion, suspend, modify, or cancel the disputed procurement/Contract action prior to issuance of a Formal Dispute decision.
- b. OGS reserves the right to require the filer to meet or participate in a conference call with OGS to discuss the Formal Dispute when, in its sole judgment, circumstances so warrant.
- c. OGS reserves the right to waive or extend the time requirements for decisions and final determinations on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
- d. OGS reserves the right to consider or reject the merits of any Formal Dispute.
- e. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the Formal Dispute.

7. Appeals

- a. Should the filer be dissatisfied with the Formal Dispute determination, a written appeal may be filed with the Chief Procurement Officer, by mail or facsimile, using the following contact information:

Chief Procurement Officer
Procurement Services
A Division of the Office of General Services
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 474-2437

- b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of Procurement Services shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

- c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.
- d. An appeal of the decision of the Director of Procurement Services shall not include new facts and information unless requested in writing by the Chief Procurement Officer.
- e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

8. Legal Appeals

- a. Nothing contained in these provisions is intended to limit or impair the rights of any vendor or Contractor to seek and pursue remedies of law through the judicial process.

6. APPLICABLE LAW

This Piggyback Contract shall be governed by and construed in accordance with the laws of the State of New York. Any claims or actions brought by Contractor against the State for monetary damages shall be brought in the New York State Court of Claims. See Section 14, *Governing Law*, in Appendix A.

7. AUTHORIZED USERS

The term Authorized User shall have the meaning set forth in the State Finance Law Section 163(1)(k). This Piggyback Contract is for use by Authorized Users, which includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Section 2(b), *Definitions*.

Upon request, all eligible non-State agencies must furnish the Contractor with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS Procurement Services, Customer Services at 518-474-6717 or at customer.services@ogs.ny.gov.

8. PREFERRED SOURCES

New York State Finance Law §162 mandates that a New York State agency, public authority, political subdivision or public benefit corporation obtain certain commodities and services from preferred sources, such as Correctional Industries (Corcraft), the blind and the disabled, when such products or services meet the form, function and utility of the entity. Some products or services under this Piggyback Contract may be available from one or more preferred sources. The Contractor understands and agrees that such products and services must be purchased from a preferred source in accordance with New York State Law.

9. NOTICES

All notices, demands, designations, certifications, requests, reports, offers, consents, approvals and other instruments given pursuant to this Piggyback Contract shall be in writing and shall be validly given when mailed by registered, certified or overnight mail, or hand delivered and, (i) if to the State, addressed to the State at its address identified as indicated herein, or (ii) if to the Contractor, addressed to the Contractor at its address set forth on page 1 of this Piggyback Contract. A Party may, from time to time, specify any address in the United States as its address for purposes of notices under this Piggyback Contract by giving fifteen (15) days written notice to the other Party. The Parties mutually agree to designate individuals in their respective organizations for purposes of receiving notice pursuant to this Piggyback Contract. The representatives for the State and the Contractor will be identified, and updated, on the Contract Award Notification page associated with this Piggyback Contract.

10. PROCESSING CONTRACT PAYMENTS

The Contractor acknowledges that a contract payment cannot be processed by an Authorized User until the contract products have been delivered and accepted in accordance with the terms and conditions of Appendix B Section 33 *Product Delivery* and Section 36 *Title and Risk of Loss*.

11. CONTRACT BILLINGS AND PAYMENTS

Appendix B, Section 49, *Contract Invoicing*, applies to this Piggyback Contract.

12. PAYMENTS OF INTEREST

Appendix B, Section 51, *Prompt Payments*, applies to this Piggyback Contract.

The Federal Prompt Payment Law (or any other law governing payment terms incorporated in the Master Contract) does not apply to this Piggyback Contract regardless of Authorized User.

13. REPORT OF CONTRACT PURCHASES

The Contractor agrees that it shall furnish a weekly report of purchases made pursuant to this Piggyback Contract by the close of business on the Monday following the end of each covered week. The State reserves the right to seek alternate data and reporting elements and will work with the Contractor if necessary to change the requirements set forth in this provision. The report shall be in the following format:

DEA NUMBER	CUSTOMER NAME	CITY	STATE	INVOICE DATE
CONTRACT FLAG	CONTRACT GROUP NUMBER	CONTRACT GROUP NAME	AHFS NUMBER	AHFS DESCRIPTION
DEA SCHEDULE DESCRIPTION	FORM DESCRIPTION	PACK SIZE QTY	PACK QUANTITY	STRENGTH
CORPORATE ITEM NUMBER	CORPORATE DESCRIPTION	MONTH YEAR DISPLAY	PRODUCT TYPE DESCRIPTION	ORDER QUANTITY
AVERAGE UNIT PRICE	EXT SELL DLR			

The report is to be submitted to OGS in accordance with the notice provisions of this Piggyback Contract and shall reference the Group Number, New York State Contract Number, sales period, and Contractor’s name.

Failure to submit the required report may constitute breach of this Piggyback Contract.

Upon request, the Contractor will furnish to OGS any applicable reports described in Section 4.19(1), Reports Provided to MMCAP, of Attachment A, Scope of Work, to the Master Contract. The Contractor will provide to OGS and to the Authorized Users the access to reporting, support, and training as described in Section 4.19(2), MMCAP Member Reporting, of Attachment A, Scope of Work, to the Master Contract. The Contractor’s ordering system will provide, at no charge, the Advanced Reporting functionality described in Section 3 of Appendix B to the Master Contract.

14. PRICE AND DISCOUNT

I. MINIMUM ORDER

The Master Contract contains no minimum order quantities or values. Shipping costs are to be prepaid by the Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the purchase order by the Authorized User.

II. PRICE AND DISCOUNTS

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the Authorized User. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.

III. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in this Piggyback Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3) (a)(v). This means that State agencies can purchase commodities from sources other than the Contractor provided that such commodities are substantially similar in form, function or utility to the commodities herein and are:

- A. lower in price
-and/or-
- B. available under terms that are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

State agencies are reminded that the Contractor must be provided an opportunity to match the non-contract savings at least two (2) business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of OSC and competitive bidding of requirements exceeding the discretionary bid limit.

15. USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS/RESELLERS

The Contractor shall be fully liable for subcontractor, dealer, distributor and/or reseller performance under this Piggyback Contract, and their compliance with all of the terms and conditions of this Piggyback Contract.

16. OVERLAPPING CONTRACT ITEMS

Products/services available under this Piggyback Contract may also be available from other New York State contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements, and to document the basis for this selection in the procurement record.

17. CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall procure at its sole cost and expense, prior to this Piggyback Contract taking effect, and shall maintain in force at all times during the Term of this Piggyback

Contract, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII" the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to OGS and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities under this Piggyback Contract.

I. General Conditions Applicable to Insurance. All policies of insurance required by this Piggyback Contract must meet the following requirements:

A. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified in Paragraph II Insurance Requirements below.

B. Policy Forms. Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.

C. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS, prior to this Piggyback Contract taking effect, and within five (5) business days of request to OGS.

1. Certificates shall reference the New York State Contract Number.

2. **ALL OF THE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The New York State Office of General Services, Procurement Services, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).

3. Certificates shall be submitted to:

**The New York State Office of General Services
Procurement Services
Corning Tower- 38th Floor
Empire State Plaza
Albany, NY 12242**

4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed any

coverage modification which affects the policy deductible, limits, coverage, conditions or definitions (, or not renewed without at least thirty (30) days' prior, written notice except for non-payment, in which case, notice shall be provided as required by law to: OGS, Attention: Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany, New York 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Within five (5) business days of policy renewal, the Contractor shall supply OGS updated replacement Certificates of Insurance. Upon policy issue Contractor will provide amendatory endorsements to OGS. In addition, except for the Data Breach/Cyber Liability insurance, the Contractor will make available to OGS, on the day of renewal, a Memorandum of Insurance evidencing renewed insurance at <https://online.marsh.com/marshconnectpublic/marsh2/public/moi?client=856864>. The Contractor also agrees to notify OGS of any changes to this link within 5 business days of such a change. The Contractor shall provide a full Data Breach/Cyber Liability insurance certificate as soon as possible after renewal.

5. Certificates of Insurance shall:
 - a. Be in the form approved by OGS (i.e., an ACORD);
 - b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this Piggyback Contract;
 - c. Specify the Additional Insureds and Named Insured, as required herein;
 - d. Refer to this Piggyback Contract by its New York State Contract Number and any other attachments on the face of the certificate; and,
 - e. Be signed by an authorized representative of the insurance carrier or producer.

6. Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

D. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the People of the State of New York, the New York State Office of General Services or any entity authorized by law or regulation to use this Piggyback Contract shall be excess of and shall not contribute with the Contractor's insurance for any claim arising from the

Contractor's work under this Piggyback Contract, or as a result of the Contractor's activities. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services or any entity authorized by law or regulation to use this Piggyback Contract shall be excess of and shall not contribute with the Contractor's insurance.

E. Policy Renewal/Expiration. Evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in accordance with § I. 4. above, and in the manner required for service of notice in Paragraph I.C. Certificates of Insurance/Notices, above. If, at any time during the Term of this Piggyback Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Piggyback Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Piggyback Contract, or proof thereof is not provided, OGS or the Authorized Users may withhold further payments due under this Piggyback Contract or treat such failure as a breach or default of this Piggyback Contract. In the event of such a breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Piggyback Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost or additional cost incurred as a result of the Contractor not having insurance required by this Piggyback Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of this Piggyback Contract and no liability shall be incurred or arise against OGS or any Authorized User, its agents and employees therefrom for lost profits or any other damages.

F. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate deductibles or self-insured retentions above \$100,000, which are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

G. Subcontractors. Should the Contractor engage a subcontractor, the Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the Term of this Piggyback Contract the insurance requirements

of this document on the subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by this Piggyback Contract shall name the People of the State of New York, the New York State Office of General Services, any entity authorized by law to use this Contract as an Authorized User and their officers, agents, and employees as additional insureds hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85 or the equivalent. Additional Insured Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, Procurement Services, Corning Tower – 38th Floor, Empire State Plaza, Albany, New York 12242. The additional insured requirement does not apply to Workers' Compensation, Disability, Products Liability and Completed Operations Insurance or Data Breach/Cyber Liability Insurance Including Technology Errors and Omissions Insurance.

II. Insurance Requirements. The Contractor, throughout the Term of this Piggyback Contract, or as otherwise required by this Piggyback Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Piggyback Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

A. Commercial General Liability Insurance (CGL) covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operation under this Piggyback Contract. The limits under such policy shall not be less than the following:

1. Each Occurrence limit - \$2,000,000.00
2. General Aggregate - \$2,000,000.00
3. Personal/Advertising Injury - \$1,000,000.00
4. Damage to Rented Premises - \$50,000.00
5. Coverage shall include, but not be limited to, the following:
 - a. premises liability;
 - b. independent contractors;
 - c. blanket contractual liability, including tort liability of another assumed in a contract;
 - d. defense and/or indemnification obligations, including obligations assumed under this Piggyback Contract;
 - e. cross liability for additional insureds;

- f. explosion, collapse, and underground hazards; and,
 - g. contractor means and methods.
6. The following ISO forms must be endorsed to the policy:
- a. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
 - b. Waiver of Subrogation
- B. Comprehensive Business Automobile Liability Insurance covering liability arising out of any automobile in connection with the work required under this Piggyback Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident and shall name the People of the State of New York, the New York State Office of General Services, any entity authorized by law to use this Contract as an Authorized User and their officers, agents, and employees as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies.
- Waiver of Subrogation. For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services and any entity authorized by law or regulation to use this Piggyback Contract. Waiver of Subrogation Endorsements shall be provided prior to this Piggyback Contract taking effect and within three (3) business days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.
- C. Products Liability and Completed Operations Insurance covering the liability incurred by the Contractor for property damage or injuries that may happen to a third party once contracted operations have ceased or been abandoned. Such policy shall have a general aggregate of at least \$2,000,000.00 and an each occurrence limit of at least \$1,000,000.00. Contractor may self-insure any or all of the required insurance and the existence of self-insurance does not change any obligation Contractor may have under this Agreement; including notifying the state in any instance where a change from third party insurance to self-insurance occurs.

D. Data Breach/Cyber Liability Insurance Including Technology Errors and Omissions Insurance:

The Contractor shall carry and maintain applicable coverage with a limit of \$5,000,000.00. If the Contractor provides technology services or products, the Contractor must also provide Technology Errors & Omissions Coverage. As this insurance is most often written on a claims made basis the Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after the work is completed if coverage is cancelled or not renewed.

III. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in Offerer/Contractor not being considered for this Piggyback Contract or renewal of same.

A. Proof of Compliance with Workers' Compensation Coverage

Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage.

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
 - a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
 - b. Obtain such coverage from an insurance carrier; or
 - c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.
2. The Contractor shall provide one of the following forms to OGS before this Piggyback Contract can be executed by the Commissioner.
 - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);

- b. Certificate of Workers' Compensation Insurance:
 - i. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, the Contractor must request its carrier to send this form to OGS, or
 - ii. Form U-26.3 if coverage is provided by the State Insurance Fund, the Contractor must request that the State Insurance Fund send this form to OGS.
- c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

B. Proof of Compliance with Disability Benefits Coverage Requirements:

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
 - a. Be legally exempt from obtaining disability benefits coverage; or
 - b. Obtain such coverage from an insurance carrier; or
 - c. Be a Board-approved self-insured employer.
2. The Contractor shall provide one of the following forms to OGS **before this Piggyback Contract can be executed by the Commissioner.**
 - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov).
 - b. Form DB-120.1, Certificate of Disability Benefits Insurance. The Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
 - c. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

18. PURCHASE ORDERS

Purchase Orders or orders for products shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted during the Term of this Piggyback Contract addressed to the Contractor using the Contractor's ordering system(s), including but not limited to Cardinal.com and Order Express, which are to be used in the performance of this Piggyback Contract. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of this Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of this Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, see Appendix B, Section 32, *Purchase Orders*.

19. INDEFINITE DELIVERY, INDEFINITE QUANTITY CONTRACT

This Piggyback Contract will be an Indefinite Delivery, Indefinite Quantity (hereinafter referred to as the "IDIQ") Contract. All quantities or dollar values listed within this Piggyback Contract or any applicable Participation Agreement are estimates. Estimates are used for evaluation purposes only.

Numerous factors could cause the actual volume of product purchased under this Piggyback Contract to vary substantially from the estimates. Such factors include, but are not limited to, the following:

- Such Piggyback Contracts could be nonexclusive contracts;
- There is no guarantee of volume to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Piggyback Contract is indeterminate and will depend upon actual Authorized User demand, and actual quantities ordered during the contract period; and,
- The State reserves the right to terminate any piggyback contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the piggyback contract.

In OGS's experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if the actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the

estimates; conversely, if the actual contract pricing is higher than anticipated or historical pricing, actual quantities purchased could be substantially lower than the estimates. By executing this Piggyback Contract, the Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the Term of this Piggyback Contract could vary substantially from the estimates provided.

20. CATALOGS AND PRICE SHEETS

Access to product information, catalogs and pricing information, including access to the Contractor's ordering system(s), including but not limited to Cardinal.com and Order Express, which are to be used in the performance of this Piggyback Contract shall be provided in accordance with the terms of Attachment A to the Master Contract. Upon request, the Contractor shall assist Authorized Users in the use of the hardware, software and other devices needed to access the product and pricing information in accordance with the terms of Attachment A to the Master Contract.

21. PRICING

The Parties agree that at the time of the commencement of this Piggyback Contract, all purchases made pursuant to this Piggyback Contract shall be priced at a Service Fee Discount for a state monthly purchase volume of \$12,500,001 and above in accordance with the terms of Table 1 of ATTACHMENT C of the Master Contract. It is anticipated that this Service Fee Discount shall continue for the term of this Piggyback Agreement. However, both Parties agree that the Service Fee Discount may be adjusted in accordance with Table 1 of ATTACHMENT C of the Master Contract during the term of this Piggyback Agreement. Both Parties agree that purchases made by all New York State entities that are MMCAP participating facilities (including but not limited to Department of Citywide Administrative Services and State University of New York schools, hospitals and medical centers) will be aggregated by Cardinal to determine the overall New York State monthly volume. In addition, applicable sales taxes and other fees may be charged pursuant to the terms of this Piggyback Contract, the Master Contract and applicable State law.

22. SUMMARY OF POLICY AND PROHIBITIONS ON PROCUREMENT LOBBYING

Pursuant to State Finance Law §§139-j and 139-k, this Piggyback Contract includes and imposes certain restrictions on communications between OGS and an Offerer/bidder during the procurement process. An Offerer/bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the procurement contract by OGS and, if applicable, the OSC (hereinafter referred to as the "Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Piggyback Contract PC66755, Cardinal Health 411, Inc.

Contract. OGS employees are also required to obtain certain information when contacted during the Restricted Period and make a determination of the responsibility of the Offerer/bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the Offerer/bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

23. NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR PROFIT BUSINESS ENTITY

- I. OGS conducts a review of Offerers to provide reasonable assurances that an Offerer is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter referred to as the "Questionnaire") is used for non-construction contracts and is designed to provide information to assess an Offerer's responsibility to conduct business in New York based upon its financial and organizational capacity, legal authority, business integrity, and past performance history. If interested in contracting with New York State, an Offerer must agree and hereby agrees to fully and accurately complete the Questionnaire. The Offerer acknowledges that the State's execution of a contract will be contingent upon the State's determination that the Offerer is responsible and that the State will be relying upon the Offerer's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends that each Offerer file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (hereinafter referred to as the "OSC") website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

The OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Offerers opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Offerer prior to contract award, the offerer must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to OGS' transmittal of this Piggyback Contract. An Offerer's Questionnaire cannot be viewed by OGS until

the Offerer has certified the Questionnaire. It is recommended that all Offerers become familiar with all of the requirements of the Questionnaire and complete the same as soon as possible to allow sufficient time for OGS review prior to Piggyback Contract execution.

- II. The Contractor shall at all times during the Piggyback Contract Term remain responsible. The Contractor agrees, if requested by the Commissioner, or her designee, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner, or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Piggyback Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Activity under the Piggyback Contract may resume at such time as the Commissioner, or her designee, issues a written notice authorizing a resumption of performance under the Piggyback Contract.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Piggyback Contract. Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Piggyback Contract may be terminated by the Commissioner, or her designee, at the Contractor's expense where the Contractor is determined by the Commissioner, or her designee, to be non-responsible. In such event, the Commissioner, or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Piggyback Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

24. NEW YORK STATE TAX LAW SECTION 5-A

New York State Tax Law §5-a requires certain contractors awarded state contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (hereinafter referred to as the "DTF") that they are registered to collect New York State and local sales and compensating use taxes. The

law applies to contracts where the total amount of such contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the contractor filed the ST-220-TD with DTF. Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed as soon as possible upon OGS' transmittal to the Contractor of this Piggyback Contract and submitted to the OGS certifying that the Contractor filed the ST-220-TD with DTF. The Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned prior to such request). Failure to make either of these filings may render a contractor non-responsive and non-responsible. The Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the contractor certification forms and instructions are provided below. Form ST-220-TD must be filed with and returned directly to the DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with the DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with the DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with the DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

Vendors may call the DTF at 518-485-2889 for any and all questions relating to Section 5-a of the New York State Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

25. NEW YORK STATE VENDOR FILE REGISTRATION

Prior to being awarded a contract, the Contractor and any designated authorized dealers/distributors/resellers who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to the Contractor and Vendor IDs will be assigned to each of your authorized

dealers/distributors/resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If the Contractor is already registered in the Vendor File, the Contractor must enter its ten-digit Vendor ID on this Piggyback Contract.

If the Contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS. Please send this document to a Designated Contact for this Piggyback Contract. In addition, if an authorized dealer/distributor/reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designated authorized dealer/distributor/reseller and submitted to OGS. The OGS will initiate the vendor registration process for all companies and their authorized dealers/distributors/resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

26. ENVIRONMENTAL ATTRIBUTES AND NYS EXECUTIVE ORDER NO. 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Piggyback Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Piggyback Contract.

27. USE OF RECYCLED OR REMANUFACTURED MATERIALS

New York State supports and encourages contractors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or the product specifications contained herein. Refurbished or remanufactured

components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Piggyback Contract. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, Section 15, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

28. SURPLUS/TAKE-BACK/RECYCLING

- I. State agencies are reminded of their obligation to comply with the NY State Finance Law §§ 167, Transfer and Disposal of Personal Property, and 168, The Management of Surplus Computer Equipment, regarding the transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If the Contractor offers a take-back/recycling program, then the Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. The Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation (hereinafter referred to as "DEC") Electronic Equipment Recycling and Reuse Act (hereinafter referred to as the "Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If the Contractor is a manufacturer of electronic equipment covered by the Act, the Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>.
- IV. If the Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. The Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. The Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value.

It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology (NIST) Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

29. BULK DELIVERY AND ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. The Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

30. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES

I. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of this Piggyback Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for New York State certified minority- and women-owned business enterprises ("MWBEs"). The Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.
- C. The Contractor further agrees to be bound by the provisions of Article 15-A and the MWBE Regulations. If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

- D. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds, suspension or termination of this Piggyback Contract or such other actions or enforcement proceedings as allowed by this Piggyback Contract.

II. Contract Goals

- A. For purposes of this Piggyback Contract, OGS conducted a comprehensive search and determined that this Piggyback Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the Contractor. The Contractor is however encouraged to make every good faith effort to promote and assist the participation of MWBEs who perform commercially useful functions on this Piggyback Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at:

<https://ny.newycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on this Piggyback Contract.

B. Commercially Useful Function

Pursuant to 5 NYCRR § 140.1(f), a MWBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, a MWBE must, where applicable and in accordance with any State Agency specifications, also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installing. A MWBE does not perform a commercially useful function if its role adds no substantive value and is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation. OGS will assess whether a MWBE is performing a commercially useful function by considering the following:

- (1) the amount of work subcontracted;
- (2) industry practices;
- (3) whether the amount the MWBE is to be paid under the contract is commensurate with the work it is to perform;
- (4) the credit claimed towards MWBE utilization goals for the performance of the work by the MWBE; and
- (5) any other relevant factors.

C. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include the following:

(1) A list of the general circulation, trade and MWBE-oriented publications and dates of publications soliciting for certified MWBE participation as a subcontractor/supplier and copies of such solicitation.

(2) A list of the certified MWBEs appearing in the Empire State Development MWBE directory that were solicited for this Piggyback Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

(3) Descriptions of this Piggyback Contract's documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with or obtaining supplies from certified MWBEs.

(4) A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Piggyback Contract.

(5) Dates of any pre-bid, pre-award or other meetings attended by the Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in this Piggyback Contract.

(6) Other information deemed relevant to the request.

III. Equal Employment Opportunity (EEO)

A. The Contractor shall comply with the following provisions of Article 15-A:

1. The Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

2. By entering into this Piggyback Contract, the Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is the Contractor's equal employment opportunity policy.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor shall submit Form EEO 100- Staffing Plan to document the composition of the proposed workforce to be utilized in the performance of this Piggyback Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories. The Contractor shall complete the Staffing plan form and submit it as part of this Piggyback contract.

C. Form EEO 101 - Workforce Employment Utilization Report ("Workforce Report")

The Contractor and OGS agree that the Contractor is unable to separate out the workforce utilized in the performance of this Piggyback Contract from the Contractor's and/or the subcontractor's total workforce and that the information provided on the previously submitted Staffing Plan is the Contractor's total workforce during the subject time frame, not limited to work specifically under this Piggyback Contract.

- D. The Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

31. MERCURY-ADDED CONSUMER PRODUCTS

The Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any products containing elemental mercury for any purpose under this Piggyback Contract.

32. DIESEL EMISSION REDUCTION ACT OF 2006

Pursuant to § 19-0323 of the N.Y. Environmental Conservation Law (hereinafter referred to as "the Law") it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (hereinafter referred to as the "BART") and ultra-low sulfur diesel fuel (hereinafter referred to as the "ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities. The Law also applies to vehicles owned, operated by or on behalf of, or leased by State agencies and State or regional public authorities with more than half of their governing body appointed by the Governor.

The Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities and requires certain reports from contract vendors. All heavy duty diesel vehicles must have BART by December 31, 2015 (unless further extended by law). The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance.

33. NEW YORK STATE REQUIRED CERTIFICATIONS

An Offerer must complete and submit the NYS Required Certifications form (Attachment X – NYS Required Certifications for Piggyback Contracts) certifying compliance with the Diesel Emission Reduction Act, the MacBride Fair Employment principles and the Non-Contract PC66755, Cardinal Health 411, Inc.

Collusive Bidding Requirements in order to be considered for award under this Piggyback Contract.

34. ENTIRE AGREEMENT

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 3 of this Piggyback Contract.

35. CAPTIONS

The captions contained in this Piggyback Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

36. SEVERABILITY

If any provision of this Piggyback Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Piggyback Contract, which shall be enforced and interpreted as if such provision was never included in the Piggyback Contract.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereby execute their mutual agreement to the terms of this Piggyback Contract. This Piggyback Contract shall be a binding agreement between the Parties when executed and created as set forth in clause 26 of Appendix B, *Contract Creation/Execution*. The State further warrants that where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of this Piggyback Contract, the approved signature page(s) will be affixed by the State to additional copies of this Piggyback Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Piggyback Contract, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing below, the Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j(3) and §139-j(6)(b).

CONTRACTOR

**THE PEOPLE OF THE STATE OF
NEW YORK ACTING BY AND
THROUGH THE COMMISSIONER OF
GENERAL SERVICES**

Signature: James L. Scott

Signature: Susan M. Filburn

Printed Name: James L. Scott

Printed Name: Susan M. Filburn

Title: SVP, National Markets

Title: 4/24/2015

Company Name: Cardinal Health 411, Inc.

Federal Tax ID: 31-1470544

NYS Vendor ID: 1000041364

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }

: Sworn Statement:

COUNTY OF _____ }

On the 20th day of April in the year 2015, before me personally appeared JAMES L. SCOTT, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at _____

Town of Dublin

County of Franklin, State of Ohio; and further that:

[Check One]

If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation): SVP, National Accounts of Cardinal Health the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If a partnership): he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

If a limited liability company): he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Janet S. Bryan
Signature of Notary Public



Janet S. Bryan
Notary Public, State of Ohio
My Commission Expires 10-15-2018

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

**PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.**

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this

contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this

contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment

opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.

In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS.

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not

limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

APPENDIX B
GENERAL SPECIFICATIONS

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GENERAL

1. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the Bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

2. DEFINITIONS Terms used herein shall have the following meanings:

a. AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

b. AUTHORIZED USER(S) Authorized User shall have the meaning set forth in New York State Finance Law section 163(1)(k) and includes, but is not limited to, New York State agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

c. COMMISSIONER Commissioner of OGS, or in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

d. CONTRACT The writing(s) which contain the agreement of the Commissioner and the bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

- 1. Agency Specific Contracts** Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).
- 2. Centralized Contracts** Single or multiple award Contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another jurisdiction's contract or on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or Mini-Bid unless otherwise required by the Bid Specifications or Contract Award Notification.
- 3. Back-Drop Contracts** Multiple award Centralized Contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous or periodic recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor(s) from among Back-Drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a Mini-Bid

among qualified Back-Drop contract holders, or such other method as set forth in the Bid Document.

4. Piggyback Contract A Contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use by the OGS Commissioner in accordance with the requirements of the State Finance Law.

5. Contract Letter A letter to the successful Bidder(s) indicating acceptance of its Bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a Contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

e. CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a Contract has been established.

f. CONTRACTOR Any successful Bidder(s) to whom a Contract has been awarded by the Commissioner.

g. DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

h. EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

i. ENTERPRISE The total business operations in the United States of Authorized User(s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User(s).

j. ENTERPRISE LICENSE A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

k. ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

l. GROUP A classification of Product, services or technology which is designated by OGS.

m. INVITATION FOR BIDS (IFB) A type of Bid Document which is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder(s).

n. LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g., patches, fixes, PTFs, programs, code or data conversion, or custom programming).

o. LICENSEE(S) One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for

purposes of compliance with an individual license, the term "Licensee(s)" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

p. LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

q. LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

r. NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

s. OGS The New York State Office of General Services.

t. PRODUCT A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

u. PROPRIETARY Protected by secrecy, patent, copyright or trademark against commercial competition.

v. PURCHASE ORDER The Authorized User's fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

w. REQUEST FOR PROPOSALS (RFP) A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to the responsive and responsible Bidder(s).

x. REQUEST FOR QUOTATION (RFQ) A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

y. RESPONSIBLE BIDDER A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

z. RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the OGS Commissioner.

aa. SINGLE SOURCE A procurement where two or more Bidders can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

bb. SITE The location (street address) where Product will be executed or services delivered.

cc. SOLE SOURCE A procurement where only one Bidder is capable of supplying the required Product.

dd. SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

ee. STATE State of New York.

ff. SUBCONTRACTOR Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

gg. TERMS OF LICENSE The terms and conditions set forth in the Contract that are in effect and applicable to a Purchase Order at the time of order placement.

hh. VIRUS Any computer code, whether or not written or conceived by Contractor, that disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

3. INTERNATIONAL BIDDING All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

4. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled Bid opening.

5. BID SUBMISSION All Bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their Bids to the location set forth in the Bid Specifications prior to the stated Bid opening date/time.

A Bid return envelope, if provided with the Bid Specifications, should be used with the Bid sealed inside. If the Bid response does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.

All Bids must have a label on the outside of the package or shipping container outlining the following information:

“**BID ENCLOSED** (bold print, all capitals)

- Group Number

- IFB or RFP Number
- Bid Submission date and time”

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper Bid number or Group Number, and the date and time of Bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

All Bids must be signed by a person authorized to commit the Bidder to the terms of the Bid Documents and the content of the Bid (offer).

6. LATE BIDS REJECTED For purposes of Bid openings held and conducted by OGS, a Bid must be received in such place as may be designated in the Bid Documents or, if no place is specified, in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the Bid opening. For purposes of Bid openings held and conducted by Authorized Users other than OGS, the term late Bid is defined as a Bid not received in the location established in the Bid Specifications at or before the date and time specified for the Bid opening.

Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received or, (ii) in the case of a multiple award, an insufficient number of timely Bids were received to satisfy the multiple award; and acceptance of the late Bid is in the best interests of the Authorized Users. Bids submitted for continuous or periodic recruitment contract awards must meet the submission requirements associated with their specifications. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Authorized User, shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance, shall not excuse late Bid submissions. Determinations relative to Bid timeliness shall be at the sole discretion of the Commissioner.

7. BID CONTENTS Bids must be complete and legible. All Bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder’s response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by the Commissioner after the time specified for the Bid opening may not be considered.

8. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license

agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

Only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:

- a. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and
- b. The writing must identify the particular specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- c. The Bidder shall enumerate the proposed addition, deletion, counter-offer, deviation, or modification from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed “material,” shall be incorporated into a Contract or Purchase Order unless submitted in accordance with the above and the Commissioner or Authorized User expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s).

9. CONFIDENTIAL/TRADE SECRET MATERIALS

a. CONTRACTOR Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder. Marking the Bid as “confidential” or “proprietary” on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The State’s receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

b. COMMISSIONER OR AUTHORIZED USER Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.

10. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

a. PREVAILING WAGE RATE APPLICABLE TO BID SUBMISSIONS A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

b. WAGE RATE PAYMENTS/CHANGES DURING CONTRACT TERM The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the prevailing wage rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS In compliance with Article 8, Section 220 of the New York State Labor Law:

i. Posting The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over \$25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the Authorized User that has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For Mini-Bid solicitations, the payroll records must be submitted to the entity preparing the agency Mini-Bid project specification. For "agency specific" Bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS Centralized Contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the Authorized User, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/Subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services contracts.

iv. Day's Labor No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five calendar days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

d. ARTICLE 9 BUILDING SERVICES CONTRACTS In compliance with Article 9, Section 230 of the New York State Labor Law:

i. Payroll Records Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work site while work is being performed.

ii. Overtime Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

11. TAXES

a. Unless otherwise specified in the Bid Specifications or Contract, the quoted Bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the Tax Law. Non-State Authorized Users must offer their own proof of exemption upon request. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to certain taxes which were not included in the Bid price, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

12. EXPENSES PRIOR TO CONTRACT EXECUTION The Commissioner and any Authorized User(s) are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

13. ADVERTISING RESULTS The prior written approval of the Commissioner is required in order for results of the Bid to be used by the Contractor as part of any commercial advertising. The Contractor

shall also obtain the prior written approval of the Commissioner relative to the Bid or Contract for press or other media releases.

14. PRODUCT REFERENCES

a. **“Or Equal”** In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner’s decision as to acceptance of the Product as equal shall be final.

b. **Discrepancies in References** In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

15. REMANUFACTURED, RECYCLED, RECYCLABLE OR RECOVERED MATERIALS

Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Contractors are further encouraged to offer remanufactured Products to the maximum extent practicable without jeopardizing the performance or intended end use of the Product and unless such use is precluded due to health, welfare, safety requirements or by the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the “Warranties” set forth below.

Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

16. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS

Bids offering Products that are manufactured or produced in public institutions will be rejected.

17. PRICING

a. **Unit Pricing** If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. **Net Pricing** Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. **“No Charge” Bid** When Bids are requested on a number of Products as a Group or Lot, a Bidder desiring to Bid “no charge” on a Product in the Group or Lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. **Educational Pricing** All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.

e. **Third Party Financing** If Product acquisitions are financed through any third party financing, Contractor may be required as a condition of Contract Award to agree to the terms and conditions of a “Consent & Acknowledgment Agreement” in a form acceptable to the Commissioner.

f. **Best Pricing Offer** During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

g. Specific price decreases:

(i) **GSA Changes:** Where NYS Net Prices are based on an approved GSA Schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA Schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where NYS Net Prices are based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or

(iii) **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or Net Price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other Contracting vehicle, competitive pricing which is lower than the NYS Net Price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract pursuant to the foregoing paragraph (iii).

Unless otherwise specified in the Bid Specifications, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order(s) from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

h. **Cost Proposal Revisions** A Contractor may be solicited prior to contract award to propose the best possible offer for the Product or service being bid on, in accordance with State Finance Law § 163(9)(c). A cost proposal revision must be a lower price than the initial price.

18. DRAWINGS

a. **Drawings Submitted With Bid** When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings

and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the Bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must, as a condition of payment, update drawings and plans during the Contract term to reflect additions, alterations, and deletions. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of Product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing Product, services or installation, or carrying out any other requirements of the intended scope of work.

19. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

20. PROCUREMENT CARD The State has entered into an agreement for purchasing card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing Purchase Orders or Purchase Authorizations. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased Products have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty Product in accordance with other Contract requirements, the Contractor shall immediately credit a cardholder's account for Products returned as defective or faulty.

21. SAMPLES

a. Standard Samples Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Specifications.

b. Bidder Supplied Samples The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the
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Product offered at any time prior to or after award of a contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

c. Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

d. Conformance with Samples Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Specifications. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Specifications, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

f. Requests For Samples By Authorized Users Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

BID EVALUATION

22. BID EVALUATION The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague Bids and his/her decision shall be final. A conditional or revocable Bid which clearly communicates the terms or limitations of acceptance may be considered, and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the Bid.

23. TIE BIDS In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. While prompt payment discounts will not be considered in determining the low Bid, the Commissioner may consider any prompt payment discount in resolving Bids which are otherwise tied. If two or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of the Commissioner to award a Contract to one or more of such Bidders shall be final.

24. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Specifications. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest responsible Bidder who accepts the revised qualifications.

25. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn. Where an award is not made within the sixty day period or other time specified as set forth in the Bid Documents, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its Bid.

TERMS & CONDITIONS

26. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Bid Specifications, a Contract shall be deemed executed and created with the successful Bidder(s) upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

27. PARTICIPATION IN CENTRALIZED CONTRACTS

a. Agencies All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Bid Documents limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

c. Voluntary Extension Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service Contracts to those additional entities authorized to utilize commodity Contracts under Section 163(3)(a)(iv) of the State Finance Law.

d. Responsibility for Performance Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; (ii) a

breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; (iii) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and (iv) each non-State Agency Authorized User and Contractor guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

e. Contract Migration Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products or services shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

28. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

29. SCOPE CHANGES The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, by altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within thirty days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a proposal. Failure to agree to any adjustment shall be a dispute under the Disputes clause, provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

30. ESTIMATED / SPECIFIC QUANTITY CONTRACTS

Estimated quantity contracts, also referred to as indefinite delivery / indefinite quantity contracts, are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity is implied or given.

With respect to any specific quantity stated in the contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

31. EMERGENCY CONTRACTS In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract(s), as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

32. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to Contracts let by the Commissioner must bear the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, JUNE 2014

the Contractor shall promptly notify in writing the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

33. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Delivery shall be made within thirty calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of a Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

34. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

35. SHIPPING/RECEIPT OF PRODUCT

a. Packaging Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

36. TITLE AND RISK OF LOSS Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order. Mere acknowledgment by

Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) shall not be deemed or construed as acceptance of the Products received. Any delivery of Product that is substandard or does not comply with the Bid Specifications or Contract terms and conditions, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

37. RE-WEIGHING PRODUCT Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

38. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for termination of Contract.

39. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten-calendar-day period.

40. INSTALLATION Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

41. REPAIRED OR REPLACED PARTS / COMPONENTS Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components
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meeting new Product standards may be permitted by the Commissioner or Authorized User. Before installation, all proposed substitutes for the original manufacturers installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

42. EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agents of the Contractor.

43. ASSIGNMENT The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title or interest therein, or its power to execute such contract to any other person, company, firm or corporation in performance of the contract without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, notwithstanding anything in Section 138 of the State Finance Law to the contrary, any approval required thereunder shall not be unreasonably withheld, conditioned, delayed or denied. Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with the Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

44. SUBCONTRACTORS AND SUPPLIERS The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

45. PERFORMANCE / BID BOND The Commissioner reserves the right to require a Bidder or Contractor to furnish, without additional cost, a performance, payment or Bid bond, negotiable

irrevocable letter of credit, or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

46. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the Authorized User. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction in State spending, declaration of emergency, contract compliance issues or other circumstances. Upon issuance of such notice, the Contractor is not to accept any Purchase Orders, and shall comply with the suspension order. Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

47. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty calendar days or other specified period after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively, at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

b. For Convenience: By written notice, this Contract may be terminated at any time by the Commissioner for convenience upon sixty calendar days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

c. For Violation of Sections 139-j and 139-k of the State Finance Law: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

d. For Violation of Section 5-a of the New York State Tax Law: The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Non-Responsibility: The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner or his or her designee to be non-responsible. In such event, the Commissioner or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

f. For refusal to testify, sign a waiver of immunity or answer questions

The Commissioner reserves the right in accordance with State Finance Law §139-a, to terminate the contract in the event it is found that a member, partner, director or officer of Contractor refused, when called before a grand jury, head of a state department, temporary state commission or other state agency, or the organized crime task force in the department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract. Upon such finding, the Commissioner may exercise his/her termination right by providing written notification to the Contractor.

48. SAVINGS/FORCE MAJEURE A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any Force Majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the Force Majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the Force Majeure condition continues beyond thirty (30) days, the Parties shall jointly decide on an appropriate course of action that will permit fulfillment of the Parties' objectives hereunder.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor, under the Contract due to a Force Majeure occurrence:

- a. The Commissioner may purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to the State, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the Force Majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the Force Majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss. Failure of the Contractor to agree to any adjustment shall be a dispute under the Disputes clause; provided however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

49. CONTRACT INVOICING

a. **Invoicing.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.nv.us, by e-mail at HelpDesk@sfs.nv.gov, or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. **Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

50. DEFAULT – AUTHORIZED USER

a. **Breach by Authorized User.** An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

b. **Failure to Make Payment.** In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within thirty calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

c. **Notice of Breach.** Notwithstanding the foregoing, the Contractor shall, at least ten business days prior to declaring a breach of Contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared.

d. **Insufficient basis.** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

51. PROMPT PAYMENTS

a. **State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty (30) calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law §179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by Agency

may be made in accordance with State Finance Law §§179-d et. seq. and the implementing regulations (2 NYCRR §18.1 et seq.).

b. By Non-State Agencies Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be thirty calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law apply only to procurements by and the consequent payment obligations of Agencies. Neither expressly nor by any implication is the statute applicable to Non-State Authorized Users. Neither OGS nor the State Comptroller is responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the State Finance Law.

52. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. Cover/Substitute Performance In the event of Contractor's material, uncured breach, the Commissioner may, with or without formally Bidding: (i) Purchase from other sources; or (ii) If the Commissioner is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the Commissioner may acquire acceptable replacement service or Product of lesser or greater quality.

Such purchases may be deducted from the Contract quantity without penalty or liability to the State. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during a period where Contractor is making good faith efforts to cure a material breach.

b. Withhold Payment In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should Contractor and the Commissioner fail to agree upon the question of "materiality" in an instance of non-performance, such failure to agree shall be a dispute under the Disputes clause.

c. Bankruptcy In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise its right to set-off against monies due the Debtor or, under the Doctrine of Recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

d. Reimbursement of Costs Incurred The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses, including reasonable attorney's fees awarded by a court of competent jurisdiction, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering Authorized User may obtain substitute Product temporarily and the cost of the replacement
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Product shall be deducted from the Contract quantity without penalty or liability to the State.

e. Deduction/Credit Sums due as a result of these remedies may be deducted or offset by the Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, damages, etc., that arise from the administration of the Contract.

53. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC Section 1, et. seq. and the antitrust laws of the State of New York, General Business Law Section 340, et. seq.

54. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance, as defined by Section 875 of the Labor Law, shall provide such Authorized User with not less than two copies of a Material Safety Data Sheet, which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Authorized User representative.

55. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

56. SECURITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the Authorized User(s) in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

57. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

58. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any Contract or unit portion thereof let by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year with the written concurrence of the Contractor and Comptroller. Such extension may be exercised on a month-to-month basis or in other stated periods of time during the one year extension.

59. WARRANTIES

a. Product Performance Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users.

In addition, Contractor hereby warrants and represents that the Products acquired by the Authorized User under the terms and conditions of this Contract conform to the manufacturer's specifications, performance standards and documentation, and the

documentation fully describes the proper procedure for using the Products.

Contractor further warrants and represents that Products, components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be free from defects in material and workmanship and will conform with all requirements of the Contract for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period").

Unless recycled or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable or Recovered Materials clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered. Contractor further warrants and represents that no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

b. Title and Ownership Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) awarded by a court of competent jurisdiction arising from any breach of Contractor's warranties as set forth herein.

c. Product Warranty for Deliverables During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").

Where Contractor, the Independent Software Vendor (ISV), or other third-party manufacturer markets any project deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third-party manufacturer's Product.

Where Contractor, ISV or other third-party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third-party extended warranty after expiration of the Project warranty and extended warranty period(s).

The Commissioner agrees that Contractor is not responsible for any modification of the Products made by an Authorized User without Contractor's approval.

d. Replacement Parts Warranty If during the regular or extended warranty periods, parts or components break or fail to perform as intended, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period(s) shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any Product or parts thereof replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the Warranty Period set forth under paragraph (a) above; or b) if a separate warranty for that Product or parts thereof is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

e. Virus Warranty The Contractor represents and warrants that any Licensed Software acquired by the Authorized User does not contain any known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

f. Date/Time Warranty Contractor warrants that Product furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g., billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract as long as the Product is used by the governmental entity, or its successor, for whom the Product was originally purchased." Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

g. Workmanship Warranty Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards. The Authorized User must notify Contractor of any services warranty deficiencies within ninety calendar days from performance of the services that gave rise to the warranty claim.

h. Miscellaneous The Authorized User shall promptly notify the Contactor and the Commissioner in writing of any claim of breach of any warranty provided herein.

The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

60. LEGAL COMPLIANCE Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

61. INDEMNIFICATION Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold harmless the Authorized Users from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation; provided, however, that the Contractor shall not indemnify to the extent any claim, loss or damage arising hereunder solely due to the negligent act, failure to act, gross negligence or willful misconduct of the Authorized Users.

The Commissioner shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action, claim or suit at the expense of Contractor.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

62. INDEMNIFICATION RELATING TO THIRD PARTY RIGHTS The Contractor will also defend, indemnify and hold the Authorized Users harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, JUNE 2014

liabilities and costs in any action for infringement of a patent, copyright, trademark, trade secret or other proprietary right provided: a) such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval, or by reason of an off-the-shelf component; and b) Authorized User gives Contractor prompt written notice of any such action, claim suit or threat of suit alleging infringement.

At Authorized User's option, Contractor may be given the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and to provide assistance in the defense of any such action, claim or suit at the expense of Contractor.

Such indemnity shall only be applicable in the event of claims, judgments, liabilities and/or costs that may be finally assessed against Authorized User in any action for infringement of a patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims, judgments, liabilities and/or costs arise solely from the Authorized Users negligent act, failure to act, gross negligence or willful misconduct.

If usage of a Product shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue Usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and seek to secure a continuance to permit the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the Authorized User may have. This constitutes the Authorized User's sole and exclusive remedy for patent infringement, or for infringement of any other third party proprietary right.

63. LIMITATION OF LIABILITY Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Third Party Rights clause, the limit of liability shall be as follows:

a. Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products and services, or parts thereof forming the basis of the Authorized User's claim (said amount

not to exceed a total of twelve (12) months charges payable under the applicable Purchase Order) or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

b. The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

c. Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

64. DISPUTES

a. Informal Dispute Resolution Process

1. It is the policy of OGS to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to OGS bid solicitations, contract awards or contract administration. If the Parties are not able to resolve their dispute between themselves as set forth below, OGS encourages vendors to seek resolution of disputes through consultation with OGS staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person identified in the Contract as a designated contact or through the OGS website (www.ogs.ny.gov).

2. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

3. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

4. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within fourteen (14) business days or as otherwise agreed to by the Contractor and Authorized User, of such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next fourteen (14) business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section JUNE 2014

shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

5. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

b. Formal Disputes

1. Definitions

- a.** Filed means the complete receipt of any document by OGS before its close of business.
- b.** Dispute means a written objection by Contractor to any of the following:
 - i.** A solicitation or other request by OGS for offers for a contract for the procurement of commodities or services.
 - ii.** The cancellation of the solicitation or other request by OGS.
 - iii.** An award or proposed award of the Contract by OGS.
 - iv.** A termination or cancellation of an award of the Contract by OGS.
 - v.** Changes in the Scope of the Centralized Contract by the Commissioner.
 - vi.** Determination of "materiality" in an instance of nonperformance or contractual breach.
 - vii.** An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a Force Majeure event.

2. Submission of Disputes

- a.** A formal dispute by Contractor must be filed in writing to OGS by mail, email or facsimile.

3. The dispute must include:

- a.** Name, address, e-mail address, fax and telephone numbers of the filer.
- b.** Solicitation or Contract number.
- c.** Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
- d.** Copies of relevant documents.
- e.** Request for a ruling by the agency.
- f.** Statement as to the form of relief requested.
- g.** All information establishing that the filer is an interested party for the purpose of filing a dispute.
- h.** All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of OGS New York State Procurement (NYSPPro) at the following address:

New York State Office of General Services

Director, NYSPPro
38th Floor, Corning Tower
Empire State Plaza
Albany, NY 12242
Facsimile: (518) 486-6099

Disputes concerning the administration of the Contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

4. Agency Response

- 1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed

procurement/Contract action prior to issuance of a formal dispute decision.

2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.

3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.

4. OGS reserves the right to consider or reject the merits of any dispute.

5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

5. Appeals

a. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

Chief Procurement Officer
New York State Office of General Services
NYSPRO
 38th Floor, Corning Tower
 Empire State Plaza
 Albany, NY 12242
 Facsimile: (518) 486-9166

b. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

c. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

d. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

e. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

6. **Legal Appeals** Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

THE FOLLOWING CLAUSES PERTAIN TO TECHNOLOGY & NEGOTIATED CONTRACTS

65. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. **License Scope** Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or JUNE 2014

interest in any trademark, trade name, or service mark is granted hereunder.

b. **License Term** The License Term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.

c. **Licensed Documentation** If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: (i) one (1) hard copy and one (1) master electronic copy of the Documentation in a mutually agreeable format; (ii) hard copy instructions for access by downloading from the Internet (iii) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - one (1) copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion.

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

d. **Product Technical Support & Maintenance** Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (i) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (ii) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates.

e. **Permitted License Transfers** As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional

license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS); or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: i) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; iii) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed herein. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as

authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the terms of license, Licensee shall not:

(i) Copy the Product;

(ii) Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;

(iii) Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

66. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have thirty (30) days from the date of delivery to accept hardware Products and sixty (60) days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for trial use, testing and acceptance unless the Commissioner or Authorized User agrees to accept the Product at completion of trial use.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for an additional thirty (30) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

If the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have thirty (30) days to correct the deficiency, and the Authorized User shall have an additional sixty (60) days to evaluate the Product as provided herein. If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to the amounts set forth in the Limitation of Liability Clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the

Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

67. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: (i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, (ii) such audit is conducted during such party's normal business hours, (iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or be recommended by Contractor; (iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and (v) if the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

68. OWNERSHIP/TITLE TO PROJECT DELIVERABLES

a. Definitions

(i) For purposes of this clause, "Products." Deliverables furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), whether printed in hard copy or maintained on diskette, CD, DVD or other electronic media c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).

(ii) For purposes of this clause, "Existing Products." Tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the Project.

(iii) For purposes of this clause, "Custom Products." Products, preliminary, final or otherwise, which are created or developed by Contractor, its Subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform the services detailed in the Purchase Order. Unless otherwise specified in writing in the JUNE 2014

Bid or Purchase Order, the Authorized User shall have ownership and license rights as follows:

(i) Existing Products:

1. Hardware - Title and ownership of Existing Hardware Product shall pass to Authorized User upon Acceptance.

2. Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the proprietary owner of other independent software vendor(s) (ISV). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the Purchase Order or work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's Purchase Order or work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's owner's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this clause.

(ii) Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or Subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a Purchase Order, project definition or work order in the course of Contractor's business. Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase(s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of Bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required

by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of its Licensee's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation - COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this clause.

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

69. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or (ii) a written confirmation from the Proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

70. PRODUCT VERSION Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

71. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (i) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: provide the Authorized User with a Product replacement or migration path with at least equivalent functionality at no additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (i) provide the notice required under JUNE 2014

the paragraph above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent Subcontractor. In the event that such Subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to State approval, to an alternate Subcontractor.

b. Product or Service Re-Bundling In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (i) notify the State and each Authorized User in writing of the intended change; (ii) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (iii) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. The provisions of this section do not apply if the Contractor is not the Product manufacturer.

72. NO HARDSTOP/PASSIVE LICENSE MONITORING

Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time of order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

73. SOURCE CODE ESCROW FOR LICENSED PRODUCT

If Source Code or Source Code escrow is offered by either Contractor or Product manufacturer or developer to any other commercial customers, Contractor shall either: (i) provide Licensee with the Source Code for the Product; or (ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or (iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Authorized User, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such

updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this clause.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

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Attachment A – Scope of Work

4.1 Definitions

Throughout this Contract, the following terms are used as defined.

340B Drug Pricing Program (340B) - The 340B Drug Pricing Program resulted from enactment of Public Law 102-585, the Veterans Health Care Act of 1992, which is codified as Section 340B of the Public Health Service Act. Section 340B limits the cost of covered outpatient drugs to certain federal grantees, federally-qualified health center look-alikes and qualified disproportionate share hospitals (DSH). Several MMCAP Participating Facilities are eligible and participate in the 340B Drug Pricing Program.

Adequate Supply- A supply of Products made available to the MMCAP Participating Facilities that allow conformity with the parameters of the fill rate and historical purchase patterns.

Bulky Products - The MMCAP Office's definition of Bulky Products include food and food products, home healthcare products (durable medical equipment, such as walking aids, bathroom safety products, wheelchairs and accessories, scooters and lift chairs, etc.), non-contract nutritionals, school and office supplies, non-contract large volume parenterals, and non-contract IV Fluids.

Closed Distribution Products (CDP) - Closed Distribution is either required by the manufacturer or by the FDA. Reasons for the Closed Distribution of a product include patient safety, product stability, or the product is new to the market. Most orders for Closed Distribution Products are passed through the Wholesaler for delivery directly by the product supplier.

Confirmation Printback/Order Confirmation - An electronic confirmation report generated from the Wholesaler's ordering system(s), meaning both Cardinal.com and Order Express and sent electronically back to the ordering facility indicating that the requested Products are available, on Manufacturer Backorder, out of stock, or deleted, etc. Also referred to as the Confirmation Printback Report.

Controlled Substance Ordering System (CSOS) - Allows for secure electronic transmission of Schedule I-V controlled substance orders without the supporting paper DEA Form 222.

Drop Shipment(s) - Products ordered by the MMCAP Participating Facilities through the Wholesaler and shipped directly to the MMCAP Participating Facilities from the manufacturer/product supplier. The manufacturer/product supplier notifies and bills the Wholesaler, who then invoices and receives payment from the MMCAP Participating Facility.

EDI - Electronic Data Interchange - Inter-process (computer to computer application) communication of business information in a standardized electronic form.

Manufacturer Backorder(s) (MBO) - An order placed by the Wholesaler to a manufacturer or supplier which is not shipped to the Wholesaler due to industry wide shortages or other supply issues as set forth in Section 4.5 (E.) of Attachment A.

MMCAP Contract Product(s) - Any Product that appears on an MMCAP contract.

MMCAP Contract File Updates – electronic files sent by the MMCAP Office to the Wholesaler which provide batched MMCAP Contract Product and MMCAP contract pricing information. The MMCAP Contract File Updates are usually sent to the Wholesaler on a weekly basis. The first file (titled “Update

[sequential number]”) details the MMCAP contract changes that have occurred since the last weekly communication from the MMCAP Office. The second file (titled “[sequential number] Contract [8-digit date]”) is a listing of the entire MMCAP contract as of the date provided in the title. The third file (titled “[sequential number] Pending [8-digit date]”) is a listing of the MMCAP Contract Products with future effective dates.

MMCAP Member(s) – Any of the, currently, 48 MMCAP member states plus the Cities of Chicago and Los Angeles and any other members added or deleted during the life of the Contract and any extensions. MMCAP Members shall be considered intended third-party beneficiaries of this Contract.

MMCAP Participating Facility - Any facility listed by the MMCAP Office as an active participant of MMCAP program. A current listing of MMCAP Facilities is made available to all MMCAP vendors monthly. MMCAP Participating Facilities shall be considered intended third-party beneficiaries of this Contract.

Both *MMCAP Member(s)* and *MMCAP Participating Facility* may be referenced as “MMCAP Member(s)”, when applicable throughout the Scope of Work.

MMCAP Office – The administrative staff of the MMCAP Program responsible for initiating and administering all MMCAP contracts. The MMCAP Office may be referred to synonymously as MMCAP. Located at:

MMCAP
Minnesota Department of Administration
Materials Management Division
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

MMCAP State Contacts – purchasing and pharmacy professionals are designated by MMCAP Member States to serve as liaisons between the MMCAP Office and the MMCAP Participating Facilities in each State. A list of MMCAP State Contacts is available at:
http://www.mmd.admin.state.mn.us/mmcap/background_current_states.htm.

National Drug Code (NDC) – a unique 11-digit number which is a universal product identifier for human drugs. The NDC identifies the labeler code, product code (strength, dosage form, and formulation), and package code (package size and type). All NDCs reported to the MMCAP Office must be in the 5-4-2 configuration.

Next Day Delivery - Orders placed Sunday through Thursday by MMCAP Participating Facilities by the designated time as proposed by the Wholesaler which will be delivered the next business day. Orders placed on Friday or Saturday must be delivered on the following Monday.

Next Scheduled Delivery Day - is the day agreed upon by the Wholesaler and the MMCAP Participating Facility for delivery of Products. For some MMCAP Participating Facilities, the Next Scheduled Delivery Day may not necessarily denote that the delivery will be made within 24 hours.

Non-Contract Product - Any product that does not appear on an MMCAP contract or the 340B Drug Pricing Program contract.

Pedigree - A record containing information regarding each transaction resulting in a change of ownership of a given medication, from sale by a manufacturer, through acquisition and sale by one or more wholesalers, manufacturers, or pharmacies, until final sale to a pharmacy or other person furnishing, administering, or dispensing the medication.

Product(s) - Synonymously used to denote the merchandise requested by the MMCAP Participating Facilities to be delivered through the Wholesaler.

Stock Outage(s) - An occurrence wherein the Wholesaler cannot make available an Adequate Supply of the MMCAP Participating Facility's requested Products. As opposed to a MBO situation, the Wholesaler will be held responsible for Stock Outages.

Wholesaler - Also referred to as Vendor, Pharmaceutical Prime Vendor, or Prime Vendor, is a business that functions as a purchaser's source of distribution for a wide array of pharmaceutical and related Products as identified by the MMCAP Participating Facility. A Wholesaler is responsible for maintaining and distributing an Adequate Supply of pharmaceuticals and related Products and any other items contracted for that are dispensed through the MMCAP Participating Facilities' pharmacy service.

4.2 Service Area

As of the Contract effective date, Wholesaler will provide the full range of contracted services under this Contract to all requesting MMCAP Participating Facilities and/or MMCAP Members. Unless approved by MMCAP in writing, Wholesaler must provide services to all MMCAP Participating Facilities within a state (not partial service coverage), subject to the requirements of Section 4.4. The MMCAP Office (represented by the term MMCAP) reserves the right to add or delete MMCAP Members at any time during the Contract term.

Wholesaler will provide service to the MMCAP Members specified in an amendment.

4.3 Customer Service

A. Customer Service to MMCAP

The Wholesaler will designate an Account Management Team for MMCAP. The assigned Account Management Team will have the depth of experience needed to serve in a solution-oriented role. The principal resources identified by the Wholesaler are confirmed as to having the authority to make decisions on behalf of the Wholesaler and to be empowered to provide accountability. The Account Management Team will be staffed with qualified resources along with additional resources to provide sufficient back-up support in the event that the principal resources become unavailable.

1. The Wholesaler's designated Primary Account Representatives for MMCAP will be Lisa Penn, Director State Government, lisa.penn@cardinalhealth.com, 614- 553-3604 and Clay Miller, Manager State Government, clay.miller@cardinalhealth.com, 614- 757-6763.
2. Additional functional contacts are:
 - a. Contract issues/discrepancies (product stocking, product loading, pricing):
Tiffany Kuhel, Consultant tiffany.kuhel@cardinalhealth.com, 614-757-7528.
 - b. Class of trade issues (contract eligibility, denials, etc.):
Tiffany Kuhel, Consultant tiffany.kuhel@cardinalhealth.com, 614-757-7528.
 - c. Issues concerning MMCAP's invoice auditing service:
Tiffany Kuhel, Consultant tiffany.kuhel@cardinalhealth.com, 614-757-7528.
 - d. Wholesaler distribution service fees:
Clay Miller, Manager State Government, clay.miller@cardinalhealth.com, 614- 757-6763

e. Data/reporting issues and Shareback fee process:

Alex Fox, Senior Analyst, alex.fox@cardinalhealth.com , 614-757-9449.

f. Electronic invoice auditing dispute resolution:

Tiffany Kuhel, Consultant tiffany.kuhel@cardinalhealth.com , 614-757-7528.

g. Service fee /cost of goods discounts:

Regional Leaders and Senior Specialists will be responsible for any service fee discount inquiries specific to their assigned member states. Any escalated inquiries surrounding service fee/cost of goods discounts should be directed to Clay Miller, Manager State Government, clay.miller@cardinalhealth.com , 614- 757-6763.

h. Accounts receivable:

Michelle Janlin, Collections Manager, michelle.janlin@cardinalhealth.com , 614-822-4135

i. Accounts Payable:

Lauren Payne, Finance Operations Manager, lauren.payne@cardinalhealth.com 614-652-1465

3. In the event the MMCAP determines the Primary Account Representative is non-responsive, MMCAP will escalate to Don Lyle, VP Account Management State Government, Don.Lyle@cardinalhealth.com, 614-757-7782, to take appropriate corrective action for problem resolution.
4. The Wholesaler must provide advanced written notification to MMCAP of changes in the Wholesaler's key administrative personnel. Any employee of Wholesaler, who, in the sole opinion of MMCAP, is unacceptable, will be removed from the project upon written notice to the Wholesaler, provided such removal is for lawful reasons. In the event that an employee is removed pursuant to a written request from MMCAP's authorized representative, the Wholesaler will have ten (10) business days in which to fill the vacancy with an acceptable employee. There will be no charge to MMCAP or the MMCAP Members for replacement personnel assigned and Wholesaler agrees that each such replacement has acquired the necessary orientation and background to make a productive contribution.
5. Business Review
 - a. Wholesaler will hold monthly business reviews at MMCAP's office with the Wholesale's Primary Account Representative(s), as deemed necessary by MMCAP's Wholesaler Distribution Services Coordinator.
 - b. Wholesaler will hold quarterly business reviews at MMCAP's office with the Wholesaler's Primary Account Representative(s) and others from the Wholesaler's Corporate Office to address, at a minimum, the following:
 - Sales Data
 - Contract Financials (discounts, fees, cost of goods, etc.)
 - Contract Compliance/Category Breakdown
 - Inflationary/Budget Related Data
 - Managed Care News/Updates
 - Service Levels by distribution center, by MMCAP Members (state and facility), and for MMCAP as a group
 - Contract Activity
 - Success Stories and Opportunities Ongoing.
 - Pedigree Updates
 - Any federal and/or state legislation affecting MMCAP Members and/or the pharmaceutical industry
 - Proactive Product Information
 - Pharmaceutical distribution impacts and trends; pharmaceutical industry updates
 - Contract Activity Reporting
 - Compliance Activity Reporting
 - Purchase Activity Reporting
 - EDI Setup Audits
 - Customer Satisfaction

- Relevant current and planned initiatives, both of MMCAP and the Wholesaler, and any associated action plans
 - Wholesaler Performance
6. Wholesaler and MMCAP agree to conduct a complete contract review no later than March 31, 2015 to determine areas of non-compliance from both parties. This review will be done annually, with the due date tied to the anniversary date of the effective date of the Contract.

B. Customer Service to MMCAP Participating Facilities

1. Customer Service Department

Wholesaler will provide the MMCAP Participating Facilities access to the Wholesaler's customer service department, which at a minimum, consists of the following:

- a. Customer support centralized in two national call centers located in Radcliff, Kentucky and Little Rock, Arkansas.
- b. Cardinal Health's overseas call center may be used only for business continuity situations, unless approved in writing by MMCAP. Cardinal Health will provide prompt notice of any overseas call center use and will provide a monthly report to MMCAP detailing the number of calls going to the overseas call center.
- c. Access to customer service representatives with principal responsibilities in the areas of order entry, Drop Shipment ordering, stocking issues, and general customer service requests.
- d. Customer service hours of operation are 7:30 a.m. – 8:00 p.m. (Eastern Standard Time) Monday through Friday (excluding the following national holidays: Christmas, New Years Day, Thanksgiving Day, Memorial Day, the Fourth of July, and Labor Day).
- e. Wholesaler's customer service can be reached toll free at 866-641-1199, by fax at 866-551-0530, or by e-mail at GMB-P_SPL_V_GOV@cardinalhealth.com.
- f. Technical support is available 24 hours a day, 7 days a week. Technical support for Cardinal.com/Order Express can be reached toll free by calling 800-326-6457.
- g. Customers may use Wholesaler's TeleServe (866.958.2200) ordering/stock check application. TeleServe is available 24 hours a day/7 days a week. Customers can use this valuable tool to place orders for products, check stock status/item availability, and receive real-time confirmation of product allocation. TeleServe allows purchasers to perform these functions hands-free through the voice-activated feature.
- h. Emergency Call Procedures are for life critical emergency situations only that require product before the Next Scheduled Delivery Day:

Emergency Call Procedure for the Fastest Response

- 1). During normal business hours (Monday-Friday 7:30 am to 8:00 pm Eastern Standard Time), call customer service at 866-641-1199.
- 2). Outside normal business hours, please call 877-772-0346. An answering service representative will take the message and a Cardinal Health employee will promptly return the call. MMCAP Participating Facilities will need to provide their servicing distribution center name, account name and number, a contact name, and a call back phone number available.

2. MMCAP Members' Customer Account Representatives

- a. MMCAP State Contacts. Each MMCAP State Contact will have a designated account management Regional Leader appointed by the Wholesaler's Primary Account Manager to meet with both MMCAP Field Services representative, where regionally available, and MMCAP State Contact and other state representatives on a quarterly basis to discuss, at a minimum, the following:
 - Customer satisfaction
 - Wholesaler performance
 - State account performance (COGs, payment terms, etc.)
 - Reports (e.g., contract compliance)
 - Other

b. **MMCAP Participating Facilities.** Wholesaler will provide an account management Regional Leader for each MMCAP Participating Facility with average volume of \$25,000 per month or more. This individual will serve as a liaison between the MMCAP Participating Facility and Wholesaler, managing the working and strategic relationship to ensure quality of service delivery and customer satisfaction. In managing the relationship, the assigned Regional Leader will utilize various relationship management contact options, including the MMCAP Field Services representatives whenever possible, dependent upon the needs of the MMCAP Participating Facilities. Dedicated Senior Specialists are assigned to support the Regional Leaders and will also have individual account management responsibilities for those MMCAP Participating Facilities with an average volume of less than \$25,000 per month. The Regional Leader will make routine on-site visits to discuss performance issues and solve problems according to the schedule below:

Average Monthly Purchasing Volume	Frequency of Contact with MMCAP Participating Facility	Type of Contact
\$0 - \$25,000	Dialogue with MMCAP Participating Facility once every 30 calendar days unless otherwise requested by the MMCAP Participating Facility	Telephone Call Onsite visits available upon reasonable request
\$25,001 – and up	1. Customer Business Reviews offered quarterly. 2. Dialogue with MMCAP Participating Facilities once every 30 calendar days or as needed	1. On-site visit or Telephone Call 2. On-site visit or Telephone Call
State Purchasing Contact	Dialogue offered monthly or as desired by State Purchasing Contact. State contacts are to be included in quarterly Member Customer Business Reviews desired.	On-site visit or telephone call

c. **Additional Resources.** Wholesaler will provide adequate staffing resources for both field operations to provide direct service for the MMCAP Members and corporate operations to assist MMCAP. These resources will provide facility targeted approaches to solve specific problems and determining solutions for operational, contract compliance and inventory management issues. Designated resources may fluctuate up or down depending on volume and business need.

d. The Wholesaler will make its best efforts to notify MMCAP at least ten (10) business days in advance of any meeting between the Wholesaler, any MMCAP State Contact, and/or MMCAP Participating Facility, and any potential MMCAP State Contact or MMCAP Participating Facility when the meeting topics will address issues beyond standard operation issues including but not limited to requests for proposal, legislative activities concerning any products or services covered by this Contract, or expansion of the Wholesaler’s presence in that organization or state. If MMCAP is not an attendee at the meeting, the Wholesaler agrees to provide a detailed account of the meeting to MMCAP and will make its best efforts to provide this information no later than five (5) business days after the meeting.

3. MMCAP State Contacts and MMCAP Participating Facility Satisfaction Survey

Wholesaler will solicit an MMCAP pre-approved, annual survey with all MMCAP State Contacts and a representative random sample of MMCAP Participating Facilities. The goal is an overall average survey score of 3.5 out of 5 points. The Wholesaler will share the raw survey responses for those survey areas that score below 3.5 and will devise an action plan(s) to address deficiencies, presenting status updates at quarterly Executive Business Reviews, or more frequent as appropriate.

4.4 Contract Transition and Implementation

If the MMCAP Member is currently contracting with the Wholesaler for the services, or substantially similar services, as set forth in this Attachment A, Wholesaler will transition each MMCAP Member from the existing contract (and existing contract terms) to this Contract (and its terms) on the 1st day of the month following execution of this Contract and in no event later than 30 days from Contract execution.

If the MMCAP Member is not currently contracting with the Wholesaler for the services or substantially similar services, as set forth in Attachment A, Wholesaler shall implement this contract (and its terms) for the MMCAP Member on the 1st day of the third month following execution of this Contract and in no event later than 90 days from Contract execution.

Transition from an existing contract to this Contract must occur on the 1st day of a month, and no other day.

In completing this transition, Wholesaler shall work with MMCAP Staff and MMCAP Participating Facilities to determine the appropriate steps and schedule, subject to the above, for the transition. Wholesaler acknowledges that the transition may be dependent upon the terms of the existing contracts and subject to the notice provisions contained therein. MMCAP and MMCAP Participating Facilities acknowledge that the transition is dependent on Wholesaler receiving all documentation from the MMCAP Participating Facility required for account set-ups. This plan will detail the phase-in of the Wholesaler's operations at the MMCAP Member with a 100% operating level at the onset of the contract effective date.

Satisfaction of a 100% operating level will include:

- a. Installation and testing of all electronic ordering equipment
- b. Training of employees
- c. Bar coding and shelf labeling
- d. Price loading of all MMCAP contract products
- e. Wholesaler's internal inventory preparation and distribution system, based on current MMCAP Participating Facilities' sales and usage data
- f. Wholesaler's plan to ensure that stocking and chargeback agreements are in place with all MMCAP-contracted vendors

Wholesaler's standard procedure for implementing a new MMCAP Participating Facility is:

Week 1

Wholesaler Distribution Services Contract Signed
 Provide 12 months detailed usage from MMCAP to Wholesaler
 Provide site listing from MMCAP to Wholesaler
 Communicate conversion team contact listing and schedule calls
 Fax/email/mail DEA and state pharmacy licenses
 Obtain MMCAP roster and confirm eligibility
 Assess customer technology requirements and begin pre-work
 Review customer attributes, needs, and expectations
 Obtain digital certificate for CSOS

Week 2

Assess customer needs for product catalogs
 Establish delivery plan, times, and requirements
 Review DC/Customer-Specific Order Cut-Off Time
 Load usage, activate/create items, and place orders
 Continue ordering pre-work (EDI, cardinal.com or Order Express, etc)

Complete account set-up and provide account numbers

Week 3

Delivery route set-ups with couriers are completed
Technology work completed and tested
Create electronic version of new customer Welcome Kits
Confirm pricing eligibility and attach contracts to sites
Create new reports as necessary

Week 4

Send new customer Welcome Kits to each site
Complete site training for Cardinal.com or Order Express, etc
Send CII blanks, product catalogs, hardware, etc. in tote as test order
Outbound calls to each site as follow-up on test delivery and site visit
Confirm Product is received and ready for day-1 orders

Week 5

Send New customer Welcome Kits to each site
Complete site training for Cardinal.com or Order Express, etc
Send CII blanks, Product catalogs, hardware, etc. in tote as test order
Outbound calls to each site as follow-up on test delivery and site visit
Confirm Product is received and ready for Day-1 orders
Request corporate contacts to complete customer survey

Week 6

Schedule post-implementation review
Schedule Business Review meeting

Wholesaler will be responsible for notifying both new and existing MMCAP Participating Facilities in writing specifying Wholesaler required documentation and instructions sufficient to enable the MMCAP Participating Facilities to transition to the new Contract. Wholesaler will promptly notify the MMCAP Participating Facilities in reasonable detail of any missing or incomplete documentation required for account set-up.

Wholesaler requires the following documents be completed and submitted to Wholesaler prior to opening a new account:

1. Confirmation of MMCAP Membership (i.e. MMCAP ID, etc.)
2. Letter of Authorization
3. Contract Pricing Declaration Form, found at: <http://www.cardinalhealth.com/pricingdeclaration>
4. State Pharmacy License
5. DEA Certificate, if required for the Products ordered
6. State Controlled Substance License (if applicable)
7. Sales Tax Exempt Certificate
8. Signed Prescription Drug Marketing Act (PDMA) form
9. A contact name will be requested to address any potential Accounts Receivable/Payable issues (credit applications are not required, however, the owner and party responsible for payment will be required)
10. Compliance Representations and Warranties

No documentation is required by the Wholesaler for use of MMCAP's repackaging, invoice auditing, and returned goods service contracts. Only notification to the Wholesaler by the MMCAP Participating Facility is required to use one of the applicable services in coordination with the Wholesaler.

Wholesaler will provide an inventory of MMCAP Contract Products sufficient to meet the needs of the MMCAP Participating Facilities from the beginning of the MMCAP contracting period. Historical usage data will be provided by MMCAP six weeks prior to the start of the contract period. Wholesaler must have all MMCAP Contract Products loaded in its ordering system(s) meaning both Cardinal.com and Order Express and have a minimum of thirty (30) calendar days' Product supply available to order prior to the Contract start date.

4.5 Inventory Management

A. MMCAP-Contracted Manufacturers

For the term of this Contract, Wholesaler will have contracts with all MMCAP-contracted manufacturers as required to provide all MMCAP Contract Products and perform the services described in this Contract to MMCAP Participating Facilities. Exceptions must be approved in writing by MMCAP.

B. Bid-Roll

For the term of this Contract, Wholesaler will agree to work with MMCAP during Bid-Roll intervals for both generic and brand MMCAP Contract Products. During each of these intervals, the Wholesaler is required to provide resources to work with MMCAP, supporting weekly meetings for status check-ins, beginning with the receipt of the MMCAP contract files 45 days in advance of the effective date of the specific Bid-Roll interval. The Wholesaler is required to establish and update a confirmation log, which will be utilized for the weekly updates. As the effective date approaches, if daily check-ins should become necessary to meet process goals, the Wholesaler will support any escalated efforts to ensure that preparations are in place to manage the inventory stocking requirements.

The Wholesaler agrees to provide Inventory Reporting, specific to products that are:

- Manufacturer Allocated
- Manufacturer discontinued
- Wholesaler discontinued
- NDC changes
- Backorders
- No contract with manufacturer status
- No Loads
- Stock status by distribution center (DC)

to ensure that Bid-Roll is synchronized for the specific effective date interval of the Contract Product roll.

The Wholesaler agrees to complete an audit of the contract load prior to the effective date of the specific Bid-Roll interval and weekly through the first month that the new contracts are in place.

C. MMCAP Contract Products

The Wholesaler will be required to sufficiently stock MMCAP Contract Products. Wholesaler will be required to stock inventory of MMCAP Contract Product unless there are fewer than three (3) units sold per month per distribution center. If there is volume of three (3) units or more of an equivalent product, Wholesaler will be required to stock inventory of MMCAP Contract Product based on equivalent product sales as requested by MMCAP. MMCAP Contract Products that do not meet the units sold threshold and which are not stocked will be expected to still be viewable within Wholesaler's online ordering system(s) and orderable through Customer Service.

1. Wholesaler will not create unreasonable barriers in order to stock an MMCAP Contract Product.
2. MMCAP must be notified in writing no later than five (5) business days if any of the MMCAP contracted manufacturers' contracts are terminated or expire via a Weekly Contract Changes report found in Section 4.16 D. MMCAP reserves the right to modify the MMCAP-contracted manufacturers list at any time during the Contract term.

3. Wholesaler acknowledges and agrees to carry utilization (demand) history for a minimum of 60 calendar days. If any Product has not been ordered after 60 calendar days, utilization history can be decreased in Wholesaler's inventory management system.
4. Wholesaler will bring in a thirty (30) days' supply of Products for initial account set-up based on usage data from MMCAP. Thereafter, Wholesaler's buying system will acknowledge created demand and purchase inventory to meet said demand. Inventory will be maintained according to Wholesaler's Service Level and inventory parameters. See also Section 4.4, Contract Transition and Implementation.
5. Wholesaler is responsible for providing an inventory forecasting report to MMCAP as requested. This report will monitor and forecast ordering, usage patterns, as well as, identify significant trends, including increases and decreases in purchases. Monthly contract compliance reports to monitor purchases of Non-Contract Products will also be available to MMCAP upon request.
6. Wholesaler may not discontinue stocking an MMCAP Contract Product unless there are fewer than three (3) units sold per month per distribution center. For Products marked as non-stock, Wholesaler must submit a monthly report detailing how equivalent generic purchasing is impacting non-movement.
7. Timeline for new MMCAP Contract Product additions. For newly added MMCAP Contract Products that are currently available, Wholesaler will have the Products loaded, stocked and viewable in its system and ready for delivery in accordance with the goals specified in Table 4.5E: Wholesaler Created Stock Outage.
8. Timeline for MMCAP Contract Products that are not stocked. For MMCAP Contract Products that are not stocked, an MMCAP Participating Facility may request the Wholesaler to add the Product to inventory at the applicable distribution center by contacting customer service or its account representative. Wholesaler will have the Products loaded, stocked and viewable in its system and ready for delivery in accordance with the goals specified in Table 4.5E: Wholesaler Created Stock Outage, unless the MMCAP Contract Product is delayed due to manufacturer unavailability or other factors outside Wholesaler's control. In the event the fulfillment of any of the requests will take longer than what is specified in Table 4.5E: Wholesaler Created Stock Outage, Wholesaler will provide prior written notice of the delay and the reason for the delay to the requesting MMCAP Participating Facility and MMCAP.
9. In the event MMCAP chooses to process Failure to Supply claims on behalf of MMCAP Participating Facilities, the Wholesaler is to receive 30 days' advance written notice. Wholesaler agrees to accept electronic claims from MMCAP, and/or MMCAP Participating Facilities. Electronic claims will identify the specific Contract Products for which alternative products were purchased and the amount of reimbursement claimed on behalf of each MMCAP Participating Facility for the additional cost incurred in purchasing the alternative products. Reimbursement amounts will be calculated by subtracting the MMCAP Product invoice amount from the purchase invoice amount, excluding all other fees. Wholesaler must pay such claims in the form of a credit within 30 days of the receipt of a claim described above. If the Wholesaler does not pay such claim within such thirty (30) day period, MMCAP will have the right to charge, and the Wholesaler agrees to pay, a late fee equal to the statutory maximum, defined in Minn. Stat. § 16D.13, as the allowable percentage per month of the amount of any unpaid claim.
10. Wholesaler's designated contacts for all usage, inventory, and special order questions for MMCAP are Holly Kartscher, holly.kartscher@cardinalhealth.com, 614-757-4622 and Kevin Wells, kevin.wells@cardinalhealth.com, 614-757-7924. MMCAP Participating Facilities can contact their account representatives or customer service.

D. Special Orders

1. All large, one-time orders should be requested through the MMCAP Participating Facility's Wholesaler account representative or customer service.
2. Special requests may be, but are not limited to: a) special one-time orders, b) governmental entities placing large orders at the end of their fiscal year, c) items to be added to usage information to ensure

they are included as routine stock items at the distribution center, d) large quantities of identical lot numbers

3. For large volume orders, no more than ten (10) business days for processing and delivery will be required, subject to supplier availability. Wholesaler will need additional time for special requests requiring the same lot number.
4. Large, one-time orders are not returnable without prior approval of manufacturer or Wholesaler. Wholesaler commits the resources to working with the MMCAP Participating Facility and the manufacturer to find a solution if the product must be returned.
5. Stockpiling Program orders will be facilitated through the Cardinal Health Contract Compliance Contracts & Pricing (CCC&P) staff member, to provide timely review of the specific items to be purchased, dating, and stocking availability for the order to be fulfilled. Appropriate communication throughout the process, from initiation to delivery, will be provided to the MMCAP Participating Facility as well as the MMCAP Stockpiling Program Coordinator.

E. Wholesaler Created Stock Outages

1. Backorders due to Wholesaler created Stock Outages will be fulfilled in accordance with the goals specified in Table 4.5E: Wholesaler Created Stock Outage.
2. Wholesaler will have the manufacturer ship directly to the MMCAP Participating Facility for Next Day Delivery if available by the manufacturer and if the Product is deemed critical by the MMCAP Participating Facility. MMCAP agrees to work with Wholesaler on abusive situations.
3. MMCAP Participating Facilities that have MMCAP Contract Products, deemed critical, drop shipped to them directly from a manufacturer as a result of Wholesaler created Stock Outages will not be charged additional fees.
4. Manufacturer fees or fees to expedite orders for MMCAP Contract Products drop-shipped due to Wholesaler created Stock Outages are not allowed.
5. MMCAP Contract Products that are drop-shipped due to Wholesaler created Stock Outages will have Wholesaler's service fee discount applied.
6. MMCAP Participating Facilities can place Products on backorder by calling Wholesaler's customer service department, otherwise orders for Products on backorder will be cancelled. Placing a Product on backorder enables the MMCAP Participating Facility to receive the Product upon availability without placing a reorder. The option to utilize auto-backorder function is available, but must be approved by the MMCAP Participating Facility. Use of Order Express will allow the MMCAP Participating Facility to select order exceptions from the Order Confirmation, and choose to add the Product(s) on a Backorder List. This Backorder List displays updated availability information and may be edited by the MMCAP Participating Facility. When a backorder Product comes back into stock and is allocated to the order, the MMCAP Participating Facility will receive an alert in Order Express that the Product is available to ship.
7. If Product is transferred from an alternative distribution center in order to resolve a Stock Outage situation due to Wholesaler created Stock Outages no fees will apply.
8. If the Wholesaler fails to make prompt shipment of MMCAP Contract Products due to Wholesaler created Stock Outages, Wholesaler's ordering system(s) view errors, cancellations by Wholesaler, or backorders (excluding manufacturer back-orders), the ordering MMCAP Participating Facility may buy an alternate equivalent (generic) substitute Product from Wholesaler for the period in which the Wholesaler is unable to provide the Product. The Wholesaler will be liable to the MMCAP Participating Facility for any excess cost over the MMCAP Contract Product price and the alternate price of the Non-Contract Product. This will be in effect for 90 calendar days from the date the Wholesaler is first unable to supply the Product to an MMCAP Participating Facility. Credits due to an MMCAP Participating Facility based on excess Product procurement costs caused by a Wholesaler created Stock Outage or cancellation/backorder will be routed from the Wholesaler back to the participating MMCAP Participating Facility in the form of an account credit.

9. When an MMCAP Participating Facility calls in regard to a Product that is temporarily out of stock, customer service will coordinate efforts through the servicing Distribution Center and applicable Inventory Departments to bring the requested Product into stock, as long as the minimum stocking requirement of three (3) units per month is met. It is acknowledged by MMCAP that applicable Pedigree requirements may limit the Wholesaler’s ability to provide alternate service for temporarily out of stock and other product shortages.
10. Wholesaler will notify MMCAP at least ten (ten) business days in advance of any changes to the list of possible inventory stocking codes viewable on its online ordering system(s). A complete list of all possible stocking codes and thorough descriptions of each code will be provided. MMCAP and MMCAP Participating Facilities must be informed of any potential changes to demand shift logic and stocking request procedures.

Table 4.5 E: Wholesaler Created Stock Outage

Wholesaler created “Stock Outages”	Goal to have stock available to ship to an MMCAP Participating Facility	Criteria for when Failure to Supply (FTS)* Applies
Current Contract Products		
MMCAP Contract Product not in stock in Distribution Center and stock is available from national warehouse if applicable.	<ul style="list-style-type: none"> • Goal: 3 business days. 	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded five (5) business days. • FTS applies when Wholesaler has exceeded seven (7) business days for MMCAP Contract Products that are not stocked due to utilization levels
MMCAP Contract Product not stocked in distribution center, available from another distribution center (if applicable) where there may be a Contract Product item surplus.	<ul style="list-style-type: none"> • Goal: 3 business days. 	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded five (5) business days.
MMCAP Contract Product not in stock at a specific distribution center, and not stocked at the national warehouse or another distribution center, when the MMCAP Participating Facility attempts to order and subsequent request to stock is made to Wholesaler (assumes Contract Product is not MBO or on Manufacturer Allocation).	<ul style="list-style-type: none"> • Goal: 5 business days. 	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded ten (10) business days for Rx and fifteen (15) business days for Consumer Health/OTC products for MMCAP Products currently meeting 3 units of usage at the distribution center. • FTS applies when Wholesaler has exceeded fifteen (15) business days for MMCAP Contract Products that are not stocked due to utilization levels.

Table 4.5 E: Wholesaler Created Stock Outage (Cont.)

Wholesaler created “Stock Outages”	Goal to have stock available to ship to an MMCAP Participating Facility	Criteria for when Failure to Supply (FTS)* Applies
Newly Added Contract Products		
New Contract Product – relationship with Mfg/Sup already established and NDC/UPC is already stocked at the distribution center for other Wholesaler’s customers.	<ul style="list-style-type: none"> • Goal: 3 Business Days. 	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded five (5) business days from the time the Wholesaler receives notification that the Product has been added to the MMCAP Contract.
New Contract Product– relationship with Mfg/Sup already established; product is not stocked at National Logistics Center or distribution centers for other customers.	<ul style="list-style-type: none"> • Goal: 10 Business Days. 	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded fifteen (15) business days from the time the Wholesaler receives notification that the Product has been added to the MMCAP Contract.
New Contract Product – relationship with Mfg/Sup needs to be established	<ul style="list-style-type: none"> • Goal: Not to exceed ninety (90) calendar days from the time the Wholesaler receives notification that the Product has been added to the MMCAP Contract. 	Due to the variability in the timing of establishing a new manufacturer/supplier relationship, an MMCAP Participating Facility will not have access to a Failure to Supply remedy, unless Wholesaler fails to inform MMCAP, in writing, of difficulties with the specific manufacturer/supplier.
Shift Demand		
<p>Shift demand of Cardinal Key equivalent(s) when a lower priced product comes on as a new Contract Product</p> <p>Assumes manufacturer has product available to ship to the Wholesaler, as of the specified effective date.</p>	<ul style="list-style-type: none"> • Goal: Ten (10) business days. 	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded fifteen (15) business days MMCAP provides notification to the Wholesaler or the new Contract Product effective date, whichever is later, to ensure the new generic Product is loaded, viewable, and stocked at each distribution center where there is MMCAP Contract and/or Non-Contract usage for Cardinal Key equivalents.

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Table 4.5 E: Wholesaler Created Stock Outage (Cont.)

Wholesaler created “Stock Outages”	Goal to have stock available to ship to an MMCAP Participating Facility	Criteria for when Failure to Supply (FTS)* Applies
Shift Demand		
<p>When a dual/multiple award Contract Product is discontinued, demand is to be shifted to a less active, Cardinal Key equivalent, alternative Contract Product. This demand shift and stocking is required as not to disrupt access to an alternative Contract Product.</p> <p>Assumes manufacturer has product available to ship to the Wholesaler, as of the specified effective date.</p>	<p>Goal: Five (5) business days.</p>	<ul style="list-style-type: none"> • FTS applies when Wholesaler has exceeded ten (10) business days for Rx and fifteen (15) business days for Consumer Health/OTC from when MMCAP provides notification to the Wholesaler of Contract Product being discontinued, to ensure the less active, alternative Contract generic Product is loaded, viewable, and stocked at each distribution center, for MMCAP Products currently meeting 3 units of usage at the distribution center. • FTS applies when Wholesaler has exceeded fifteen (15) business days for MMCAP Contract Products that are not stocked due to utilization levels.
<p>* FTS = Failure to Supply, where MMCAP Participating Facility is provided a credit of the difference between the lower cost Contract Product not available and the higher cost product (either Contract or Non-Contract) that is purchased from Wholesaler as a result of the Wholesaler exceeding the specified business days in stocking the Contract Product. Wholesaler will not be responsible to pay FTS claims for MMCAP Contracted products that are on supplier disruption (i.e., manufacturer backorder, manufacturer allocation, etc.) or products in which the supplier cannot support the additional volume requested. All FTS claims will be subject to the same exclusionary rules as identified in section 4.5, G Service Levels, under MBO Units.</p>		

Failure to Supply (FTS) MMCAP Contracted Products Process:

1. If Wholesaler fails to maintain sufficient inventory of MMCAP Contract Products to meet the anticipated needs of MMCAP Participating Facilities, an MMCAP Participating Facility may purchase an alternate equivalent generic product from Wholesaler for the period in which Wholesaler is unable to provide the Product. Wholesaler will be liable for any excess cost over the MMCAP Contract Price for a period of 90 calendar days from the date the Wholesaler is unable to supply the MMCAP Contract Product to an MMCAP Participating Facility.
2. Wholesaler will use the price of the MMCAP Contract Products and the invoice price of the alternate generic product to determine the amount of reimbursement for failure to supply claims.
3. An MMCAP Participating Facility will submit the following information to Wholesaler for each MMCAP Contract Product that reimbursement is expected:
 - MMCAP Participating Facility Name, Address, City, State, Zip
 - MMCAP Participating Facility DEA or HIN
 - MMCAP Participating Facility point of contact for reimbursement (including telephone number and e-mail address)
 - Product description

- Generic Source price
 - MMCAP Participating Facility’s purchase price
 - Alternate NDC
 - Alternate NDC manufacturer
 - Alternate NDC purchase price
 - Alternate NDC quantity purchased
 - Alternate NDC date purchased
 - Amount due
 - Reason (e.g., brief description, proof of failed order)
 - A copy of the invoice showing the purchase of an equivalent generic product from the Wholesaler
4. Wholesaler must pay claims directly to the MMCAP Participating Facility via credit memo within 30 days of receipt of a claim.
 5. Wholesaler will be responsible for payment of Failure to Supply claims for 90 calendar days from the date the Wholesaler is first unable to supply the Product to an MMCAP Participating Facility. Credits due to an MMCAP Participating Facility based on excess product procurement costs caused by the Wholesaler’s stocking failure will be routed from the Wholesaler back to the MMCAP Participating Facility in the form of an account credit.
 6. Wholesaler’s address for FTS reimbursement:
Electronic filing address: tiffany.kuhel@cardinalhealth.com

Wholesaler will provide training to MMCAP Participating Facilities using Wholesaler’s Generic Drug Program to include:

1. Ordering training to all MMCAP Participating Facilities desiring training, to include ordering of non-stocked MMCAP Contract Products to be stocked as inventory in Wholesaler’s distribution center and available for prompt delivery.
2. Ranking for both MMCAP and Wholesaler’s Generic Drug Program contracts by contract and by price.
3. Filtering and sorting products to find the lowest priced item by purchased size or unit of measure.

F. Manufacturer Backorders

1. Wholesaler’s order entry system will provide notification prior to order of all Manufacturer Backorders.
2. Wholesaler will also list all Manufacturer Backorders on its ordering website and the MMCAP Participating Facilities can call customer service.
3. Notifications of Manufacturer Backorders will be provided by Wholesaler’s weekly “Service Flash,” which is available via Wholesaler’s website or push e-mail. Backorder notices will contain an expected date of resolution as well as the reason for the backorder (e.g., raw material shortage), if the information is available from the supplier. When information is not forthcoming from the supplier, the Wholesaler’s standard procedure is to make the “date out” two (2) months from the notification, following up with the supplier on an every two week basis to obtain the appropriate updated information as to when products will be available. Wholesaler’s “Service Flash” will also list recalled Products, discontinued Products, and Products on allocation.
4. Wholesaler acknowledges and agrees that its policy is to kill or fill all orders at order placement unless the MMCAP Participating Facility is set up to receive backorders.
5. MMCAP Participating Facilities with questions in regard to recalled, allocated, and discontinued Products on backorder should call Wholesaler’s customer service.

G. Service Levels

1. Raw and Adjusted Fill Rates will be calculated on a monthly basis for each MMCAP Participating Facility's account(s) (including 340B Drug Pricing Program accounts) serviced by the Wholesaler. Raw and Adjusted Fill Rates will also be calculated for MMCAP as a group as well as by each distribution center servicing MMCAP Participating Facilities.
2. Wholesaler must submit a Raw and Adjusted Fill Rate Report using the calculations defined below (Service Level Definitions) for each MMCAP Participating Facility, distribution center serving MMCAP Participating Facilities, and by MMCAP as a group to MMCAP on a monthly and a quarterly basis. See also Section 4.19 Mandatory Reports, for report requirements.
3. Service Levels will be defined as follows:
 - a. Raw Fill Rate will be calculated by dividing the number of units delivered by the number of units ordered.

$$\text{Raw Fill Rate} = \frac{\text{Number of Units Delivered}}{\text{Number of Units Ordered}}$$

Orders for Products that are not filled as a result of Wholesaler being out of stock of such Products will be considered as a line item for Product ordered in this calculation regardless of the reason for Wholesaler being out of stock.

- b. Adjusted Fill Rate will be calculated by dividing the number of units delivered by the number of units ordered minus the number of Manufacturer Backorder (MBO) units.

$$\text{Adjusted Fill Rate} = \frac{\text{Number of Units Delivered}}{\text{Number of Units Ordered} - \text{MBO Units}}$$

MBO Units will include:

- Orders for Products made but not shipped because of industry wide shortages or other issues beyond the control of Wholesaler as demonstrated by Wholesaler to the reasonable satisfaction of the MMCAP Managing Director, lead pharmacist, and lead financial representative (e.g., Manufacturer Unable to Supply, Manufacturer Allocations, Manufacturer Backorders, Manufacturer Recalls, and Manufacturer Discontinued).
 - Purchases of Products which exceed 150% of the previous months activity
 - Products ordered which are filled and delivered within 24 hours of the original order
 - Partial shipments if 75% or more of the order can be completely filled within 48 hours
 - Unavailable Products repeatedly ordered within 72 hours of the original order
 - Special orders requiring shipment from the manufacturer
 - Non-stock Products that are not under contract with MMCAP
 - Contract rolls/awards where notifications from MMCAP are received with less than 4 weeks' notice prior to transition of addition (e.g., bid year transition). Wholesaler may only include Products in MBO Units for 30 calendar days after notification.
- c. Non-Contract OTC Products will not be included in the Adjusted Fill Rate.
 4. Wholesaler agrees to maintain a monthly Adjusted Fill Rate for pharmaceutical Products of at least 98.5% (calculated as set forth above) for each MMCAP Participating Facility account. Pharmaceutical Products include but are not limited to: MMCAP Contract and Non-Contract prescription drug Products, MMCAP Contract OTC Products, IV solutions, contrast media, nutritionals, and anesthesia gases.
 5. If the monthly Adjusted Fill Rate for pharmaceutical Products (calculated as set forth above) for a MMCAP Participating Facility account falls below 98.5%, Wholesaler will provide the affected MMCAP Participating Facility an action plan for improvement and will work in good faith to resolve the Adjusted Fill Rate issue.
 6. Service level requirements for MMCAP Participating Facilities currently utilizing the Wholesaler will begin 30 calendar days following the effective date of this Contract. The service level for new MMCAP

Participating Facilities added to this Contract after the effective date will begin 30 calendar days from the time Wholesaler receives the MMCAP Participating Facility's first order.

H. Shift Demands

The Wholesaler will perform weekly maintenance in the Wholesaler's procurement system, shifting demands for additions and deletions where applicable. The Wholesaler will use Cardinal Key, (specific for active ingredient, route, dosage form, pack size and strength), rather than NDC to aid in shift demand stocking decisions. Brand to Generic Shift. When a branded pharmaceutical Product patent release approaches, Wholesaler will utilize the following process to ensure MMCAP Contract Products are expedited for the newly awarded generic.

- a. Ten (10) business days prior to patent expiration:
 - Wholesaler will run a sales report capturing three (3) months of purchase history on the branded pharmaceutical Product.
 - Sales history will be provided to MMCAP and a reminder sent that the Wholesaler plans to shift demand from the branded pharmaceutical Product to the awarded generic Product.
 - MMCAP will notify Wholesaler of the awarded generic Product at the same time MMCAP notifies the awarded generic Product manufacturer.
 - Wholesaler will provide MMCAP with a summary of the shift demand that occurred per distribution center.
 - Upon manufacturer launch and/or availability, Wholesaler will have demands shifted and will expedite the new MMCAP generic Contract Product into applicable distribution centers.
 - b. A shift demand will occur for all Product presentations for which there was a brand Product available. For example, if the brand Product was available in 100-count bottles, 500-count bottles and unit dose packaging (UD100ea x 1), Wholesaler will shift demand generically for all three presentations, if available.
 - c. Shift demands will be converted even if bottle or package size varies. For example, if the brand Product was available in 60 count bottles but the generic Product is available in 100 count bottles, demand will be shifted to the 100 count bottles.
 - d. Shift demands will not take place on additional bottle sizes or unit dose packaging that was not previously available unless Wholesaler is directed by MMCAP to do so. MMCAP will notify Wholesaler of expected shift demands through its weekly contract update process.
1. Generic to Generic Shift. Wholesaler will process shift demands for multi-source generic Products added to contract upon notification of an award from MMCAP. Wholesaler has ten (10) business days from the time of MMCAP notification or until the product effective date, whichever is later, to have the new generic Product loaded, viewable, and stocked at each distribution center where there is MMCAP contract and/or non-contract usage for equivalent generic Products. This time line assumes that the manufacturer has the Contract Product ready to ship to the Wholesaler on the effective date specified. Wholesaler will provide MMCAP with a summary of the shift demand that occurred per distribution center.
 2. Additional Services and Activities
 - a. Wholesaler will provide a weekly price change report to MMCAP to assist in monitoring price reductions for multi-source generics. Wholesaler will do shift demands for price decreases upon MMCAP request.
 - b. Weekly maintenance is run in the Wholesaler's procurement system, shifting demands for additions and deletions where applicable.

4.6 Management of MMCAP Contract Products

A. Price Loading and Pricing Accuracy

1. Wholesaler will be responsible for processing the MMCAP Contract File Updates, or the files sent to the Wholesaler by MMCAP which specify the Products and pricing that MMCAP has negotiated with its contracted manufacturers. Wholesaler will load and make viewable in its ordering system(s) all data lines from MMCAP's Contract File Update notifications within five (5) business days from the date of receipt or by the MMCAP Contract File Update effective date, whichever is later. When manufacturer verification is needed in order to load an MMCAP Contract Product and the MMCAP-contracted manufacturer has not responded or provides data that is inconsistent with the MMCAP Contract File Updates, Wholesaler will promptly notify MMCAP in writing no later than two (2) business days (after the five (5) business days allowed for Wholesaler processing).
2. Wholesaler agrees that any notice received from an MMCAP-contracted manufacturer or supplier for a price or Product change on an MMCAP Contract Product will be forwarded to MMCAP in the form of a weekly contract change report (see Section 4.19, Mandatory Reports). Wholesaler agrees to provide credits/rebills at no charge to correct pricing in the event that MMCAP and its contracted manufacturers disagree in regard to price and Product loading.
3. Price change reports will be available to all MMCAP Participating Facilities at any time via Wholesaler's ordering system(s).
4. Provided that Wholesaler has received all requested account set-up information, Wholesaler will have all MMCAP contract and individual contracts loaded prior to the MMCAP Participating Facility's first order. This includes all tiered contracts, if applicable, per receipt of documentation from the supplier.

B. Product Additions/Deletions

1. Wholesaler may not add or remove any MMCAP Contract Products from its database without providing prior written notification to MMCAP. Written notification can consist of the latest weekly Contract Change report which lists all changes made within the past week to the MMCAP contract (see Section 4.19, Mandatory Reports).
2. Wholesaler agrees to maintain an Adequate Supply for a Product that is added to the MMCAP contract due to a change in the NDC number, Product deletion, and replacement of a Product by the manufacturer, and in situations where Wholesaler is notified that MMCAP has determined a need to switch its procurement selections. Immediately upon notification of the change, Wholesaler will generate a usage report for the old item. This report will be used to decrement the old item(s) and increment the new item(s) as needed, to procure Product in a timely manner to satisfy MMCAP Participating Facilities' needs.

C. Convenience and Individual Contracts

1. MMCAP Contract Products priced at Wholesale Acquisition Cost – zero percent (WAC - 0%) will be reported as on-contract purchases.
2. Wholesaler agrees that contract purchases for WAC – 0% will receive Wholesaler's service fee discount, as set forth in Attachment C, Service Fee Discount Matrix.
3. Wholesaler will not charge any delivery fees for MMCAP Contract WAC – 0% Products if they fall within the MMCAP Participating Facility's normal delivery schedule.
4. Upon request of an MMCAP Participating Facility and after prior approval by MMCAP in writing, Wholesaler will supply and distribute Products acquired under contracts individually negotiated with (e.g., pharmaceutical) manufacturers by an MMCAP Participating Facility. Service fee discounts will be applied to purchases made from MMCAP Participating Facility individually negotiated contracts.

D. Product Expiration Dating

1. At a minimum, expiration dating for all MMCAP Contract Products and Non-Contract Products delivered under this Contract must have a minimum shelf life of six (6) months expiration dating remaining upon delivery to the MMCAP Participating Facilities.
2. Shipment of Product with expiration dating of less than six (6) months requires the prior approval of the MMCAP Participating Facility before release and delivery of the short-dated Product.
3. If Wholesaler distributes short dated Product to an MMCAP Participating Facility without prior approval, the Product may be returned to Wholesaler, with the MMCAP Participating Facility being credited for the return, subject to Attachment A, Section 4.12 H, Goods Returned to the Wholesaler.

4.7 Ordering Equipment

A. Ordering System

1. Wholesaler will provide to each MMCAP Participating Facility an ordering method that allows the facility to quickly and accurately order MMCAP Contract Products, within the technological capabilities of the MMCAP Participating Facility. At a minimum, Wholesaler's ordering system(s) must provide the following functionalities:
 - a. Clearly identify all MMCAP Contract Products and whether these Products are in stock
 - b. Build and place electronic orders
 - c. Review pending orders for correctness and contract compliance
 - d. Provide online allocation of ordered amounts
 - e. Receive Order Confirmation reports
2. Wholesaler will offer its ordering system(s) to MMCAP Participating Facilities. Wholesaler currently supports the following ordering methods: Internet, EDI, phone orders via interactive voice response, direct call to customer service, handheld device ordering, and fax orders. All ordering methods described below require minimal setup and implementation work with the exception of EDI.
 - a. **Telxon** – is a hand held ordering system which allows MMCAP Participating Facilities to order at the SKU level directly from the shelf location.
 - b. **TeleServe** - allows MMCAP Participating Facilities access to Wholesaler's Stock Support Line (866-958-2200) 24 hours a day, 7 (seven) days a week to order Product and check stock status. TeleServe is tied into Wholesaler's pharmaceutical distribution system so users receive instant confirmation that Product is available and will be shipped with the next delivery. The system features interactive voice response.
 - c. **Cardinal.com** - is a pharmacy order and inventory management solution available via the Internet. Cardinal.com features real-time stock status, real-time allocation of Products, instantaneous Order Confirmation, electronic credits and returns, and reporting capabilities.

Cardinal.com will be sunset, once all MMCAP Participating Facilities have been converted and transitioned to Order Express. The Wholesaler's Account Management team will continue working with MMCAP Participating Facilities to convert them from Cardinal.com to Order Express. Transition planning and execution includes account setup, training, and follow up to ensure compliance. Wholesaler's goal is to convert all current and new MMCAP Participating Facilities to Order Express by the end of FY15. Wholesaler will report monthly to MMCAP, the status of the conversions and transition timelines.

- d. **Order Express** – is a web-based order entry and inventory management system that will provide MMCAP Participating Facilities with real-time access to up-to-date product information including product availability, immediate order confirmations, 36 months of purchase history for reporting, and other reporting capabilities.
- e. **EDI Capabilities** - the process for Electronic Purchase Orders begins with the receipt from a customer of an EDI PO (850), followed by the delivery to the customer of an Order

Confirmation (855), an Advanced Shipment Notice (ASN) (856) is created once the order is picked, then an Electronic Invoice (810), which is followed by a Electronic Funds Transfer Remittance Advice (820) from the customer. The Wholesaler is required to support all 810, 894 and 880 EDI protocol documents for electronic invoicing as well as 820 notices for electronic remittances. If an MMCAP Participating Facility chooses to implement an EDI solution, Wholesaler will have a dedicated staff who will work with the customer and the third party vendor to develop the appropriate interface to begin trading files.

- f. **Mobile Solutions** with the MC70 Handheld Scanner- allows customers to order, receive, and inventory Product using a handheld device. The user can send/receive current catalog data, submit orders, transfer orders to Cardinal.com, and retrieve receiving data. The device offers greater flexibility in the management of the receiving process, allowing receiving to take place at any location within the pharmacy. Mobile Solutions utilizes wireless technology. Mobile Solutions will be retired along with Cardinal.com and is to be replaced with Order Express with MC40.
- g. **Mobile Order Express with MC40** - allow a user to build and place an order, perform physical inventory and receive their shipment of orders all on the device with no need to cradle or sync to a computer. The Mobile website seamlessly integrates with the desktop experience on Order Express giving the user easy access to the best of both features. With instant synchronization of data between the desktop and mobile experience, any user can review and modify actions throughout the ordering process. The MC40 scans directly in the Mobile Order Express website obtaining the most recent catalog and pricing which provides the pharmacy with accurate stock and pricing information.

The MC1000 builds an order and take inventory offline. The MC1000 syncs with Order Express to allow easy access to ordering and inventory files. The MC1000 carries a full product catalog of available products and displays product details remotely on the device.

B. Hardware, Software, and Devices

1. Wholesaler agrees that all fees charged for software and/or ordering devices will be listed in Attachment B, Discounts and Fees.
2. Telxons will be provided upon request and based on need, depending upon availability in the Wholesaler's supply network. As a result of enhanced handheld device technology, Telxons do not interface with Order Express and will therefore be completely phased-out with Cardinal.com
3. MMCAP Participating Facilities that have existing hardware provided by Wholesaler previously will have it remain until it no longer functions or is not needed by the facility. Wholesaler's handheld devices require the installation of Microsoft's Active Sync 4.5 which is currently provided by Microsoft as freeware.
4. Wholesaler's CSOS requires the installation of Axway's Cyclone Activator which is provided by Wholesaler at no charge. Wholesaler is working to have CSOS technology available to MMCAP Participating Facilities that does not require the use of Java.

C. Installation and Training

1. Wholesaler agrees that all provided hardware, software, and ordering devices will be fully functional at time of installation.
2. Software updates, system changes, and training will be facilitated through a variety of communication methods. Scheduled maintenance as well as new Product offerings and enhancements will be detailed on the MMCAP Participating Facility's Cardinal.com or Order Express home page. Training can either be provided on-site by the business/IT team or the MMCAP Participating Facility will have the option to participate in monthly application training webinars.

3. Wholesaler's software for CSOS and Mobile Solutions can be downloaded from the Internet. System requirements and installation instructions for CSOS and Mobile Solutions will be available from Wholesaler upon request.
4. Training will include:
 - a. Proper use of order entry devices including computer and hand held units
 - b. How to access and interpret Wholesaler's inventory status
 - c. Order placement process (Product inquiry, placement, order edit, printback confirmation, etc.)
 - d. Any required ordering system maintenance
 - e. Downloading price changes
 - f. Performing file maintenance
 - g. Requesting or printing bar code labels
 - h. Download/Run/Print/Export contractually required reports
 - i. Operation of Inventory Management program
 - j. Identifying MMCAP Contract Products (e.g., contract ranking)
 - k. Any other commercially available training in use of the equipment or ancillary items
 - l. Contact information in case of questions regarding ordering
 - m. Training guides or manuals and system operating manuals, accessible on-line (including all updates), for all equipment and software furnished by the Wholesaler to each individual ordering facility
 - n. Assigning of account login IDs and passwords
 - o. Item Return Processing Training
 - p. Technical support to interface hand held devices with each facility's PC/network infrastructure.
5. Wholesaler will make available to each facility online training documents and videos for the Order Express ordering system being used by the MMCAP Participating Facility that outlines all of the functions on the online ordering tool. Wholesaler will work with MMCAP to develop other training processes.

D. Inventory at an MMCAP Participating Facility

Wholesaler will provide, at no cost to the MMCAP Participating Facility, training, software, reports, and handheld devices to perform an onsite inventory. Hiring a physical inventory company is not included in these services. Requests for inventory support need to be made directly with the MMCAP Participating Facility's account representative or customer service. Wholesaler recommends at least fourteen (14) day lead time to reserve extra handheld devices for use in performing inventory; Wholesaler will take reservations for handheld devices up to 60 calendar days prior to the inventory date. MMCAP Participating Facilities may also request a set of shelf labels to be printed using the facilities' purchase history. The labels can be printed in Brand or Generic name order for ease of use. Training on the inventory procedure may be on-site or online.

E. Ordering System(s) Back-up Service, Maintenance and Repair

Wholesaler agrees to provide all software updates and system maintenance at no cost for the term of this Contract. Cardinal.com is Internet-based and therefore requires routine site maintenance. Order Express, while web-based, also requires routine maintenance. Wholesaler agrees that maintenance on either ordering system will only occur on weekends and MMCAP Participating Facilities will be notified in advance. The Wholesaler reserves a maintenance window for Cardinal.com and Order Express of Saturday 8pm through Sunday 8am EST. TeleServe stock status line, Telxons, faxes, and calling the customer service department will serve as back-ups for Wholesaler's ordering systems. If computer maintenance is required, Wholesaler will replace or repair accordingly.

F. Label and Marking

Wholesaler's online ordering system(s), Order Express, will print shelf labels, on-site, on demand. MMCAP Participating Facilities may also call Customer Service to request shelf labels. Wholesaler can provide contract status on its shelf labels. However MMCAP Participating Facilities can also request that the contract name field be added to their yellow Product sticker format which will aid in the identification of MMCAP Contract Products.

4.8 Order Placement

A. Wholesaler's Ordering System(s)

1. Wholesaler's ordering system(s) will display the following information:
 - MMCAP Participating Facility's name
 - Wholesaler assigned account number
 - Product Name
 - Wholesaler's Product Number
 - Generic Name
 - Product Description
 - Strength
 - Packaging
 - Manufacturer
 - Unit dose indicator
 - Form (e.g., tablet, capsule, etc.)
 - National Drug Code (NDC) for applicable Products
 - Wholesale Acquisition Cost
 - Average Wholesale Cost
 - Orange Book Rating – Referred to as AB rating
 - Universal Product Code (UPC), where applicable
 - Product Control Schedule (e.g., CII)
 - DEA number (where applicable)
 - Type of contract – contract identification or code that identifies product as an MMCAP Contract Product, Non-Contract, 340B Drug Pricing Program contract, or alternate contract Product
 - Contract price (specific to the pricing and contract eligibility of each MMCAP Participating Facility).
 - Product denoted as available as a Drop Shipment
 - Product inventory status (e.g., stocked, unavailable due to MBO, Wholesaler Out of Stock, or allocation situations)
 - Real-time Product inventory quantity available (Product in stock minus those allocated to orders)
 - Alternate Product search option
 - Product inquiry search option
 - Automatic substitution information option
2. Wholesaler's ordering system(s) cannot display the following information:
 - Universal Product Number (UPN), - not currently on development plans for an addition to ordering systems(s) data fields
 - HIN number (where applicable) – will be made available Summer 2015
3. Wholesaler agrees that all new MMCAP Participating Facilities will be started with a standard default ordering set-up to ensure MMCAP contract compliance. This default set-up will be approved by MMCAP prior to being deployed.

4. All MMCAP Contract Products and MMCAP Participating Facility individually negotiated contracts will be loaded in the prime or first position (with price being the ranking determinant between MMCAP Contract Products and individually negotiated contracts) and be visible in Wholesaler's ordering system(s). In situations where the MMCAP Contract Product and another item are the same price, the MMCAP Contract Product and price will be loaded and visible. When there is a lower cost option for which there is a shared NDC, the lower cost option will be visible. Wholesaler's ordering system(s) will clearly identify MMCAP Contract Products. Wholesaler will not redirect MMCAP Participating Facility to other available contracts except with the written request of the MMCAP Participating Facilities.
5. Wholesaler's ordering screen will clearly identify special orders such as controlled substances (e.g., CIIIs), Drop Shipments, and Closed Distribution Products. Closed Distribution Products and Drop Shipment Products are identified in the Stock status field. Drop Shipment Products are denoted with a "DSHP" within the item description.

B. Automatic Substitution

Automatic substitution will only be permitted upon specific request by an MMCAP Participating Facility, with prior written notification provided by Wholesaler to MMCAP. In instances where the Wholesaler uses the Automatic Substitution process, the MMCAP Participating Facility must be notified of the substitution and the substituted Product must be annotated as such on the MMCAP Participating Facility's Order Confirmation. Once such an agreement is entered into between the Wholesaler and the MMCAP Participating Facility, the Wholesaler will be required to maintain an Adequate Supply of the alternate Product. There will be no commitment to buy the alternate Product and any order consisting of alternate Products will still require the prior approval of the MMCAP Participating Facility. Automatic substitution by the Wholesaler without the MMCAP Participating Facility's prior approval is prohibited. Upon request, Wholesaler will supply MMCAP with a list of facilities using automatic substitution.

C. Confirmation Printback/Order Confirmation

1. All orders processed through Wholesaler's electronic ordering system(s) will receive a Confirmation Printback or Order Confirmation generated from the Wholesaler's system and sent to the ordering MMCAP Participating Facility. For orders submitted through Cardinal.com or Order Express ordering, an immediate Order Confirmation is provided to the user. Additionally, the MMCAP Participating Facility can elect to have the Order Confirmation print automatically to a local printer for each order submitted.
2. Any additional fees for Product distribution will show as a separate line charge on an invoice, but not on the Order Confirmation.
3. Order Confirmations, regardless of the order's source system, can be viewed on Cardinal.com and Order Express once the order has been allocated. The timeframe for allocation is approximately five (5) minutes from the time Wholesaler receives the order. If the MMCAP Participating Facility chooses to receive an EDI Order Confirmation, the Order Confirmation is still generated at the time of allocation, however the file may take anywhere from 10 to 30 minutes to be transmitted to the MMCAP Participating Facility to allow for file translation time.

D. Controlled Substances Ordering System

1. Wholesaler's Controlled Substance Ordering System (CSOS) will allow MMCAP Participating Facilities to submit secure, electronic orders for controlled substances.
2. Wholesaler will provide CSOS through Cardinal.com and Order Express.
3. Wholesaler's standard turnaround time for the hard copy version of DEA Form 222 is 24 hours to 48 hours, depending on location. If CSOS orders are received by the distribution centers' cutoff time, they will be delivered the next day.

4. Controlled substances ordered on a hard copy version of DEA Form 222 will be shipped upon Wholesaler’s receipt of the form or on the Next Scheduled Delivery Day. Wholesaler will not impose any additional shipping charges for ordering controlled substances if the controlled substances are shipped separately from the original order or on the Next Scheduled Delivery Day.
5. For controlled substance orders using electronic CSOS (electronic DEA Form 222), Wholesaler’s standard turnaround time is 24 hours. Wholesaler will not apply additional shipping charges for controlled substances when shipped separately from another order due to process delays.
6. All fees for the use of CSOS or for using the hard copy version of DEA Form 222 will be listed on Attachment B, Discounts and Fees.

E. Technical Support for Ordering

Wholesaler’s technical support is available from 7:00 A.M. – 12:00 A.M. EST Monday-Friday and 9:00 A.M.- 9:00 P.M. Saturday & Sunday. From midnight until 8 am, the line will transfer to voicemail, however, Wholesaler’s technical staff on site will check voicemail every hour and will respond to any urgent issue. The primary method for contacting technical support is via telephone, however for certain support scenarios, technical support can accommodate requests via email.

F. 340B Drug Pricing Program

Wholesaler is and must remain for the term of this Contract an Authorized Distributor for the 340B Drug Pricing Program. Wholesaler is required to provide notice in writing to MMCAP, immediately, in the event of a status change. For MMCAP Participating Facilities that are eligible and participating in the 340B Drug Pricing Program, the Wholesaler will maintain two separate purchasing accounts, one for ordering MMCAP Contract Products and one for ordering 340B Drug Pricing Program contract products.

Wholesaler is required to have sufficient subject matter expertise available to MMCAP Participating Facilities to support the complex intricacies of this program.

Service fee/cost of goods discounts are to be applied to 340B purchases, with 340B purchase volume to be included in the total purchasing volume for the state, as it relates to the service fee/cost of goods discount volume matrix.

4.9 Delivery

A. Routine Delivery

1. Wholesaler agrees that all fees charged for delivery will be listed on Attachment B, Discounts and Fees. Wholesaler will not charge any additional fees for routine service to Alaska or Hawaii.
2. All routine scheduled order shipments will be F.O.B. destination, freight prepaid.
3. Wholesaler will provide delivery services based on average monthly purchasing volume as summarized below. Scheduled delivery days will be communicated at setup.

Average Monthly Purchasing Volume	Number of Free (No-Charge) Deliveries per Week
\$0 - \$25,000	5
\$25,000 and up	5

4. Wholesaler agrees that it will not charge a fuel surcharge for the term of this Contract and any extensions.

5. Wholesaler will provide a daily order and delivery schedule for each MMCAP Participating Facility. All deliveries will be made next day or on the Next Scheduled Delivery Day (excluding Alaska and Hawaii), unless communicated otherwise.
6. Wholesaler's daily order cut off time will be 7 pm local time with the delivery window from 7 am – 3 pm the next day depending on location and distance from servicing distribution center. Orders received Monday through Thursday will be delivered the following day. Orders received Friday will be delivered the next business day (Monday). Wholesaler's distribution centers will make a good faith effort to deliver before noon local time.
7. Wholesaler will provide a Holiday Schedule to each MMCAP Participating Facility and MMCAP throughout the term of this Contract. Wholesaler will notify MMCAP Participating Facilities of the holiday schedule by using tote stuffers.
8. Wholesaler usually makes normal deliveries via its contracted couriers. Delivery to locations outside of the continental US will be accomplished via commercial air, vessel, and local couriers.
9. Wholesaler will stock and deliver Products that require special handling and shipping, such as controlled substances, refrigerated or temperature-controlled Products, oncology or chemotherapy Products, and any hazardous materials. Wholesaler will only ship hazardous materials as allowed by the appropriate government regulations.
10. Same day delivery is not available unless the service can be available through emergency delivery.
11. Damaged Products must be reported to Wholesaler's customer service department as set forth in Section 4.12 H, Goods Returned to Wholesaler, and applicable credits will be issued within three (3) business days from receipt of the damaged item.
12. Lost Products must be reported to Wholesaler's customer service department as set forth in Section 4.12 H, Goods Returned to Wholesaler. Upon reconciliation, Wholesaler will apply credit for lost items as applicable within three (3) business days.
13. Wholesaler must have the ability to ship palletized deliveries via freight companies and must be able to use large companies for dock deliveries instead of small couriers. Orders should be shipped as ordered (by case or by pallet) to the facility so they can be properly unloaded and stored. Wholesaler will ship palletized and case quantity orders on a weekly or twice monthly basis for all distribution centers.
14. MMCAP agrees to work with Wholesaler on abusive situations involving MMCAP Participating Facilities which request special delivery vehicles or methods for routine deliveries.

B. Drop Shipments

1. All fees associated with Drop Shipments are listed in Attachment B, Discounts and Fees.
2. The Wholesaler will act as a conduit to expedite and simplify the ordering and payment of drop shipped Products.
3. Unless approved by the MMCAP Participating Facility, Drop Shipments directly from product suppliers for recurring orders are prohibited.
4. Products requiring Drop Shipment must be easily identified in Wholesaler's ordering system(s). Wholesaler's Drop Shipment Products are denoted in Cardinal.com and Order Express as DSHP.
5. Timelines for the delivery of Drop Shipment Products will be made per the request of the MMCAP Participating Facility (e.g., expedited shipment, standard delivery, etc). Wholesaler will place Drop Shipment requests with manufacturers or suppliers within one (1) business day of receiving the request from the MMCAP Participating Facility.
6. In the event that Wholesaler is unable to fill an MMCAP Participating Facility's order for an MMCAP Contract Product, Wholesaler will have the Product drop shipped directly from the manufacturer. The MMCAP Participating Facility will not be assessed a fee for this shipment.

C. Delivery for Special Products

1. Wholesaler will maintain appropriate temperatures and environmental conditions in accordance with manufacturer requirements for delivery to the MMCAP Participating Facilities. All refrigerated Products will be shipped in returnable coolers with appropriate packaging to maintain the required temperature range. Products requiring refrigeration will be clearly marked as such. Wholesaler will use phase change panels to maintain orders at proper temperatures.
2. All Products will be adequately packaged by Wholesaler. If an MMCAP Participating Facility refuses Product that has been inadequately packaged, the MMCAP Participating Facility must notify Wholesaler's customer service department to log the complaint. Any costs associated with the return of Product due to improper packaging or transport will be at the expense of the Wholesaler.
3. Wholesaler will comply with all DEA requirements for controlled substances.
4. Wholesaler must not distribute MMCAP Contract Products through associated specialty distributors without the prior written approval of MMCAP or without the manufacturer requiring the Wholesaler to do so. Wholesaler has a relationship with Cardinal Health 108, LLC d/b/a Specialty Pharmaceutical Distribution (SPD). SPD is a wholly owned subsidiary of Cardinal Health, Inc. MMCAP acknowledges that certain MMCAP-contracted suppliers have limited distribution networks and that Cardinal SPD will be distributing these manufacturers' products for MMCAP Participating Facilities. Wholesaler is required to apply service fee/cost of goods discounts to any MMCAP Contract Products distributed by Cardinal SPD, and ensure that MMCAP is paid the distributor administration fee on same said products distributed by Cardinal SPD. Wholesaler is also required to ensure that sales distributed by Cardinal SPD are included in the Sales Data Report, as specified in Section 4.19 Mandatory Reporting.
5. In the event a manufacturer charges Cardinal SPD for shipping due to an expedited request by an MMCAP Participating Facility, Wholesaler will line item invoice the MMCAP Participating Facility for the same shipping cost charged by the manufacturer. Backup documentation will be available upon request for any shipping fees that are charged to the MMCAP Participating Facility for products supplied by Cardinal SPD.

D. Delivery of Bulky Items.

Bulky items are those products that may be exceptionally cumbersome to deliver. Examples of these products may include cases of nutritional products, IV fluids, etc. In the event that the MMCAP Participating Facility approves the Wholesaler's request to have bulky items drop shipped, the product manufacturer and drop-ship notification is to be annotated on the MMCAP Participating Facility's order confirmation.

Service fee/cost of goods discounts are required to be applied to orders for bulky items for which MMCAP has a contract.

E. Emergency Order, Placement and Delivery

Wholesaler's procedure for placement of emergency orders during non-business hours will be made available to each MMCAP Participating Facility upon startup of service. Each MMCAP Participating Facility will be provided twelve (12) emergency orders annually free of charge. Any additional emergency orders beyond the twelve per year that are free will be assessed a fee as detailed in Attachment B, Discounts and Fees. An emergency order is defined as one necessary for immediate and specific patient care which falls outside the normal order and delivery parameters. Using air and ground options, Wholesaler will exhaust all resources in delivering emergency Product in the most timely and efficient methods. Air services may be used at the discretion of the Wholesaler based on the severity of the emergency situation. Wholesaler will make a good faith effort to make emergency deliveries within four (4) hours following receipt of the order. OTC Products are not considered necessary for immediate

and specific patient care and therefore do not qualify for free emergency orders. Service fee discounts will be applied to emergency orders as set forth in Attachment B, Discounts and Fees.

4.10 Pedigree

In the passage of the Drug Quality and Security Act (H.R. 3204) on November 27, 2013, Title II of the Act, establishes a national system for tracing pharmaceutical products through the supply chain and sets national licensing standards for wholesale distributors. This legislation preempts the current state pedigree and serialization laws, however, as the Drug Quality and Security Act transitions, the Federal pedigree requirements within the Prescription Drug Marketing Act (PDMA) are to remain in effect for the immediate future.

The Wholesaler is required to comply with all aspects of Drug Quality and Security Act as it transitions, and until January 1, 2015, to continue to comply with PDMA. During the interim period, from DSCSA being passed, 11/27/13, until 1/1/15, the current federal minimum standards for the wholesale distribution of prescription drugs apply, meaning PDMA remains in effect and can be enforced. Cardinal Health is an Authorized Distributor of Record for all prescription drugs distributed and is therefore not required to pass pedigree under PDMA.

If any new transitions of the Drug Quality and Security Act which require change(s) to the current pharmaceutical distribution procedure(s), a minimum of 30 calendar days' notice of the change(s) will be provided so MMCAP Participating Facilities can prepare. Wholesaler agrees to provide next day service for those Products requiring a Pedigree.

As the Drug Quality and Security Act, Title II is a requirement upon wholesalers as a national licensing standard, Wholesaler will not charge any fees throughout the term of this Contract and any extensions to MMCAP or MMCAP Participating Facilities related to complying with this Act.

As part of the quarterly executive business review with MMCAP, the Wholesaler will be required to provide updates on the Drug Quality and Security Act, Title II transition and how the Wholesaler is integrating compliance aspects into its work deliverables to MMCAP Participating Facilities and MMCAP.

4.11 Contract Compliance

A. On-Contract Purchasing

Wholesaler agrees to encourage MMCAP Participating Facilities to purchase MMCAP Contract Products. Wholesaler must not condone or encourage in any way the purchase substitution of an MMCAP Contract Product with that of a Non-Contract Product. To ensure overall MMCAP Participating Facility contract compliance, Wholesaler may be asked to provide, at no cost to the MMCAP State Contacts in each state served by the Wholesaler, a monthly report containing the following fields:

1. MMCAP Participating Facility name
2. Wholesaler account number
3. Contract volume (in dollars) by facility
4. Not-on-contract volume (in dollars) by facility
5. Total volume (in dollars) amounts by facility
6. Number of line items shipped to the facility

B. Compliance Calculations

Wholesaler agrees to report contract compliance using MMCAP's preferred calculations when requested by MMCAP, MMCAP Participating Facilities, or any other entities designated by MMCAP.

1. Raw Contract Compliance:**MMCAP Contract Sales^a****Total Sales^b**

- a. MMCAP Contract Sales: Products for which MMCAP has negotiated a contract
- b. Total Sales consist of MMCAP Contract Sales, Alternate Contract Sales, Wholesaler's Generic Drug Program pricing, and non-contract sales.

2. Adjusted Contract Compliance:**MMCAP Contract Sales^a + Alternate Contract Sales^b****Total Sales^c**

- a. MMCAP Contract Sales: Products for which MMCAP has negotiated a contract
 - b. Alternate Contract Sales consist of Products purchased under the 340B Drug Pricing Program, Products purchased from contracts individually negotiated by the MMCAP Participating Facilities, and/or Products purchased from the Wholesaler's Generic Drug Program.
 - c. Total Sales consist of MMCAP Contract Sales, Alternate Contract Sales, and Non-Contract Sales.
 - d. In the event that an MMCAP Participating Facility has a 340B account, that portion of the MMCAP Participating Facility's business will be assigned a separate account number and Contract Compliance will be calculated in the same manner for that account.
3. Wholesaler will encourage the use of MMCAP Contract Products by providing training and services to MMCAP Participating Facilities during the bid roll and throughout the term of this Contract.
 4. Cardinal.com and Order Express will offer "Contract Ranking" settings to assist MMCAP Participating Facilities in color coding and sets a search result ranking bringing preferred contracts to the top of the users search screen.
 5. In special situations where deemed necessary, Wholesaler will provide sub logic to MMCAP to support corporate initiatives (e.g., market share agreements, contract switches and other potential formulary initiatives).
 6. In the case where an MMCAP Participating Facility is denied contract pricing (e.g., vendor block), Wholesaler agrees to send notification to MMCAP via e-mail (mmcap.contracts@state.mn.us).

C. Reporting Tools

1. Wholesaler agrees to provide online electronic access to all purchasing data relating to the Products that are purchased by each MMCAP Participating Facility to MMCAP and MMCAP Participating Facilities. Wholesaler will provide a system for reporting each individual MMCAP Participating Facility's purchases, as well as be capable of running reports on select groups of facilities. Users must be able to manipulate the data to build reports based on each MMCAP Participating Facility's individual needs/requirements directly through the system or through the ability to transfer data into spreadsheets in a Microsoft Office compatible format.
2. Wholesaler agrees to provide each MMCAP Participating Facility and MMCAP either with entelligenceSM, a web-based reporting tool on Cardinal.com or Standard and Advanced Reporting on Order Express. The entelligenceSM decision support tool rolls up purchase data from each of the points of purchasing within an organization and provides comprehensive reporting to evaluate

purchasing (e.g., super-user). Report Writer is an ad hoc reporting tool that enables MMCAP Participating Facilities to create, preview, save, copy, and print report requests. Report Writer will also be made available to MMCAP's Members and MMCAP. Advanced Reporting on Order Express, largely replaces the entelligenceSM reporting tool, with enhanced capabilities. Standard and Advanced Reporting on Order Express will be provided at no additional charge to MMCAP or to MMCAP Members.

3. At a minimum, Wholesaler will provide the following on-line reporting tools:
 - 80/20 (Velocity) Purchase Summary Report: ranks items by sales value over a designated period of time
 - Manufacturer Backorder reporting
 - Contract missed opportunities
 - Therapeutic interchange analysis
 - Brand-to-generic saving analysis
 - Budgetary forecasting and analysis
4. Wholesaler will set up a user login on Wholesaler's online ordering system(s) for each MMCAP Member State and MMCAP with all MMCAP Participating Facility accounts for the purpose of reporting at no cost.
5. Wholesaler will provide the technology to allow one user (e.g., super-user) to run reports for several MMCAP Participating Facilities' accounts at one time.

4.12 Invoicing

A. Order Invoice

1. Wholesaler agrees that MMCAP Participating Facilities will be invoiced at the MMCAP contract price for MMCAP Contract Products, plus or minus the negotiated service fee discount, throughout the term of this Contract and any extensions. Service fee discounts will be applied to all Non-Contract Products with the exception of Non-Contract Bulky Products, as set forth in Attachment B, Discounts and Fees.
2. Wholesaler agrees that all service fee discounts will be in accordance with Attachment C, Service Fee Discount Matrix.
3. Wholesaler agrees that any fees besides cost for both MMCAP Contract Products and Non-Contract Products will be listed on Attachment B, Discounts and Fees.
4. Wholesaler will not add any fee, percentage, or other cost to the Products purchased under this Contract unless the fee, percentage, or cost is defined and approved in writing by MMCAP prior to implementation.
5. Wholesaler will submit an invoice with each order. Invoices must be only for the amount of Product delivered, not the amount ordered. Quantity ordered and quantity shipped must be based on the packaging associated with the NDC number.
6. MMCAP's definition of Bulky Products include food and food products, home healthcare products (durable medical equipment, such as walking aids, bathroom safety products, wheelchairs and accessories, scooters and lift chairs, etc.), non-contract nutritionals, school and office supplies, non-contract large volume parenterals, and non-contract IV Fluids. All service fee discounts and fees for the delivery of Bulky Products are listed on Attachment B, Discounts and Fees. No fees or special handling charges will be assessed for MMCAP contract nutritionals, MMCAP contract large volume parenterals, or MMCAP contract IV fluids throughout the term of this Contract. Service fee discounts will be applied to MMCAP Contract Products that are also Bulky Products, including MMCAP contract nutritionals, MMCAP contract large volume parenterals, and MMCAP contract IV fluids, as set forth on Attachment B, Discounts and Fees.
7. Cardinal SPD is required to utilize the MMCAP contract price associated with MMCAP Contract Products distributed through Cardinal SPD. If Cardinal SPD has the same NDC available through its contracting as is contracted under MMCAP, Cardinal SPD will provide the CIN utilizing the MMCAP contract pricing. Service fee discounts will be applied to MMCAP Contract Products that are drop

shipped through Cardinal SPD. Cardinal SPD is required to stock or make available those MMCAP-contracted Blood Factor and MMCAP-contracted Plasma Products, ensuring primacy of these Contract Product items. In a secondary placement, Cardinal SPD-contracted Blood Factor and Cardinal SPD-contracted Plasma Products that are not MMCAP Contract Products will be billed at market price, as communicated to the MMCAP Participating Facility prior to purchase.

8. Any non-contract brand prescription product purchases will be invoiced at no more than WAC.
9. All additional fees (e.g., service fees, shipping charges, emergency orders, etc.) charged by Wholesaler will be in line item detail separated from the product’s cost and will be tied back to an original invoice number. Wholesaler’s invoices have a memo field that is used to reference the original invoice in instances where fees or credits are billed to the MMCAP Participating Facility. Wholesaler will populate this memo field for all MMCAP Participating Facility orders, if applicable.
10. Wholesaler agrees to work with facilities requesting customized invoices within 120 days of project initiation. At no cost and upon request, Wholesaler will work with the MMCAP Participating Facility to develop a customized invoice format. Wholesaler agrees to respond to all customized invoice requests within 120 calendar days.
11. At a minimum, the Wholesaler’s invoice will contain the following fields:
 - MMCAP Participating Facility Name
 - Wholesaler-assigned account number for the MMCAP Participating Facility
 - Invoice number
 - Invoice line number
 - MMCAP Participating Facility's purchase order number
 - Invoice date
 - Wholesaler’s SKU item number
 - NDC (11 digit)
 - Controlled substance classification
 - Product Name/Description
 - Packaging as associated with NDC number
 - Unit price
 - Quantity ordered
 - Quantity shipped
 - Extension (unit price multiplied by the quantity shipped)
 - Total invoice price
 - Type of transaction (MMCAP contract purchase, other contract purchase (e.g., 340B, off-contract purchase))*
 - Service fee per line item
 - Bill to address
 - Ship to address
 - Applicable omit codes (e.g., Manufacturer Backorder, wholesaler temporarily out, manufacturer discontinued, etc.)

12. Wholesaler’s invoice note codes indicate the type of transaction and are as follows:

Code	Definition
T	Taxable
CT	Contract
G	Generic substitution
SN	Special net
CS	Source Contract
SP	Special pricing
OV	Price Override

13. Wholesaler's omit codes are:

Code	Definition
C	Dropship
2	DC out
3	Mfr out
4	Not stocked
5	Mfr disc
6	DC disc
7	Drug recall
8	New item/stock unavailable
9	Restricted item

B. Invoice Rounding

Wholesaler is required to have invoicing procedures that follow standard rounding methodology. The standard invoicing methodology will round down if the third digit after the decimal is 4 or less and round up if the third digit after the decimal is 5 or more. Wholesaler agrees that any rounding will occur at the line item.

C. Credits and Rebills

1. Wholesaler agrees to process and issue credits and rebills as manufacturer notifications are received. . In the case of an invoice dispute, Wholesaler will issue credits/rebills within two (2) business days after dispute resolution.
2. Wholesaler will make credits and rebills available to each MMCAP Participating Facility online, with the option to print a hard copy.
3. Wholesaler will notify MMCAP Participating Facility of credit balances through a monthly report showing all credits that were paid and any existing credit that is still available.
4. Wholesaler will provide credits issued to MMCAP Participating Facilities without an expiration date, and for all dollar amounts; credits will not be subject to a minimum amount.
5. Wholesaler agrees that in the event of a facility closure or other extreme event where the MMCAP Participating Facility will not be making another purchase through the Wholesaler, the MMCAP Participating Facility may cash out its credit(s).
6. Wholesaler agrees that if it is directed by an MMCAP Participating Facility, a credit can be transferred from one account to another account.
7. Wholesaler will clearly identify Credits as a credit.
8. The Wholesaler will take all necessary steps to ensure that credits that become available close to the end of the MMCAP Participating Facility's Fiscal Year are available for use by the MMCAP Participating Facility not later than five (5) business days prior to the end of the fiscal year.
9. Wholesaler's credit memo will contain:
 - a. Original purchase order
 - b. Original Wholesaler invoice number
 - c. Original invoice date
 - d. Itemized listing of the product(s) affected
 - e. Any rebill associated with the credit
 - f. Reason(s) for the credit (e.g., manufacturer credit, merchandise return, etc.)
 - g. Net credit amount available to the MMCAP Participating Facility
10. Wholesaler will clearly identify Rebills as a rebill. Rebilled invoices can be found online via Cardinal.com through entelligenceSM (Standard Reports) or in Order Express (Standard Reports).

11. Wholesaler's rebill memo will contain:
 - a. Original purchase order
 - b. Original Wholesaler invoice number
 - c. Original invoice date
 - d. Itemized listing of the product(s) affected
 - e. Credit memo associated with the rebill
 - f. Reason(s) for the rebill (e.g., manufacturer chargeback denial, pricing error, etc.)
12. Wholesaler agrees that rebills will reflect the net difference owed or due after any original credited amount has been applied.

D. Price Audits and Corrections

1. In the event of a pricing error (e.g., late pricing load, etc.) that is solely attributable to the Wholesaler, Wholesaler agrees to no longer process credit/rebills after the greater of 90 calendar days or the maximum allowed by the supplier. Wholesaler agrees to actively pursue any available remedies with suppliers on behalf of MMCAP Participating Facilities' interests and agrees to seek exceptions to supplier imposed limitations if necessary. This clause will in no way be deemed a limitation on the Parties as it relates to the future auditing and/or correction of invoices.
2. When Wholesaler, an MMCAP Participating Facility, MMCAP, or an MMCAP contracted service vendor, like an invoice auditing service provider, discovers an error in pricing for an MMCAP Contract Product that affects one MMCAP Participating Facility, Wholesaler will issue credits/rebills to ALL MMCAP Participating Facilities for the time period from the date the error began to the date it is corrected.
3. Price Audits and Corrections: Throughout the terms of this Contract, Wholesaler will conduct contract pricing audits matching pricing information provided by MMCAP against contract pricing provided by Manufacturers. If Wholesaler discovers discrepancies, the Wholesaler will notify manufacturer and MMCAP of the discrepancy in order to reach resolution. Upon resolution, Wholesaler will correct the errors, will create a sales history report, and enter credit(s)/rebill(s) for each MMCAP Participating Facility connected to the contracts within five (5) business days. Wholesaler is expected to continue to provide the process, which was the outcome of the collaboration between the Wholesaler and MMCAP, to deliver comprehensive and efficient means to provide continuous price audit data.
4. MMCAP and the MMCAP Participating Facilities acknowledge that if a pricing discrepancy is the fault of the applicable manufacturer, such manufacturer may limit recovery arising from such pricing discrepancy and Wholesaler will not have any responsibility for such discrepancy or any such limitation.

E. Chargeback Denials

MMCAP requires the Wholesaler to provide prompt electronic notification upon receipt by the Wholesaler of a legitimate chargeback denials from manufacturers that have denied MMCAP Participating Facilities contract pricing. Notification will be communicated to MMCAP via a notification from a member of the Wholesaler's Account Management team. Wholesaler will provide this notification within two (2) business days of validation with the supplier. Wholesaler may require support from MMCAP to rectify eligibility issues with MMCAP-contracted suppliers, and Wholesaler agrees to resubmit chargebacks for the MMCAP Participating Facility upon eligibility resolution. Notifications are to be sent to: mmcap.contracts@state.mn.us .

F. Invoice Disputes

Subject to state law, the MMCAP Participating Facility will notify Wholesaler of any known dispute with an invoice within 30 calendar days of receipt of the invoice.

The MMCAP Participating Facility will pay all portions of a disputed invoice, unless prohibited by state law, subject to resolution of that dispute. If upon resolution, the disputed invoice was found to be in error, Wholesaler will credit the original amount of the invoice and rebill the MMCAP Participating Facility.

Where complete payment of a disputed invoice is prohibited by an MMCAP Member State's applicable law(s), the Wholesaler will comply with requirements of that state's law(s) related to disputed invoices. In addition, Wholesaler agrees that any outstanding amount on a disputed invoice will not be held against the MMCAP Participating Facility when calculating the weighted average payment date as applicable to service fee discounts. For any disputed invoice, the Wholesaler agrees to code the invoice as disputed to ensure the service fee calculation for the MMCAP Participating Facility is not impaired.

Wholesaler will make a good faith effort to resolve known disputes related to contract pricing within 30 calendar days of notice of the dispute. This clause will in no way be deemed a limitation on the Parties as it relates to the future auditing and/or correction of invoices.

Where a disputed invoice is determined not to have been in error, the MMCAP Participating Facility will not be liable for interest and penalties related to the disputed amount.

G. 810 EDI Invoices and Auditing

Wholesaler must provide 810 EDI invoices to MMCAP, MMCAP Participating Facilities, and any other entity designated by MMCAP. Wholesaler is required to work with MMCAP's contracted invoice auditing vendor. Wholesaler will research product pricing that appears to have a discrepancy and will confirm that pricing and information with the manufacturer. Wholesaler will review and make a reasonable effort to resolve errors within ten (10) business days of notification from MMCAP-contracted invoice auditing vendor. Wholesaler will not charge MMCAP or the MMCAP Participating Facility for use of an invoice auditing service or for invoice dispute resolution. Wholesaler will issue credits/rebills within three (3) days of manufacturer verification.

H. Goods Returned to the Wholesaler

Goods returned to Wholesaler will be managed in accordance with Attachment D, Wholesaler's Returned Goods Policy.

I. Recalls

If any Product distributed by the Wholesaler under this Contract is recalled or removed by the manufacturer or the Wholesaler itself, or if a recall is suggested or mandated by a regulatory or official Agency, Wholesaler will send notice to each ship-to location for which Wholesaler has a sales history within the affected recall timeframe. Recall notices will be sent with the MMCAP Participating Facility's next delivery or via mail if the MMCAP Participating Facility does not have a delivery the day the recall notice is released.

Depending on the class of the recall, Wholesaler will, after initiating a recall, send to any MMCAP Participating Facility that did not provide Wholesaler verification they received the recall notice, a second notice three weeks and/or six weeks after recall initiation.

Wholesaler will send recall notices to inactive MMCAP Participating Facilities that have ordered the recalled Product up to 12 months after the last purchase.

4.13 Purchase Orders and Payment

A. Purchase Orders

As a condition for purchasing under this Contract, purchasers must be MMCAP Participating Facilities in good standing with MMCAP. Then, MMCAP Participating Facilities may purchase goods and services by submitting Purchase Orders. MMCAP Participating Facilities may use their own forms for Purchase Orders. To the extent that the terms of any form differ from the terms of this Contract, the terms of this Contract supersede such conflicting or contrary terms.

B. Payments by MMCAP Participating Facility

Each MMCAP Participating Facility will be responsible for payment of goods and services provided to them by the Wholesaler. MMCAP does not have any liability for an unpaid invoice of any MMCAP Participating Facility. The Wholesaler is required to accept purchase orders and invoice the MMCAP Participating Facility for all products shipped and services provided. Payment modalities that the Wholesaler is minimally required to facilitate are checks and Automated Clearing House/Electronic Funds Transfer (ACH/EFT) transactions. At time of new account setup, the MMCAP Participating Facility will initiate ACH/EFT process with its bank.

Service fee discounts and payment term definitions are listed on Attachment C, Service Fee Discount Matrix.

C. Verification of Authorized Purchasers

Upon request of MMCAP, Wholesaler must verify that it provides goods and services under this Contract only to MMCAP Participating Facilities.

D. Funds available and authorized/non-appropriation

Wholesaler will not be compensated for goods delivered or services performed under a Purchase Order by any entity other than the MMCAP Participating Facility that issued the Purchase Order. By submitting a Purchase Order the MMCAP Participating Facility represents it has sufficient funds currently available and authorized for expenditure to finance the costs of the Purchase Order.

E. Termination of Individual Purchase Orders

MMCAP Participating Facilities may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Wholesaler, or at such later date as the MMCAP Participating Facility may establish in such notice, upon the occurrence of any of the following events:

- a. The MMCAP Participating Facility fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- b. Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or the MMCAP Participating Facility is prohibited from paying for such goods from the planned funding source; or
- c. Wholesaler commits any material breach of this Contract or a Purchase Order.

Upon receipt of written notice of termination, Wholesaler will stop performance under the Purchase Order as directed by the MMCAP Participating Facility.

Termination of a standing Purchase Order does not extinguish or prejudice the MMCAP Participating Facility's right to enforce such Purchase Order with respect to Wholesaler's breach of any warranty or any defect in or default of Wholesaler's performance under such Purchase Order that has not been cured,

including any right of the MMCAP Participating Facility to indemnification by Wholesaler or enforcement of a warranty. If a standing Purchase Order is terminated, the MMCAP Participating Facility must pay Wholesaler in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Participating Facility.

F. Jurisdiction and Venue

Upon completion of the Dispute Resolution process outlined in Article 31 of this Contract, and solely with the prior written consent of MMCAP and the State of Minnesota Attorney General's Office, the MMCAP Member may bring a claim, action, suit or proceeding against Wholesaler. The MMCAP Member's request to MMCAP to bring the claim, action, suit, or proceeding must state the initiating party's desired jurisdiction, venue and governing law.

Upon completion of the Dispute Resolution process outlined in Article 31 of this Contract, the Wholesaler may bring a claim, action, suit or proceeding against MMCAP Member, in Wholesaler's sole discretion.

G. Late Payment

This clause will not apply to an MMCAP Participating Facility when prohibited by that MMCAP Participating Facility's applicable state law.

If any MMCAP Participating Facility fails to comply with the agreed upon payment terms, Wholesaler will have the right to change the Service Fee Discount to that which the MMCAP Participating Facility is entitled to prospectively, to reflect that MMCAP Participating Facility's actual payment practices. An MMCAP Participating Facility will be deemed to have failed to comply with the payment terms if it does not make timely payment for a period lasting two cycles or, with respect to MMCAP Participating Facilities selecting the 30 Day Pay or 45 Day Pay, for a period of sixty (60) calendar days.

Wholesaler will use commercially reasonable efforts to work with the MMCAP Participating Facility in the event payments are not timely made. Wholesaler may, at its election, either reduce payment terms to a shorter number of days or place an MMCAP Participating Facility on C.O.D status under the following circumstances: (i) if Wholesaler has not received payment of outstanding invoices in full as set forth above, or (ii) there is a material adverse change in the financial condition of the MMCAP Participating Facility. In either instance, the situation shall be immediately elevated to an executive team from both the MMCAP Participating Facility and Wholesaler in an effort to rectify the situation and restore the MMCAP Participating Facility's then current payment terms. In the event of such elevation, if the executives are unable to reach a mutually acceptable resolution within a period of twenty (20) calendar days and any undisputed amounts remain unpaid for more than ten (10) calendar days thereafter, Wholesaler reserves the right to refuse orders from the MMCAP Participating Facility.

Notwithstanding anything to the contrary that may be contained herein, Wholesaler shall have, and it hereby reserves, all the rights and remedies otherwise available to it under the Uniform Commercial Code, as in effect from time to time.

4.14 Administrative Fee

In consideration for services provided by MMCAP, the Wholesaler will pay an administrative fee on all purchases (less any credits and returns) made through Wholesaler and the Wholesaler's Specialty Products Distribution division, as specified in Attachment B. Administrative fees will not be paid on 340B, PHS, or ADAP sales or prime vendor DSH sales. The administrative fee must be paid as soon as is reasonable after the end of each month, but no later than 30 calendar days after the end of the month. The Wholesaler will not pay MMCAP Member state specific administrative or procurement fees that are not considered "pass through". "Pass Through" fees are included in state specific terms and conditions requiring the Wholesaler to increase Service Fees, and then passing them through in the form of a check to the designated State entity.

MMCAP reserves the right to collect interest on payments 30 calendar days past due at a rate of 18% annually, consistent with Minn. Stat. § 16A.124.

Wholesaler will submit monthly administrative fee data for all sales made through Wholesaler and the Wholesaler's Specialty Products Distribution division. All required administrative fee data files must be sent to: Mn.MMCAP@state.mn.us at the end of each month, but no later than 30 days after the end of the month. Failure to comply with this provision may constitute breach of this Contract.

4.15 MMCAP Service Contracts

A. Contract Price Auditing

The Wholesaler is required to have the ability to provide 810 EDI invoices to MMCAP, MMCAP Participating Facilities, and any other entity designated by MMCAP. It is expected that the Wholesaler will work with MMCAP's contracted invoice auditing vendor and that the Wholesaler will research product pricing that appears to have a discrepancy and will confirm that pricing and information with the manufacturer, making a reasonable effort to resolve errors within ten (10) business days of the notification from MMCAP-contracted invoice auditing vendor. The Wholesaler will then be expected to issue credits/rebills within three (3) days of manufacturer verification.

The Wholesaler will not charge any fees, to either MMCAP or the MMCAP Participating Facilities, for the transmissions made to MMCAP's contracted invoice auditing vendor.

B. Reverse Distribution Processor

Wholesaler must have an agreement throughout this contract period with the MMCAP-contracted returned goods processor(s) to allow all MMCAP Participating Facilities to fully participate in the services offered by the MMCAP Returned Goods Contract. The Returned Goods Processor(s) is subject to change at any time. The Wholesaler will not withhold or delay application of a credit from a returned goods processor to the MMCAP Participating Facility's account for any reason. Wholesaler will not withhold credit owed to MMCAP Participating Facilities when the credit is from a manufacturer that is in arrears with the Wholesaler. All fees associated with reverse distribution, including returns from alternate processors that are not the awarded reverse distribution processing vendor for the MMCAP Returned Goods Program, are listed on Attachment B, Discounts and Fees.

C. Repackaging Services

Wholesaler is required to have an agreement throughout the term of the Contract period with the MMCAP-contracted repackaging vendor(s) to allow all MMCAP Participating Facilities to fully participate in the services offered by the MMCAP Repackaging Services Contract. It is expected that the Wholesaler will have contracts with all MMCAP contracted repackaging vendor(s), and to note the Repackaging Services vendor(s) is subject to change at any time.

Process Steps:

- a. The MMCAP Participating Facility notifies the Wholesaler that they would like to utilize an MMCAP repackaging services contract.
- b. Once the Wholesaler is notified, the Wholesaler begins the set-up work with the identified repackaging vendor.
- c. The repackaging vendor will then work directly with the MMCAP Participating Facility to qualify their needs. Paperwork will be sent to the MMCAP Participating Facility and a list of the drugs that

- that are being requested to have repackaged should be provided (NDCs, quantities, repackaging format, etc.)
- d. Once the MMCAP Participating Facility has been qualified by the repackaging vendor and all documentation is completed, the MMCAP Participating Facility will then request a new ship-to/bill-to account be setup by the Wholesaler.
 - e. The NDCs that are intended to be repackaged should be shared with the Wholesaler to ensure stocking adjustments have been made at the distribution center that would be servicing the repackaging vendor's facility on behalf of the MMCAP Participating Facility.
 - f. The Wholesaler would set up the new account to have all of the MMCAP Participating Facility's standard contracts and pricing applied.
 - g. The MMCAP Participating Facility will make the determination if invoicing for the repackaging services is to be through the Wholesaler or direct billed by the repackaging vendor.
 - h. MMCAP Participating Facility places their first order through the new repackaging account once fully setup and order-ready.
 - i. Repackaging vendor receives MMCAP Participating Facility's order the next day from the Wholesaler and processes the repackaging order according to the MMCAP Participating Facility requirements.
 - j. The repackaging vendor then ships the product directly to the MMCAP Participating Facility via UPS/FedEx.
 - k. Invoicing is generated based on the determination made by the MMCAP Participating Facility.

While the Wholesaler can require a repackaging vendor to pay a fee to the Wholesaler for services rendered, Wholesaler is not allowed to charge an additional fee to the MMCAP Participating Facility for utilizing this service. However if the MMCAP Participating Facility has exceeded the free delivery quota for the period of time applicable, the Wholesaler can charge a delivery fee in keeping with the delivery fee associated with exceeding the free delivery quota for the specified period of time.

The set-up of the repackaging account should not impair any account limitations or incur any initial account set-up fees to the MMCAP Participating Facility.

D. Influenza Vaccine/Medical Supplies.

Both influenza vaccine distribution and medical supplies distribution are independent, separate service offerings. It is required that reasonable efforts will be made by Wholesaler to direct MMCAP Participating Facilities to MMCAP for guidance on these service offerings. Unless Wholesaler is also awarded one or both of these other service offerings through a separate contract award processes, it is required that Wholesaler will not solicit MMCAP Participating Facilities for influenza vaccine distribution and medical supplies distribution service offerings.

4.16 Other Value-Added Services

A. Wholesaler's Generic Drug Program

Many MMCAP Members have state procurement mandates requiring the purchase of the lowest cost product. Adherence to the requirement to stock MMCAP Contract Products is in place to support the procurement mandates of MMCAP Members.

In addition to MMCAP Contract Products to support the procurement mandates of MMCAP Members MMCAP expects the Wholesaler to provide a fluid warehousing approach whereby the Wholesaler will be permitted to load its best-priced tier Generic Drug Program, offered side-by-side, in the stocking of like products. This fluid approach would allow the MMCAP Participating Facilities to choose a product from the Wholesaler's generic drug program if the product was at a lower price than the MMCAP Contract

Product. The choice would be based on price, not on the Wholesaler's generic drug product being the only product stocked.

The fluid warehousing approach requires strict adherence the following conditions:

- a. The applicable MMCAP State Contract has not opted out of the Wholesaler's Generic Drug Program.
- b. Wholesaler is not allowed to use MMCAP's contract pricing to calculate its Generic Drug Program Pricing.
- c. For consistency in communicating program savings, if Wholesaler receives requests for program savings, a demonstration of program savings, or cost avoidance regarding Wholesaler's generic drug program, Wholesaler is required to direct all inquiries to MMCAP.
- d. For consistency in communications in promoting Wholesaler's generic drug program, Wholesaler agrees to work with MMCAP on material content and potential co-branding.
- e. Wholesaler's Generic Drug Program products may be ranked before MMCAP Contract Products only if an MMCAP Participating Facility has set its ordering system to rank by price and the price is lower than the MMCAP Contract Product. If an MMCAP Participating Facility ranks by contract, then the MMCAP Contract Product must appear first.
- f. Wholesaler is required to clearly label any products on its Generic Drug Program as such in its ordering system.
- g. Wholesaler is required to identify Wholesaler's Generic Drug Program products as such when Wholesaler reports sales data to MMCAP.
- h. Wholesaler will be required to pay a monthly administrative fee of 3% to MMCAP on all sales of Wholesaler's Generic Drug Program products sold to MMCAP Participating Facilities, in addition to any distributor administrative fee payments.
- i. Service fee discounts extended to MMCAP Participating Facilities will be applied to all Generic Drug Program sales.
- j. A complete list of products and pricing under the Generic Drug Program will be available for viewing in Wholesaler's ordering systems by MMCAP and MMCAP Participating Facilities.
- k. Products in Wholesaler's Generic Drug Program available to MMCAP Participating Facilities will be generic pharmaceuticals (including vitamins and over the counter products) and will not contain medical supplies or health and beauty products, unless approved by MMCAP.
- l. Wholesaler will notify all MMCAP Participating Facilities participating in the Generic Source program and MMCAP of switches in products covered under the Generic Source program.
- m. Wholesaler is required to only institute automatic substitution upon specific request of an MMCAP Participating Facility and upon written notification by the Wholesaler to MMCAP.
- n. If the same NDC is the same price on both an MMCAP contract and on Wholesaler's Generic Drug Program, the sale will be applied to MMCAP.
- o. Wholesaler agrees to minimum stocking levels (three units/month) at each distribution center for all MMCAP Contract Products, dependent upon MMCAP Participating Facility demand.
- p. Wholesaler is required to send MMCAP's contracted invoice auditing vendor a weekly pricing file that will include all the data necessary for the invoice auditing vendor to be able to audit the pricing invoiced to MMCAP Participating Facilities.
- q. Wholesaler's ordering system will have capability to accept an MMCAP Participating Facility's zero order. MMCAP Participating Facilities will need to call Customer Service to request Wholesaler stock an MMCAP Contract Product.

In order to audit compliance and non-competitiveness with the requirements above, Wholesaler must provide a report on a monthly basis to MMCAP that details each product that is currently available on the Wholesaler's Generic Drug Program and the product price so that MMCAP can validate that the Wholesaler's Generic Drug Program is not competing with MMCAP Contract Products. The minimum data fields required are listed below:

Minimum data fields required
NDC (11-digit format)
Wholesaler product identification number
SKU or Manufacturer's part number
Product description (generic name)
Packaging
Supplier name (Manufacturer)
Quantity Purchased
Total Sales
Wholesaler's Generic Drug Program Price per Unit

Wholesaler will not use MMCAP pricing or manufacturer contract terms in the Wholesaler's generic pricing program for any other use beyond managing the MMCAP Contract for MMCAP Participating Facilities, nor will MMCAP use the Wholesaler's pricing for the same purposes. Wholesaler and MMCAP will maintain appropriate policies, procedures, and information technology and infrastructure to ensure that only those employees of the Wholesaler and MMCAP that have a need to know for performance under this Contract have access to product lists, discounts, prices, and any other information that would qualify as competitive information in connection with the contracts, subject to Minn. Stat. Ch. 13.

B. MMCAP Participating Facility Negotiated Contracts

There will likely be instances where MMCAP Participating Facilities may enter into contracts individually negotiated by MMCAP Participating Facilities. In those instances, the Wholesaler is required to agree that the ordering, delivery, payment, and reporting terms of the overlying contract with MMCAP will apply to contracts individually negotiated by MMCAP Participating Facilities, including any associated service fees.

C. Pharmacy Interfaces

Wholesaler's pharmacy interfaces with software/dispensing systems will be developed and implemented at no cost to the MMCAP Participating Facility. Training and technical support related to pharmacy interfaces will be provided at no cost.

D. Business Development

MMCAP Members benefit when opportunities to increase purchase volumes are optimized, as well as creating business wins for MMCAP vendor partners. To strengthen current relationships and develop new ones, MMCAP deploys Field Services staff to provide front-line support to current MMCAP State Contacts and MMCAP Participating Facilities and to engage state eligible entities by explaining to them the benefits available to them through leveraging the MMCAP membership contracts to their purchasing benefit. The Wholesaler will support business development opportunities, utilizing joint engagement strategies with MMCAP Field Services, to increase the use of the MMCAP contracts. Should said efforts place the Wholesaler in a position where the Wholesaler would be in breach of contract with another business partner, the Wholesaler can exempt themselves from a business development opportunity.

E. Supplemental/Additional Services

The Wholesaler must make supplemental/additional services and products that are available to its general customers, not specifically mentioned within the resulting contract with MMCAP, available to all MMCAP Participating Facilities upon request and agreement by MMCAP and the MMCAP Participating Facilities. Wholesaler shall not solicit MMCAP Participating Facilities to participate in Wholesaler's supplemental/additional services and products programs, where such programs are already provided by MMCAP to MMCAP Participating Facilities. Prior to providing these supplemental/additional services, the Wholesaler must provide full disclosure of the services or product fees and costs to MMCAP and receive approval from MMCAP before these services and products are provided to any MMCAP Participating Facilities.

Supplemental/additional services and products offered by Wholesaler, if approved by MMCAP, will be managed through an amendment to the Contract.

4.17 Business Interruption Plan

Wholesaler must have in-place during the term of this Contract, an emergency preparedness and business continuity plan. Upon request, Wholesaler will work with the MMCAP Participating Facility to develop a pre-selected list of Products that would be needed in the event of a national or regional emergency and shipped upon availability. The Wholesaler's emergency preparedness and business continuity plan is to include specificity on how the Wholesaler will ensure that MMCAP Participating Facilities would continue to receive medications during a regional/national disaster or other unforeseen malfunction in pharmaceutical distribution. Wholesaler's detailed Disaster Recovery Plan is available upon request from MMCAP or MMCAP Participating Facilities.

As part of the Business Continuity Plan, Wholesaler will provide:

1. Up to three backup locations for each distribution center
2. Emergency customer support and centralized command and control centers
3. Procedures for contacting employees
4. Strong relationships with suppliers to maintain fuel supply in the event of a shortage
5. Working relationships with government agencies and industry trade associations

4.18 Shareback Credits

Wholesaler will manage, at no additional cost or fee withheld to MMCAP or MMCAP Participating Facilities, the MMCAP annual shareback credit according to the schedule below:

1. MMCAP will provide Wholesaler a list of MMCAP Participating Facilities receiving a credit, the credit amount for each facility, and a check for the total amount of all credits to be provided.
2. Wholesaler is required to apply the credit to all listed MMCAP Participating Facilities within fifteen (15) business days of the receipt of the funds and the list of facilities receiving credit has been received from MMCAP.
3. Within 30 business days of the receipt of the funds and the list of facilities receiving credit, Wholesaler is required to provide to MMCAP an Excel Spreadsheet detailing the credit memo information. This Excel listing must include the following fields: distribution center, account number, facility name, facility address, facility city, facility state, DEA, HIN, date of credit memo, credit memo number, and credit memo amount. In addition to supplying the credit memo detail to MMCAP, the Wholesaler will also provide a listing of all accounts that are inactive that cannot have a credit memo issued.
4. Within 60 days of the date credits were applied and the inactive accounts are communicated as stated in process step #3, MMCAP must provide W-9 documents to the Wholesaler for any facilities found on the "Inactive Account" listing provide that expect to receive their credits in the form of a

check. All other outstanding credits will be refunded to MMCAP in the form of a check at the end of the 60 day waiting period.

5. The Wholesaler will work with MMCAP to identify all MMCAP Participating Facilities in an effort to issue all credits before refunding dollars back to MMCAP. Prior to any funds returned to MMCAP, written approval must be received from MMCAP.
6. Within 15 business days of written approval for funds to be returned, Wholesaler is required to issue a refund to MMCAP of the remaining dollars for which it was unable to issue credit.
7. Upon initiating the refund to MMCAP, Wholesaler will provide a copy of the original Shareback Credit spreadsheet detailing the credit information (received from MMCAP), the reason for non-application of funds, and the dollar amount of the funds being returned to MMCAP.

Should MMCAP change its process for the Shareback Credit to a more frequent interval (semi-annual, quarterly), any time during the term of this Contract, the Wholesaler will continue to manage this process as a service inclusion, with no additional cost or fee withhold to MMCAP or MMCAP Participating Facilities.

4.19 Mandatory Reports

Wholesaler will provide the reports listed herein for all MMCAP Participating Facilities regardless of a primary GPO affiliation other than MMCAP. Reports will not include pricing or other contract details for GPO purchases not associated with MMCAP. Wholesaler agrees that any similar reports provided to other GPOs for shared MMCAP Participating Facilities will not include MMCAP pricing or contract details.

Wholesaler is required to comply with specified formats, timing, and provision of all the reports listed in this Section. Reporting is a wholesaler work product requirement, for which the Wholesaler will provide, without additional cost to either MMCAP or MMCAP Participating Facilities.

1. Reports provided to MMCAP:

A. Sales Data Report

Wholesaler will supply to MMCAP accurate monthly sales data on or before the 10th day of the second subsequent month (e.g., June’s data will be due July 10th). This report MUST include the following for every transaction between the Wholesaler and the MMCAP Participating Facility, including those transactions that come through the Wholesaler’s Specialty Products Distribution division:

- i. The first table details the required fields for the sales data report
- ii. The second table details the required record layout in fixed record format.

Required Data Field Full Name for Sales Data Report
MMCAP-assigned facility ID
MMCAP Facility Name
Vendor Distribution Center Code
Vendor-assigned Account number for the MMCAP Facility
Invoice Number
Invoice Line Number
Purchase Order Number
Invoice date (mmddccyy)
Buyer name or equivalent of buyer ID for person submitting the invoices
Vendor's (distributor) SKU item number
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.

Required Data Field Full Name for Sales Data Report
Label Name
Unit Dose
Pack Size
Unit
Case Size
Dose
Strength
Route
Unit Price (99999.9999)
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
Bill to Address 1
Bill to City
Bill to State (2 alpha postal code)
Bill to Zip (standard 5-4 format, no dash necessary)
Ship to Address 1
Ship to City
Ship to State (2 alpha postal code)
Ship to Zip (standard 5-4 format, no dash necessary)
Service Fee (9999.9999)
MMCAP Contract Number (MMSxxxxx) or Generic Source Contract Identifier
Admin fee for non-contract items (9999.9999)
Credit Indicator (C for credit)
MMCAP Assigned Wholesaler Code (<i>Codes will be assigned to Wholesaler's during implementation period of the contract</i>)
Manufacture Name (MFG Name)
Class of Trade
340b Purchase

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Monthly Sales Data Usage Report - Fixed Length Fields							
Required Data Field Full Name	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP_id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP_Name	Alpha Numeric		30	1	8	37
Vendor Distribution Center Code	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmdccyy)	InvoiceDate	numeric	mmdccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack_Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case_Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocity	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocity	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxxx)	contractnumber	Alpha Numeric		10	1	400	409
Admin fee for not-on-contract items (9999.9999)	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
MMCAP Assigned Wholesaler Code (AmeriSource-Bergen=0401, Cardinal Health=0301, Morris-Dickson=0701, Bergen=0201, (New codes will be assigned to PPV's during implementation period of the contract))	WholeCode	Alpha Numeric		4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade	ClassofTrade	Alpha Numeric		4	1	464	467
340b Purchase	340b	Alpha Numeric		1	1	468	468

B. Monthly Payment Report

Wholesaler will provide to MMCAP accurate monthly payment data on or before the 10th day of the second subsequent month (e.g., June’s data will be due July 10th).

1. The first table details the required fields for the monthly payment report
2. The second table details the required record layout in fixed record format.

MMCAP Payment Data Fields
MMCAP-assigned facility ID
MMCAP Facility Name
Vendor-assigned Account number for the MMCAP Facility
Invoice Number
Invoice Line Number
Purchase Order Number
Vendor's (distributor) SKU item number
NDC of purchased Product in 5-4-2 format as stored in First DataBank, Inc.
Payment Due Date (mmddccyy)
Label Name
Packaging as associated with NDC Number
Date Payment Credited to Account (mmddccyy)
Quantity Purchased-must be expressed in terms of the packaging associated with the NDC (not Vendor repackaged or re-bundled quantity) (999999.9999)
Dollar Amount of Transaction-to the third decimal. The dollar amount must be the actual acquisition cost, after any discounts and service fees.
Credit Indicator (C for credit)
ID for person making the payment

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Record Layout for the Monthly Payment File - Fixed Length Fields

Long Name (from original MMCAP Contract)	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP_id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP_Name	Alpha Numeric		30	1	8	37
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	38	47
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	48	62
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	63	66
Purchase Order Number	poNumber	Alpha Numeric		15	1	67	81
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	82	94
NDC of purchased Product in 5-4-2 format as stored in First DataBank, Inc.	NDC	numeric	9999999999	11	1	95	105
Payment Due Date (mmddccyy)	DueDate	numeric	mmddccyy	8	1	106	113
Label Name	LabelName	Alpha Numeric		40	1	114	153
Packaging as associated with NDC Number	Packaging	Alpha Numeric		16	1	154	169
Date Payment Credited to Account (mmddccyy)	PaymentCDate	numeric	mmddccyy	8	1	170	177
Quantity Purchased-must be expressed in terms of the packaging associated with the NDC (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityOrdered (Shipped)	numeric	999999.9999	11	1	178	188
Dollar Amount of Transaction-to the third decimal. The dollar amount must be the actual acquisition cost, after any discounts and service fees.	TranDollar	numeric	99999999.999	13	1	189	201
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	202	202
ID for person making the payment	BuyerName	Alpha Numeric		20	1	203	222

C. Kill/Fill Report

Wholesaler will provide to MMCAP accurate kill/fill data on or before the 10th day of the second subsequent month (e.g., June’s data will be due July 10th). This data must be provided in an Excel format and be submitted electronically to mn.multistate@state.mn.us. The following table details the required fields for the Kill/Fill data report:

Field Long Name
MMCAP ID
Customer Name
PPV Customer DC Number
Customer Distribution Center
PPV Customer Number
Address
City
State
NDC of Product in 5-4-2 format as stored in First DataBank
Invoice Number
Invoice Date
Short Reason Code
Short Reason Description
Product Trade Name
Product Generic Name
Pack Qty
Pack Size
Order Quantity
Shipped Quantity
Killed Qty
Extended Sales

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D. Contract Change Report

Wholesaler will provide to MMCAP accurate Contract Change data on or before the first day of each week. This data must be provided in an Excel format (may be zipped) and be submitted electronically to mn.multistate@state.mn.us. The table below details the required fields from the Contract Change Report. This report must include the following for every Product added to, changed, or deleted from the MMCAP contract.

Long Field Description Name – Contract Change Report
MMCAP Office Assigned PPV Number
Contract Start Date
Contract End Date
Pharmaceutical Manufacturer Contract Number
Vendor Product ID Number
Pharmaceutical Manufacturer
Description
NDC (11 digit format)
Packaging
Current Price
Previous Price
Effective Date
Change Type (e.g., price increase, price decrease, NDC change, etc.)

E. Contract File Audit Report

Wholesaler will provide to MMCAP accurate contract data on or before the first day of each week. This data must be provided in an Excel format (may be zipped) and be submitted electronically to mn.multistate@state.mn.us. The table details the required fields for the Contract Audit Report. This report MUST include the following for every product loaded and attached to the MMCAP contract:

Long Field Description Name – Contract Audit Report
Vendor Name
MMCAP Contract Number
Product Item Unit Number
NDC of Product in 5-4-2 format as stored in First DataBank
Manufacturer
Item Description
Vendor Reference Contract Number
Size
Form
UOM
MMCAP Contract Cost
Contract Start Date
Contract End Date

F. Off-Contract with Alternative On-Contract Report

Wholesaler will provide to MMCAP accurate Off-Contract with Alternative Item On-Contract report on or before the 10th day of the subsequent month (e.g., June's data will be due on July 10th). This report must be provided in an Excel format and be submitted electronically to mn.multistate@state.mn.us. The table details the required fields for the Off-Contract with Alternative On-Contract Report. This report MUST include the following for every transaction where an MMCAP Contract Product was available for an off-contract purchase:

Field Long Name – Off-Contract with Alternate On-Contract Report
MMCAP ID
Customer Name
PPV Customer DC Number
Customer Distribution Center
PPV Customer Number
Address
City
State
NDC of Product in 5-4-2 format as stored in First DataBank Off Contract
Product Generic Name
Product Trade Name
Pack Size
Order Quantity
Cost
NDC of Product in 5-4-2 format On MMCAP contract
Product Generic Name
Product Trade Name
Pack Size
Cost
Difference in price from off contract to on contract

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G. Raw and Adjusted Fill Rate Report

Wholesaler will provide to MMCAP a Raw and Adjusted Fill Rate Report. The Raw and Adjusted Fill Rate Report must be received on or before the 10th day of the subsequent month (e.g., June’s data will be due on July 10th). The table details the required fields for the Raw and Adjusted Fill Rate Report. This report must be provided in an Excel format and be delivered electronically to mn.multistate@state.mn.us. This report MUST include the following fields:

Field Long Name – Raw and Adjusted Fill Rate Report
MMCAP ID
Customer Name
PPV Customer DC Number
Customer Distribution Center
PPV Customer Number
Address
City
State
Raw Fill Rate
Adjusted Fill Rate

H. Wholesaler Participating Facility Listing

Wholesaler will provide a listing to MMCAP of the MMCAP Participating Facilities attached to the MMCAP contract on or before the 10th day of the subsequent month (e.g., June’s data will be due on July 10th). The data must be submitted electronically to mn.multistate@state.mn.us.

Field Long Name – Wholesaler Member Listing
MMCAP ID
DC
VendAccountNo
shiptoname
shiptoaddress
shiptocity
shiptostate
shiptozip
billtoname
billtoaddress
billtocity
billtostate
billtozip
DEA
HIN
Service Fee Discount (COGS)

I. Manufacturer Backorders

Wholesaler will provide to MMCAP, at a minimum, weekly a listing of all MMCAP Contract Products backordered due to the manufacturer’s inability to supply the Product. The report is to be delivered the first business day of each week. The Excel report must be delivered electronically to mn.multistate@state.mn.us and any other sources MMCAP designates (e.g., current vendor hosting MMCAP’s online catalog).

Required MBO Report Fields and Record Layout
Product Description
Manufacturer
NDC
Packaging
Reason
Restock Date
Distributor Information

Manufacturer is to be spelled out, no abbreviations.
 NDC – 11 digit format as defined in First Data Bank

J. Discontinued Product Report.

A monthly, or more frequent, report detailing MMCAP Products which the Wholesaler deems to be discontinued. This report must identify reason for discontinuation (e.g. manufacturer discontinued, wholesaler discontinued, etc.). A monthly frequency reporting cycle is to be provided on or before the 10th day of the subsequent month (e.g., June’s data will be due on July 10th) and the Excel report must be delivered electronically to mn.multistate@state.mn.us . The table below details the required fields from the Discontinued Product Report:

Required Discontinued Product Report
NDC
Vendor Name
Item Description
Strength
Packaging
Contract Price
Status (e.g., Mfr Disc, Wlsr Disc)

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K. Service Level Report.

Monthly report detailing service levels provided on or before the 10th day of the subsequent month (e.g., June’s data will be due on July 10th) and the Excel report must be delivered electronically to mn.multistate@state.mn.us. The table below details the required fields from the Service Level Report:

Field Name - Long Name	Service Level	Report
DC Number		
DC Name		
Distributor Customer Account Number		
MMCAP ID		
Customer Name		
Bill to State		
Total Sales		
Order Qty		
Ship Qty		
Total Pieces not Shipped		
Raw SL %		
Adj SL %		

L. Service Fee Discount Report.

Quarterly report detailing applicable Service Fee Discount for each MMCAP Participating Facility based on payment terms and purchase volume. Report is to be provided not later than the 20th of the month following the end of the quarter for an effective date of the last day of the month following the end of the quarter. For example, Q1 of a fiscal year is July – September. The updated Service Fee Discount report is due to MMCAP not later than October 20th, for an effective date change of October 31st. The Excel report must be delivered electronically to mn.multistate@state.mn.us. The table below details the required fields for the Service Fee Discount (COG) report:

Field Name - Long Name	Service Level Discount (COG) Report
Distribution Center Name	
DC Number	
Distributor Account Number	
MMCAP ID	
Customer Name	
City	
State	
Payment Terms	
3 Month Average Sales	
Previous Quarter - 3 Month Average Sales	
Matrix Volume	
NEW COGS %	
OLD COGS %	
Comment	

M. MMCAP Participating Facility Credit Report

Quarterly report detailing credits available to MMCAP Participating Facilities by account number. The report must be submitted electronically to mn.multistate@state.mn.us and is due by the 15th of the month, following the end of the quarter.

Report Requirements
MMCAP Participating Facilities Number
Facility Name
Facility State
DC
Wholesaler Account Number
Credit Issue Date
Credit Balance

N. Miscellaneous Fees Charged to MMCAP Participating Facilities

Wholesaler will provide a monthly report to MMCAP of any miscellaneous fees charged to MMCAP Participating Facilities which are not related directly to Product cost or not specified in Attachment B. Report is to be submitted on or before the 10th day of the subsequent month (e.g., June's data will be due on July 10th) and the Excel report must be delivered electronically to mn.multistate@state.mn.us.

Report Requirements
MMCAP Participating Facility Number
Facility Name
Facility State
DC
Wholesaler Account Number
Invoice Number
Invoice Date
Amount Charged
Description of Charge

2. MMCAP Member Reporting:

The following reports, are the minimum reporting requirements for the Wholesaler to make available to all MMCAP Members and these reports are to be made available online in printable copy and electronic/exportable formats (e.g., Excel).

If the Wholesaler has multiple levels of reporting packages, it is required that the Wholesaler allow MMCAP Participating Facility access to any and all reporting, whether standard, advance or analytics type of reporting, provide support to train both general and super-user of the reporting tools, as well as set-up support for super-user account structures for appropriate MMCAP Member oversight. These tools, regardless of level (standard, advance, analytics) must be provided to MMCAP Members at no additional cost for the full term of the Wholesaler Distribution Services Contract

If applicable, reports must be sortable by generic or label name, units, date range, or dollars. Additionally, units reported must correspond to the packaging associated with the NDC.

Wholesaler is required to meet the reporting requirements for frequency (e.g., daily, monthly, quarterly, annually, etc.), using on-line tools for generating frequency specified reporting or ad hoc reporting options. All reporting is required to accurate for all reporting types. Standard, aggregated, and enhanced reports are to including but are not limited to the following:

- a. Reports detailing total purchases (payment amount and units) by individual item (e.g., NDC, SKU, supplier, generic name, and/or label name);
- b. Cost savings reports associated with the use of either MMCAP Contract Products or other alternative contracts (should be compared to relevant retail pricing);
- c. Reports displaying purchases of controlled substances and the associated invoice and/or purchase order numbers along with MMCAP Participating Facility name, account number, NDC number, invoice number, invoice line number, label name, date shipped, amount paid, date payment credited, FDA schedule category, and DEA number;
- d. Velocity (80/20) report (fastest moving and highest dollar) containing forecasted velocity codes with order points and order quantities; contains cumulative percentages;
- e. Price change report, indicating products with price changes; includes percentage change in price;
- f. Physical inventory reports sorted by American Hospital Formulary Service (AHFS) pharmaceutical category. These reports must show the label name, NDC, quantity, cost per unit and the extended cost of the product units on hand;
- g. Drug usage (amount paid and units) reports by AHFS category. Percentages for each category must be provided. MMCAP Participating Facilities must be able to select all AHFS categories as well as select specific AHFS categories;
- h. A report detailing all items that were ordered, but that will not be delivered, provided to the MMCAP Participating Facility the same day the order is generated by the same method that the order was transmitted;
- i. Manufacturer backorder reports, identifying where products were not available due to manufacturers' inability to supply that captures all product alternatives purchased in its place;
- j. Product category breakdown reports, which display total procurement dollar volume for categories such as brand, generic, OTC, 340B, contract, non-contract, etc.;
- k. Invoice reports, selected by invoice number, account number, purchase order number, or at billing statement intervals;
- l. On- and off- contract reports that display total dollars spent on and off contract; MMCAP Members should be able to drill down into item purchases;
- m. Off-contract purchases with contract alternatives report; and
- n. Any other reports required by law.

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ATTACHMENT B

DISTRIBUTOR ADMINISTRATIVE FEE (Payable by Wholesaler to MMCAP)

0.40% will be paid to MMCAP on all MMCAP Member purchases (less any credits and returns) made through the Wholesaler under this Contract (the Distributor Administrative Fee applicable to MMCAP Members continuing to purchase under the prior contract will continue to be equal to 0.32% until such time such MMCAP Members transition to this Contract or terminate their relationship with Distributor). Distributor Administrative fees will not be paid on Prime Vendor 340B Drug Pricing Program Sales or Prime Vendor DSH sales.

OTHER FEES (Payable by MMCAP Member To Wholesaler)

1. Deliveries

Deliveries	Routine	Emergency
Regardless of dollar volume	5 per week	12 per year

- a. If a member requires more deliveries beyond the allotments specified for routine and emergency deliveries, the Wholesaler will pass on the cost of the delivery to the member.
- b. There will be no charges for the delivery of MMCAP Contract or Non-Contract Bulky Products so long as the delivery falls within the MMCAP Member's normal delivery schedule.
- c. Wholesaler will not assess a delivery fee to an MMCAP Member for drop shipped deliveries, unless delivery charges are passed onto Wholesaler by the supplier.
- d. Wholesaler will not assess a delivery fee to an MMCAP Member for Specialty deliveries, unless delivery charges are passed onto Wholesaler/SPD by the supplier.
- e. Wholesaler will not assess delivery fee to an MMCAP Member for products shipped to MMCAP's contracted repackaging vendor(s), unless delivery charges are passed onto the Wholesaler by the repackager.
- f. Control substances shipping – if held to be shipped with MMCAP Member's regular order and not shipped with regular order, there will be no charge to the Member to ship it and there will be no impairment to the weekly allotment.

2. MMCAP Service Contracts

Service	Fees
Contract Price Audit	No Charge
Reverse Distribution	No Charge
Repackaging*	No Charge

*Note 1.e. on Delivery charges.

3. Reporting

Reporting	Standard	Advanced Reporting
	No Charge	No Charge*

*The value of such advanced reporting programs (\$99 per month for six (6) dashboards; \$30 per month for individual dashboards) constitutes a "discount or other reduction in price," as such terms are defined under the Medicare/Medicaid Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)(3)(A) and the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h)), on the products purchased by MMCAP Members under the terms of this Contract. MMCAP Members may have an obligation to accurately report, under any state or federal program which provides cost or charge based reimbursement for the products or services covered by this Contract, or as otherwise requested or required by any governmental agency, the net cost actually paid by MMCAP Members. In lieu of accepting this free service, MMCAP Members may elect to pay for such advanced reporting programs, at the rates set forth above. Upon request of MMCAP, Wholesaler agrees to provide a list of MMCAP Members utilizing advanced reporting programs and whether or not they have elected to pay for the service.

4. Inventory Support

Inventory Support	Fees
Restocking Fee	Returns subject to specific requirements outlined within Attachment D (Wholesaler's Returned Goods Policy).
Shelf Labels	No Charge
On-site support of physical inventory	No Charge
Telxon or similar device	Price per Device <ul style="list-style-type: none"> • Telxons: No Charge • MC 1000 – Long Term Lease, minimum 3 month requirement, \$25/month or \$250 per year • Physical Inventory <ul style="list-style-type: none"> - Single Unit, 1 docking station \$50 - Small Bundle, 4 handhelds, 1 docking station \$150 - Large Bundle, 6 handhelds, 2 docking stations \$250 • MC 40 – Long Term Lease \$100/month

ATTACHMENT C

Table 1: Service Fee Discount Pricing Matrix							
	State Monthly Purchase Volume						
Facility Payment Terms	\$1 to \$500,000	\$500,001 to \$1,000,000	\$1,000,001 to \$2,000,000	\$2,000,001 to \$5,000,000	\$5,000,001 to \$8,000,000	\$8,000,000 to \$12,500,000	\$12,500,001 and Above
30 Day Pre-Pay	-4.69%	-5.07%	-5.56%	-5.86%	-6.07%	-6.32%	-6.54%
15 Day Pre-Pay	-4.45%	-4.83%	-5.32%	-5.62%	-5.83%	-6.08%	-6.30%
7 Day Pre-Pay	-4.32%	-4.70%	-5.19%	-5.49%	-5.70%	-5.95%	-6.17%
Next Day Pay	-4.19%	-4.57%	-5.06%	-5.36%	-5.57%	-5.82%	-6.04%
7 Day Net	-4.10%	-4.48%	-4.97%	-5.27%	-5.48%	-5.73%	-5.95%
15 Day Net	-3.97%	-4.35%	-4.84%	-5.14%	-5.35%	-5.60%	-5.82%
30 Day Net	-3.73%	-4.11%	-4.60%	-4.90%	-5.11%	-5.36%	-5.58%
45 Day Net	-3.33%	-3.71%	-4.20%	-4.50%	-4.71%	-4.96%	-5.18%
60 Day Net	-2.92%	-3.30%	-3.79%	-4.09%	-4.30%	-4.55%	-4.77%
90 Day Net	-2.11%	-2.69%	-2.98%	-3.28%	-3.49%	-3.74%	-3.96%

Generic Source Program Opt-Out:

Wholesaler will adjust the Service Fee Discount by 0.40% for those MMCAP Members that notify MMCAP of their decision to opt-out of allowing the Wholesaler to attach the Wholesaler's Generic Source program.

For example, an MMCAP Member notifying MMCAP of an opt-out decision to the attachment of the Wholesaler's Generic Source program, having an average pay date of 7 Day Net Pay and a state monthly purchase volume of \$2 Million to \$5 Million, the Service Fee Discount for this MMCAP Member would decrease from -5.27% to -4.87% .

Table 2: Annual Volume Incentive:

MMCAP Volume Per Year*	Additional Service Fee Discount
\$750,000,000 to \$999,999,999	10 Basis Points (-0.10%)
\$1,000,000,000 and above	20 Basis Points (-0.20%)

*Total book of business between MMCAP and Wholesaler

The following payment term options shall be available to each MMCAP Member:

30 Day Pre-pay: A one-time deposit equal to 30 days purchase value is due by the 25th of the previous month. Thereafter, payment is due on or before seven calendar days from the date of invoice.

15 Day Pre-pay: A one-time deposit equal to 15 days purchase value is due by the 25th of the previous month. Thereafter, payment is due on or before seven days from the date of invoice.

7 Day Pre-pay: A one-time deposit equal to 7 days purchase value is due by the 25th of the previous month. Thereafter, payment is due on or before seven days from the date of invoice.

Next Day Net: Next Day Net means that the buyer will pay Wholesaler in full on or before the next calendar day of when the invoice is received by the buyer.

Seven (7) Day Net: 7 Day Net means that buyer will pay Wholesaler in full on or before the 7th calendar day of when the invoice is received by the buyer.

Fifteen (15) Day Net: 15 Day Net means that buyer will pay Wholesaler in full on or before the 15th calendar day of when the invoice is received by the buyer.

Thirty (30) Day Net: 30 Day Net means that buyer will pay Wholesaler in full on or before the 30th calendar day of when the invoice is received by the buyer.

Forty-Five (45) Day Net: 45 Day Net means that buyer will pay Wholesaler in full on or before the 45th calendar day of when the invoice is received by the buyer.

Sixty (60) Day Net: 60 Day Net means that buyer will pay Wholesaler in full on or before the 60th calendar day of when the invoice is received by the buyer.

Ninety (90) Day Net: 90 Day Net means that buyer will pay Wholesaler in full on or before the 90th calendar day of when the invoice is received by the buyer.

If any of the above-specified Payment Term due dates fall on a weekend day or local, state, or federal holiday, payment will be due on the on the preceding business day.

Each MMCAP Member may select one of the payment term options indicated above by indicating its selection to Wholesaler. At any time during the term of this Contract, an MMCAP Member may change its manner of paying the Wholesaler upon thirty (30) days' prior written notice to Wholesaler.

Wholesaler will accept Electronic Funds Transfer (EFT) for payment, but does not offer any additional discounts for paying by EFT.

Wholesaler will apply service fee discounts to all emergency deliveries.

Wholesaler will apply service fee discounts to all MMCAP Contract Products. Service fee discounts will be applied to MMCAP Contract Products that also meet the definition of Bulky Products. Service fee discounts will be applied to Non- Contract Products, (including Wholesaler's Generic Drug Program Products), with the exception of Non-Contract Products that also meet the definition of Bulky Products. Service fee discounts will not be applied to Non-Contract Bulky Products.

Service fee discounts will be applied to MMCAP Contract Drop Shipments. Service fee discounts will be applied to Non-Contract Products that must be drop shipped due to a Vendor-created Stock Outage (excluding cases where the manufacturer is unable to supply the MMCAP Contract Product). Service fee discounts will be applied to Non-Contract Drop Shipment Products that do not meet the definition of Bulky Products.

Service fee discounts will be applied to MMCAP Contract Products that are drop shipped through SPD. SPD contracted Blood Factor and SPD-contract Plasma Products that are not MMCAP Contract Products will be billed at market price as communicated prior to the purchase.

The purchase price for the below listed items are not subject to the standard Service Fee Discount Pricing Matrix, and will instead be priced according to the below Service Fee Discount, unless an MMCAP Member's applicable Service Fee Discount is lower, in which case, the lower Service Fee Discount will be applied. For example if an MMCAP Member's applicable Service Fee Discount is -2.11%, such Member's Service Fee Discount applicable to its purchases of Sovaldi® will be -2.11%, not -2.60% (Olysio® will be -2.10%). Wholesaler reserves the right to negotiate with MMCAP adjustments to Service Fee Discounts applied to brand pharmaceutical products launched after October 1, 2014. If Wholesaler and MMCAP are unable to come to an agreement on the applicable Service Fee Discount for any brand pharmaceutical product launched after October 1, 2014, Wholesaler will sell any such product that is an MMCAP Contract Product at the MMCAP Contract Price (i.e., no Service Fee Discount to be applied), or for any such product that is a Non-Contract Product, at a price equal to no more than WAC (i.e., no Service Fee Discount to be applied).

Table 3: Service Fee Discount Exceptions

Product	Service Fee Discount
Sovaldi® (Sofosbuvir 400MG TAB)	-2.60%
Olysio® (Simeprevir 150MG CAP)	-2.10%

Table 4: Application of Service Fee Matrix:

Application of Service Fee Matrix	Yes	No
MMCAP Contract Products	X	
MMCAP Contract Bulky Products	X	
MMCAP Contract Products Drop Shipped	X	
MMCAP Contract Product for which due to Wholesaler stocking error, must be Drop Shipped to meet the needs of the MMCAP Member	X	
Wholesaler's Generic Source Program	X	
Non-Contract (Generic/Brand)	X	
Non-Contract Bulky Products		X

Service fee discounts are based on the previous quarter's payment performance and sales volume for each MMCAP Member. Wholesaler will be allowed to change MMCAP Members' service fee discounts four times annually within 30 calendar days after the close of each fiscal quarter (e.g., service fee discounts for January through March must be changed by April 30). If Wholesaler does not make changes to the service fee discounts within 30 calendar days, Wholesaler will be required to make the changes that positively impact MMCAP Members and backdate those changes to the first day of the quarter, but will not be allowed to make changes to those accounts that are negatively impacted until the next fiscal quarter.

Wholesaler will provide MMCAP a draft of the proposed service fee discount changes for all MMCAP Members ten (10) business days prior to the date the changes will take effect. If MMCAP identifies any errors in the proposed service fee discounts, Wholesaler will resolve any concerns, by reviewing, modifying, and resending a draft of the proposed changes such that the required deadline is met.

Cardinal Health Pharmaceutical Distribution Returned Goods Policy

Products in "merchantable condition" (as defined below) and originally purchased from Cardinal Health may generally be returned to the customer's servicing Cardinal Health distribution center in accordance with, and subject to, the terms and conditions of this policy.

Return Made Within:

1 – 60 Days from Invoice Date

61 – 180 Days

181 – 365 Days

Normal Credit Amount:

100% of original invoice amount paid by customer. This policy covers all order shortages, filling errors and damage if reported within three (3) business days and such products are returned within ten (10) business days of the date of the applicable invoice. Recalled products must be returned in accordance with applicable recall terms.

85% of original invoice amount paid by customer. Provided, however, if applicable Cardinal Health mark-up is greater than 0%, credit will be based on customer's contract cost or Cardinal Health's then-current base cost, as applicable.

70% of original invoice amount paid by customer. Provided, however, if applicable Cardinal Health mark-up is greater than 0%, credit will be based on customer's contract cost or Cardinal Health's then-current base cost, as applicable.

Returns made greater than 365 days from the invoice date will not be accepted. No credit will be issued, and the product will be returned to customer.

Recalls

100% of return value (prorated for partial return) or, if known, applicable manufacturer credit.

"*Merchantable condition*" will be determined by Cardinal Health based upon its ability to return the product to its inventory for resale in the normal course of its business, without special preparation, testing, handling, or expense and will **exclude** the following:

- a) Any product purchased from any supplier other than Cardinal Health.
- b) Any product which has been used or opened; is a partial dispensing unit or unit of sale; is without all original packaging, labeling, inserts, or operating manuals; or that is stickered, marked, damaged, defaced, or otherwise cannot readily be resold by Cardinal Health for any reason.
- c) Short-dated (less than seven (7) months expiration dating)
- d) Any product that is outdated, seasonal, purchased on a "special order" basis, non-stocked or discontinued, drop-shipped, deals, pre-packs, frozen, products with low stability (e.g., unusually sensitive to temperature/handling situations), products considered to be toxic waste, and products not returnable by law proposed at the time of return and products remaining in opened containers.
- e) Any product not intended for return to a wholesaler in accordance with the return policies of the applicable manufacturer.
- f) Any product listed by any state or federal regulatory agency as a high-risk pedigree item that is returned without a valid invoice number that cannot otherwise be verified by Cardinal Health.

Unmerchantable Products

Any product not eligible for return in accordance with this policy (i.e., the product is not in "merchantable condition" as set forth above) will require return directly to the manufacturer. If any such products are returned to Cardinal Health, they will be returned to customer and no credit will be issued. Stickered products will be handled as follows: Cardinal Health will remove the sticker, retain the product and credit the customer (as applicable pursuant to this policy). If the product is damaged during the removal of the sticker, no credit will be issued to customer and the product will be returned to customer.

Notwithstanding the foregoing, in any case where Cardinal Health accepts the return of such products and agrees to return such products to the applicable manufacturer on behalf of customer (provided the manufacturer allows the return of such products), any credit issued to customer will be determined by Cardinal Health.

Required Return Documentation

Prior to returning any product to Cardinal Health, customer must execute and deliver to Cardinal Health a **Cardinal Health Returned Goods Authorization Ongoing Assurance** verifying that all returned products have been kept under proper conditions for storage, handling, and shipping. A fully completed and signed **Merchandise Return Authorization Form** (the "MRA Form") must accompany all products to be returned. **Note:** An MRA Form cannot be fully completed without a valid invoice number. The request for an MRA Form will be rejected if a valid invoice number is not provided.

Controlled Substances

Credit for the return of controlled substances requires a separate MRA Form and such returns must comply with all applicable laws, rules and regulations in addition to the terms and conditions of this policy.

Refrigerated, Chemotherapy and Hazardous Products

Refrigerated, chemotherapy and hazardous products must be returned in packaging that complies with applicable regulatory requirements. All such products that are not returned in packaging that complies with applicable regulatory requirements will be considered damaged and unsaleable. This product will be destroyed and no credit will be issued to customer.

Shorts and Damaged Products

Claims of order shortages (e.g., products invoiced but not received), filling errors and damage must be reported within three (3) business days from the applicable invoice date, or no credit will be issued. Returns of damaged products or products shipped in error must be received by the Cardinal Health servicing distribution center within ten (10) business days from the applicable invoice date, or no credit will be issued. Controlled substance shortage claims must be reported immediately per DEA requirements. In all instances, credit will not be issued until verification of the claim by Cardinal Health.

No deductions may be taken by customer until a valid credit memo is issued by Cardinal Health.

Shipping of Return Products

Products to be returned must be placed in a proper shipping container and signed for by the driver when picked up.

Signed MRA Forms shall be included in totes with the returned products. Only one (1) MRA Form shall be included in each tote.

- a) If the MRA Form is not signed, no credit will be issued, and the products will be returned to the customer.

- b) If the MRA Form is not inside the tote with the returned products, Cardinal Health will attempt to identify the customer that returned the products. The tote will then be returned to the customer with a request for a completed MRA Form(s).
- c) No credit will be issued for products returned but not listed on the accompanying MRA Form. Such products will be returned to the customer.

All MRA Forms will be reviewed by Cardinal Health for compliance with this policy. The acceptability and valuation of any return is at the sole discretion of Cardinal Health.

Products must be returned to the customer's servicing Cardinal Health distribution center within thirty (30) days from the date of customer's request for an MRA Form, or no credit will be issued. In addition to the requirements set forth in this policy, Customer shall comply with all return procedures required by the Cardinal Health servicing distribution center.

Other Restrictions

Excessive returns may result in higher restocking fees as deemed necessary by Cardinal Health. In such an instance, Cardinal Health shall provide customer and MMCAP with at least (30) days written notice prior to implementing a higher restocking fee.

This policy is subject to change without prior notice by Cardinal Health. This policy is further subject to modification as may be deemed necessary or appropriate by Cardinal Health to comply with applicable federal and/or state regulations, FDA guidelines, state law, and other restrictions applicable to returned products. Cardinal Health will use commercially reasonable efforts to notify MMCAP of any change to this policy within ten (10) business days of said change.