



Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

Administrative Services

Office of Contracts & Procurement

500 Summer Street NE, E-03

Salem, OR 97301-1080

(503) 945-5818

Fax: (503) 378-4324

TTY: (503) 947-5330

Contract Number XXXXXX



State of Oregon
SUPPLEMENTAL REBATE AGREEMENT

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audiotape, oral presentation and electronic format. To request an alternate format, please send an e-mail to DHS.Forms@state.or.us or contact the Office of Document Management at (503) 378-3523, and TTY at 503-378-3523.

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as “DHS,” and

Manufacturer Name

Address

Address

Phone Number:

Fax Number:

E-mail:

hereinafter referred to as “Manufacturer”.

Work to be performed under this Agreement relates principally to the DHS’

Division of Medical Assistance Programs

500 Summer St. NE

Salem, OR 97301

Contact Person: Ralph Magrish

Phone Number: 503-945-6291

E-mail: Ralph.M.Magrish@state.or.us

“Assisting People to Become Independent, Healthy and Safe”
An Equal Opportunity Employer

RECITALS

WHEREAS, Agency has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates for the benefit of Agency's Medicaid recipients provided that such agreements are approved by the Centers for Medicare and Medicaid Services (CMS); and

WHEREAS, Manufacturer is willing to provide supplemental rebates to Agency based on the actual dispensing of Manufacturer's Covered Product(s) under the State of Oregon's fee-for-service Medicaid program.

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual terms and conditions set forth below, the parties, intending to be legally bound, agree as follows:

1. TERM AND TERMINATION

- a. **Effective Date.** This Agreement shall be effective as on the latter of the following dates: the date the Agreement has been signed by all parties and when required, approved for legal sufficiency by the Oregon Department of Justice, the date that any necessary state plan amendment is effective. The Agreement shall continue in force through **(enter date)**, unless it is terminated sooner pursuant to any of the following:
 - (1) **Breach.** If either party commits a material breach of this Agreement, the non-breaching party shall deliver written notice mailed by certified mail, return receipt requested, of the alleged breach to the breaching party, with an opportunity for the breaching party to cure the breach during the thirty day period following the delivery of notice. Failure to cure shall give the non-breaching party the right to terminate this Agreement at the end of the thirty day period. The non-breaching party shall give the breaching party final written notice of the cancellation of this Agreement.
 - (2) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any calendar quarter by giving the other party ninety days prior written notice.
 - (3) **Law Change.** Either party may terminate this Agreement if federal or state law or regulations or CMS waiver terms are modified, changed or interpreted in such a way that the reimbursement is no longer allowable. Notice of intent to terminate based on law change shall be given to the other party in writing ninety days prior to termination, or such shorter time as may be required to avoid a violation of law.
- b. **Accrued Obligations/Remedies.** Notwithstanding any non-renewal or termination of this Agreement, State Supplemental Rebates will still be due and payable from the Manufacturer under Section 4 for any Covered Product(s) for which Manufacturer's obligation to reimburse Agency arose prior to the effective date of termination or expiration of this Agreement. The expiration or termination of this Agreement shall not affect any rights or obligations of the parties that have accrued prior to the effective date of such termination or

expiration. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from pursuing any other remedy it may be entitled to in law or equity. Any remedy provided herein shall not be deemed an exclusive remedy unless expressly provided for as such.

- c. **Periodic Review.** On at least an annual basis or as mutually agreed upon by Manufacturer and Agency, Manufacturer shall have the opportunity to decrease the Net Price of its Covered Product(s) to increase the likelihood of product(s) utilization or inclusion in the PDL.
- d. **Execution, Amendment, and Waiver.** This Agreement shall be binding only upon signature by both parties. This Agreement, or any provision, may be altered, amended, or waived by a written amendment executed by both parties as authorized by CMS.

2. **DEFINITIONS.** As used herein, the following terms shall have the meanings set forth below. Terms not defined herein that are defined in 42 USC 1396r-8 shall have the meaning of the term used in that statute.

- a. **“Agency”** shall mean, for purposes of this Agreement, the Oregon Department of Human Services, its officers and employees, and may include in Agency’s discretion, a pharmacy benefits manager under contract with Agency.
- b. **“Agreement”** means this Supplemental Rebate Agreement, including all documents attached or incorporated by reference.
- c. **“Average Net Price (ANP)”** will be the mechanism for determining placement on the Practitioner Managed Preferred Drug Plan (PDMP). All drugs with an ANP at or below the Net Price for each PMPDP drug class may be placed on the PMPDP, provided that it has an equivalent therapeutic effectiveness as other drugs within the PMPDP drug class, as determined by the Health Resources Commission.
- d. **“Average Wholesale Price (AWP)”** shall mean the lowest published price of the Covered Product(s) by National Drug Code as published by First DataBank, MediSpan, or Red Book on the last day of the calendar quarter that corresponds to the calendar quarter for which the Medicaid Utilization Information for the Covered Product is reported to the manufacturer.
- e. **“Best Price”** shall mean Best Price as set forth in 42 USC 1396r-8; as such statute may be amended from time to time, excluding State Supplemental Rebate Amounts.
- f. **“CMS”** shall mean the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the U.S. Department of Health and Human Services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.
- g. **“CMS Basic Rebate”** shall mean, with respect to the Covered Product, the quarterly payment by Manufacturer pursuant to Manufacturer’s CMS Medicaid Drug Rebate

Agreement made in accordance with Section 1927(c)(1) or Section 1927(c)(3) of the Social Security Act (42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8(c)(3)).

- h. **“CMS CPI Rebate”** means, with respect to the Covered Products, the quarterly payment by the Manufacturer pursuant to Manufacturer’s CMS Medicaid Drug Rebate Agreement, made in accordance with 42 USC 1396r-8(c)(2).
- i. **“CMS Medicaid Drug Rebate Agreement(s)”** shall mean the agreement(s) in place between Manufacturer and the Secretary of Health and Human Services for CMS Basic Rebates and CMS CPI Rebates, pursuant to Section 4401 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508).
- j. **“Covered Product(s)”** shall mean any specific pharmaceutical product(s) covered by this Agreement as a supplemental rebate drug, as detailed in Attachment A of this Agreement.
- k. **“Estimated Acquisition Cost (EAC)”** means the estimated acquisition cost as set forth in OAR 410-121-0155, at which the pharmacy can obtain the product.
- l. **“Guaranteed Net Price”** shall mean the final fixed price of the drug assured by the Manufacturer to the State. It shall be calculated as the EAC minus the CMS rebate and minus the State Supplemental Rebate necessary to equal the guaranteed net price to the State by Manufacturer for the Covered Product for the calendar quarter. EAC shall be determined by a formula utilizing either WAC or AWP as mutually agreed by both parties.
- m. **“Medicaid Recipient”** shall mean any person enrolled in the State of Oregon’s Medicaid Program and eligible to receive prescription drug benefits reimbursed by Agency.
- n. **“Medicaid Utilization Information”** means the information on the total Units of each dosage form and strength of the Manufacturer’s Covered Product reimbursed during a quarter under this Agreement. This information is based on claims paid by DHS during a calendar quarter and does not necessarily coincide with drugs that were dispensed during that calendar quarter. The Medicaid Utilization Information to be supplied includes: 1) NDC number; 2) Covered Product name; 3) Units paid for during the quarter by NDC number; 4) Total number of prescriptions paid for during the quarter by NDC number; and 5) Total amount paid during the quarter by NDC number. This shall include the NDCs of all physician-administered drugs (J-codes).
- o. **“Net Price”** means the amount a drug cost DHS and is calculated using the following formula: Estimated Acquisition Cost (-) CMS Basic Rebate (-) CMS CPI Rebate (-) State Supplemental Rebate.
- p. **“Pharmacy”** shall mean a facility or person licensed to dispense legend drugs, and enrolled as a State of Oregon Medicaid provider.
- q. **“Practitioner Managed Prescription Drug Plan (PMPDP)”** shall mean the list of preferred drugs in specified classes identified by the Oregon Health Resources

Commission (HRC). The list may commonly be referred to as the Plan Drug List (PDL). The HRC conducts an evidence-based review to establish the list. In consultation with the HRC, DHS determines which of the effective drugs have the best possible price for the State of Oregon Medicaid Program. See, OAR 410-121-0030.

- r. **“State Medicaid Program”** shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for, or coverage of, prescription drug products to Medicaid Recipients.
- s. **“State Supplemental Rebate Amount”** means, with respect to Covered Product(s), the amount(s) specified in the Supplemental Rebate Formula and as set forth in Attachment A, that the Manufacturer has agreed to reimburse Agency per Unit of drug.
- t. **“Unit”** means a single capsule or smallest issue measure of a Covered Product as established by applicable CMS definitions and interpretive guidelines.
- u. **“USC”** means the United States Code. All references to this agreement to USC chapters or sections shall include any successor, amended, or replacement statute.
- v. **“Wholesale Acquisition Cost (WAC)”** shall the price, paid by a wholesaler for drugs purchased from the wholesaler’s supplier, typically the manufacturer of the drug. The WAC used for supplemental invoicing shall be the published WAC price of a Covered Product by the National Drug Code (“NDC”) as published by First DataBank, MediSpan or Red Book on the last day of the calendar quarter that corresponds to the calendar quarter for which the Medicaid Utilization Information for the Covered Product is reported to the manufacturer.
- w. **“OAR”** means the Oregon Administrative Rules. All references in this Contract to OAR chapters or sections shall include any successor, amended, or replacement regulation.
- x. **“Quarter”** shall mean, for the period from January 1 through March 31 will be Quarter 1; the period from April 1 through June 30 will be Quarter 2; the period from July 1 through September 30 will be Quarter 3; and the period from October 1 through December 31 shall be Quarter 4.
- y. **“Day”** shall mean calendar day.

3. **AGENCY OBLIGATIONS**

- a. **Plan Drug List.** To be eligible for the Supplemental Rebates specified in Attachment A:
 - (1) Agency shall place and maintain Covered Product(s) on the PMPDP Plan Drug List, it being agreed that utilization of Covered Product(s) shall be

eligible for the State Supplemental Rebate only in quarters in which Covered Product(s) is listed on the PMPDP Plan Drug List; and

- (2) Agency shall maintain this Agreement in accordance with all CMS requirements and the State Plan Amendment approval process.
 - (3) If prior authorization is required by the Agency for utilization of Manufacturer's Covered Product(s) by a Medicaid Recipient as a part of a product category, the Covered Product(s) shall nonetheless be subject to payment of a State Supplemental Rebate in accordance with the terms of this Agreement.
 - (4) If during the duration of this Agreement a generic equivalent of any Covered Product should become available, and no Federal Upper Limit (FUL) is established, or the aggregate expenditures are within the total FUL reimbursement before any rebate is applied, the Department will allow the Covered Product to remain on the Preferred Drug List so long as the net cost to the State, as defined in ORS 410-121-0030, is not more than the lowest reimbursement cost for a generic equivalent.
- b. **PMPDP Plan Drug List Documentation and Publication.** Agency shall communicate the inclusion of Covered Product(s) on the PMPDP Plan Drug List to State of Oregon Medicaid Program providers through the standard notification process.
- c. **Utilization Data.** Agency will maintain Medicaid Utilization Information applicable to the Covered Product(s) for use in calculating the State Supplemental Rebate. Agency will provide aggregate Medicaid Utilization Information applicable to Covered Product(s) to Manufacturer on a quarterly basis in connection with the invoicing required under paragraph 3.e.
- d. **Calculation of State Supplemental Rebate.** The Supplemental Rebate shall be calculated pursuant to the Supplemental Rebate Formula as set forth in Attachment A. The Supplemental Rebate for the quarter will be determined by multiplying the number of Units of the Covered Product(s) reimbursed by Agency in the preceding quarter by the Covered Product(s) Supplemental Rebate Amount per Unit.
- e. **Invoicing.** Agency or its contractor shall calculate and invoice Manufacturer for the total State Supplemental Rebate Amount for the Quarter separately from CMS Basic or CMS CPI Rebates using the format set forth by CMS (Reconciliation of State Invoice format), consistent with the requirements of paragraphs 3.e and 3.d. Agency or its contractor shall submit the State Supplemental Rebate invoice to Manufacturer within sixty days after the end of each calendar quarter in which the Covered Product(s) subject to such State Supplemental Rebate was paid for by Agency. Any amended invoice shall be submitted by Agency or its contractor within twelve months after the end of the calendar quarter in which Covered Product(s) was paid for by Agency.
- (1) Quarter 1 invoices shall be submitted by June 1 of the same year;

- (2) Quarter 2 invoices shall be submitted by September 1 of that same year;
 - (3) Quarter 3 invoices shall be submitted by December 1 of that same year;
 - (4) Quarter 4 invoices shall be submitted by March 1 of the following year.
- f. Agency shall fully and accurately report the State Supplemental Rebate, including interest, in any applicable cost report to CMS and shall remit the appropriate share of the State Supplemental Rebate payments made under this Agreement to CMS as required under Agency's approved state plan.
- g. Agency must provide, upon request by the Secretary of Health and Human Services, any information related to this Agreement, including information provided by the Manufacturer as specified in 42 CFR 1001.952(h)(3)(ii), to the extent applicable to this Agreement.

4. MANUFACTURER OBLIGATIONS

- a. **Continuing CMS Rebate Obligations.** Pursuant to its separate CMS Medicaid Drug Rebate Agreement and CMS CPI Agreement, Manufacturer will calculate and provide CMS rebates to Agency for the Covered Product(s), which includes the CMS Basic Rebate and the CMS CPI Rebate, as appropriate. Manufacturer's obligation for CMS rebates will continue for the duration of the Manufacturer's CMS Agreement.
- b. **State Supplemental Rebate Payment.** In addition to the CMS Basic Rebate and the CMS CPI Rebate, Manufacturer agrees to pay a Supplemental Rebate to Agency for each of its Covered Product(s) dispensed to Medicaid Recipients by Pharmacies, or physicians (J- codes), for each calendar quarter that Covered Product(s) are included in the PMPDP Plan Drug List based on the invoice submitted by Agency or its contractor pursuant to paragraph 4.e. Manufacturer's obligation to pay Agency the Supplemental Rebate shall be as set forth in Attachment A. Nothing in this Agreement shall be construed to relieve Manufacturer from its obligation to pay CMS Medicaid Drug Rebates.
- c. **Payment Timeframe.** Manufacturer shall pay to Agency the State Supplemental Rebate which Agency is entitled in accordance the terms of this Agreement, within thirty days of Manufacturer's receipt of Agency's rebate invoice pursuant to Section 3.e. Using 8 calendar days as reasonable time for reports to reach the manufacturer, payment of the invoiced amounts is due on the following schedule.
- (1) Rebate payment for Quarter 1 shall be due by July 7 of that same year;
 - (2) Rebate payment for Quarter 2 shall be due by October 7 of that same year;
 - (3) Rebate payment for Quarter 3 shall be due by January 6 of the following year; and
 - (4) Rebate payment for Quarter 4 shall be due by April 6 of the following year.
- d. **Interest Payment.** Manufacturer's Supplemental Rebate amount shall include any applicable interest. The interest rate shall be determined as specified under federal guidelines for rebates under the CMS Basic Rebate. Interest on the Supplemental Rebate begins accruing 38 calendar days from the postmark date of

the Agency invoice and interest will continue to accrue until the postmark date of the Manufacturer's payment.

- e. **Disputes.** Any dispute about the rebate invoice or any failure to make timely payment in full of the amount due shall initiate a dispute. Timely is defined as 38 days after the postmarked date of the invoice. Disputes shall be addressed using the Dispute Resolution Procedures in OAR 410-121-0580, except that any references in such rule to the Rebate Agreement shall be construed to refer to this Supplemental Rebate Agreement.
- f. **Over/Underpayment.** If either party discovers an error in the payment of State Supplemental Rebates, it shall notify the other of such error. The parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with OAR 410-121-0580. Any adjustment shall be credited or recouped, as applicable, from subsequent State Supplemental Rebates payable under this Agreement. In the event that no subsequent State Supplemental Rebates are payable, Agency will refund any such overpayment to Manufacturer within sixty days of the parties' acknowledgement of the overpayment. Manufacturer will remit any underpayment to Agency within sixty days of the parties' acknowledgement of such underpayment.
- g. **Discretion to Market.** Nothing in this Agreement shall be construed to prohibit Manufacturer from discontinuing production, marketing or distribution of any Covered Product or from transferring or licensing any Covered Product to a third party. It is understood that Manufacturer is liable for the payment of State Supplemental Rebates only for Covered Product(s) (as identified by the 11-digit NDC code) distributed (directly or through the wholesale channel) to medical or pharmacy providers and dispensed to Medicaid Recipients. If Manufacturer elects to discontinue production, marketing or distribution of any Covered Product or to transfer or license any Covered Product to a third party, Manufacturer shall make every reasonable effort to notify Agency prior to such actions.
- h. Manufacturer shall refrain from doing anything that would impede DHS' ability to meet its obligations under paragraph 3 of this Agreement.

5. CONFIDENTIALITY AND RECORD KEEPING

- a. **Confidentiality.** The parties agree that confidential information will not be released to any person or entity not a party to this Agreement. "Confidential information" includes Medicaid Recipient information, Medicaid Utilization Information, trade secret and proprietary information, and any other information subject to federal or state confidentiality or privacy laws. Confidential information will not be disclosed or used except as expressly authorized in this Agreement or as may be required by law or judicial order. Each party shall maintain the confidentiality of information under this Agreement throughout the term hereof and for a period of three years thereafter. Notwithstanding the non-renewal or termination of this Agreement for any reason, these confidentiality provisions will remain in full force and effect.

- b. **Record Keeping and Audit.** During the term of this Agreement and for a period of three years thereafter, both parties to the Agreement shall maintain current and accurate accounts, files, and records relevant to this Agreement. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of the parties whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as “Records.” Manufacturer acknowledges and agrees that the Agency, the Secretary of State's Office and the federal government and their duly authorized representatives shall have access to all Records to perform examinations and audits and make excerpts and transcripts. At a party’s written request, the other party shall make such Records available for inspection by the requesting party’s representatives or its designated auditors during regular business hours. Upon written request, each party shall otherwise have the right to inspect, all such relevant accounts and records of the other party to verify compliance with the terms of this Agreement. Notwithstanding any other provision of this paragraph 5.b, Manufacturer shall cooperate with Agency as necessary to enable Agency to respond to a state or federal audit of Agency where the subject of such audit pertains to this Agreement or where this Agreement is the subject of litigation involving the Agency. The Manufacturer will hold the Medicaid Utilization Information confidential. If the Manufacturer audits this information or receives further information on such data, that information shall also be held confidential by the Manufacturer and its designated auditor.
- c. **Medicaid Recipient Health Information.** Agency, its agents, employees and contractors shall not provide to Manufacturer or its agents any individually identifiable health information or protected health information (“PHI”) or any other information prohibited or regulated by laws or regulations governing confidentiality or privacy of medical or other information. Nothing in this Agreement shall be construed to make Manufacturer or its agents or subcontractors a “business associate” of the Agency, as that term is used in the HIPAA Privacy Rules, 45 CFR Parts 160 and 164.
- d. **Trade Secret and Proprietary Information.** Except as otherwise may be required to be disclosed by law and in accordance with 42 USC 1396r-8(b)(3)(D), the parties agree that confidential information will not be used except in connection with this Agreement or as may be required by judicial order. The parties agree that the Manufacturer asserts any information provided to the State by the Manufacturer under this Agreement constitutes trade secrets or proprietary commercial and financial information, not subject to public disclosure. Agency will treat trade secret information as confidential consistent with the Uniform Trade Secrets Act, ORS 646.461 to 646.475.
- e. **Agents.** If the services of a third party are used by either party to administer any portion of this Agreement, Sections 5.a through 5.d of this Agreement shall apply to the third party.
- f. **Required Disclosures.** In the event that either party is required by law to disclose any provision of this Agreement or pricing information to any person or entity, such party shall provide written advance notice to the other party

sufficiently in advance of the disclosure to allow the other party to seek a protective order or other relief.

7. **OTHER TERMS AND CONDITIONS**

- a. **Indemnification.** The parties do not contemplate any circumstances under which indemnification of the other party would arise. Nevertheless, should such circumstances arise, Manufacturer shall be responsible for and shall indemnify and hold Agency harmless from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Manufacturer in the performance of this Agreement.
- b. **Force Majeure.** Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, destruction of production facilities and materials, fire, earthquake or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.
- c. **Assignment.** Neither party shall have the right to assign this Agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any party of responsibility for the performance of any obligations that have accrued prior to such assignment.
- d. **No Waiver of Rights.** The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive any such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.
- e. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties. This Agreement (including Attachments) may not be amended or modified except upon the written agreement of both parties.
- f. **Governing Law.** This Agreement shall be construed in accordance with 42 USC 1396r-8 and other laws applicable to the administration of Title XIX of the Social Security Act. Manufacturer agrees to be bound by the laws of the United States of America and with the laws of the State of Oregon. This Agreement shall be governed by the laws of the State of Oregon. In the event of a lawsuit involving this Agreement, venue shall be proper only in Marion County, Oregon. This agreement will not be altered and any changes or alterations to this Agreement must be authorized by CMS.
- g. **Integration.** The parties declare that this Agreement, including attachments, schedules, and addenda, contains a total integration of all rights and obligations of the parties. There are no extrinsic conditions, collateral agreements or undertakings of any kind. In regarding this agreement as the full and final expression of the contract, it is the express intention of the parties that any and all

prior or contemporaneous agreement, promises, negotiations or representations, either oral or written, relating to the subject matter and period of time governed by this Agreement which are not expressly set forth herein are to have no force, effect, or legal consequences of any kind.

- h. **Effect of Future Laws.** In the event of the enactment, promulgation, rescission, modification or interpretation of any law or regulation after the date hereof which would (1) materially adversely affect the manner in which either party is obligated to perform under this Agreement, (2) adversely affect for either party the net prices or State Supplemental Rebates or other terms applicable under this Agreement, (3) alter or impose additional criteria for placement of a Covered Product on the PDL, or (4) have the effect of requiring the Net Price or State Supplemental Rebate or other terms applicable under this Agreement to be extended or offered to any third party, each party shall have the right to enter into good faith negotiation with the other in order to seek to agree on reasonable terms for maintaining the intent of the Agreement affected by such enactment, promulgation, etc. Agreement on any such terms shall be in the sole discretion of each party. If the parties do not agree within sixty days of a party's written request for negotiations, either party may terminate this Agreement with respect to the affected Covered Product(s) upon expiration of the sixty day period, with immediate effect.
- i. **Compliance with Law.** In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law. If any provision of this Agreement is found to be invalid or illegal by a court of law, or inconsistent with federal requirements, this Agreement will be construed in all respects as if any invalid, unenforceable, or inconsistent provision were eliminated, and without any effect on any other provision. The parties agree to negotiate replacement provisions, to afford the parties as much of the benefit of their original bargain as possible.
- j. **Authority.** Agency and Manufacturer each represent a warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of each party and each party shall thereby be bound.
- k. **Notices.** Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail or express delivery, addressed to the other party at the address set forth below.

DHS: Division of Medical Assistance Programs
500 Summer St. NE
Salem, Oregon, 97301
Contact Person: Ralph Magrish
Phone Number: 503-945-6291
E-mail: Ralph.M.Magrish@state.or.us

Manufacturer: Name
Address
Address
Phone Number:
Fax Number:
Contract Person:
E-mail:

- l. **Independent Contractor.** Manufacturer and the agents and employees of Manufacturer in the performance of this Agreement, will act in an independent capacity, and not as officers, employees or agents of the State of Oregon.
- m. **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval of the State Plan Amendment for the Supplemental Rebate Program, by Agency.

IN WITNESS WHEREOF, this Agreement has been executed by the parties set forth below:

Approved By Manufacturer

Authorized Signature	Title	Date
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Approved By DHS

Authorized Signature	Title	Date
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Approved for Legal Sufficiency

Assistant Attorney General	Date
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DMAP Program Review

Signature	Name (printed)	Date
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DHS Contract Specialist

Signature	Name (printed)	Date
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