



## MASTER TERMS AND CONDITIONS

(Including Pharmaceutical Product Purchase Order Terms and Conditions)

These Master Terms and Conditions (“**Terms and Conditions**”) apply to all goods purchased by Meijer (including any of its subsidiaries) from Company directly or indirectly (“**Goods**”); including products for resale to Meijer customers (“**Resale Goods**”), pharmaceuticals and other pharmacy products purchased by Meijer (“**Pharmaceutical Goods**”), raw materials and ingredients for manufacturing (“**Manufacturing Goods**”), Goods (including equipment) for Meijer’s non-resale, internal use (“**Indirect Procurement Goods**”); and any Services performed by Company (“**Services**”). These Terms and Conditions are part of an integrated agreement (“**Agreement**”) between the entity or individual providing Goods or Services (herein referred to as “**Company**”) and the Meijer entity or subsidiary purchasing the Goods and Services (herein referred to as “**Meijer**”) consisting of the following (as applicable) in controlling order of precedence: any written specially-negotiated agreement or addendum between the parties; these Terms and Conditions; Commercial Terms (defined below) electronically agreed to in Meijer’s online VendorNet portal (“**VendorNet**”) at <https://www.meijervendornet.com> (Resale Goods only); any Order (defined below); terms contained in any applicable sections of the *Vendor Requirements and Reference Guide* located on the VendorNet; and terms of the *Pharmaceutical Vendor Requirements and Reference Guide* located on the VendorNet (Pharmaceutical Goods only).

**1. ORDERS AND INVOICING.** The parties’ written or electronic agreement to these Terms and Conditions do not commit Meijer to order, purchase or accept any Goods or Services. All orders of Goods and Services (each an “**Order**”) will be made according to these Terms and Conditions and the applicable *Vendor Requirements and Reference Guide* sections. Meijer may immediately terminate each Order without liability to Company if any of the following events (or any other similar or comparable events; each, a “**Company Insolvency**”) occur: (i) Company’s insolvency; (ii) Company’s inability to promptly provide Meijer with adequate and reasonable assurance of Company’s financial capability to timely perform any of Company’s obligations under any Order; (iii) Company’s filing of a voluntary bankruptcy petition; (iv) the filing of an involuntary bankruptcy petition against Company; (v) appointment of a receiver or trustee for Company; or (vi) Company’s signature on an assignment for the benefit of its creditors. Company will reimburse Meijer for all costs incurred by Meijer related to a Company Insolvency, including all attorneys’ fees and other professional fees. Meijer will not be obligated to pay for

Company’s Goods or Services not invoiced by Company within 120 days after the date the Goods were received or the Services were rendered, provided that the failure to issue an invoice was not caused by Meijer’s act or omission. Company agrees to participate, at its own expense, in Meijer’s online invoicing system as instructed in the *Vendor Requirements and Reference Guide* (“**System**”) and will only electronically invoice Meijer through the System. If Company submits a paper invoice, Company agrees that Meijer may charge or debit Company a reasonable administrative fee from any such paper invoice to partially compensate Meijer for manually processing Company’s invoice. At Meijer’s request, Company will provide documentation reasonably requested by Meijer to substantiate Company’s invoices. Company will retain all Meijer records of purchases and payments for a period of two years after the end of the calendar year in which they occur. These records will be made available to Meijer upon request and at no charge. With respect to Pharmaceutical Goods, Company agrees to provide Meijer all information required to comply with the Drug Quality and Security Act, as amended, in such format as Meijer may reasonably request.

**2. COMMERCIAL TERMS.** Terms including, but not limited to, pricing, quantities, descriptions, shipping and delivery terms, payment terms, non-saleable disposition methods, non-conforming shipments, scan-based “shrink” terms and accounting methods, own-brand and control brand buy-back obligations, allowances, specification, deliverables, and other variable business terms are commercial terms (“**Commercial Terms**”). Commercial Terms are established as follows:

**a. Resale and Manufacturing Goods.** Unless otherwise mutually agreed in writing or via electronic consent, all Commercial Terms for Resale Goods and Manufacturing Goods transactions will be established on the VendorNet. After information has been properly entered and accepted by the parties on the VendorNet, the Commercial Terms will contractually bind the parties as a supplement to these Terms and Conditions. Commercial Terms agreed to on the VendorNet may only be amended by updating the information on the VendorNet and electronically agreeing to the changes. Once new Commercial Terms have been properly updated and accepted by Meijer and Company on the VendorNet, the new Commercial Terms will contractually bind the parties and supersede any prior Commercial Terms that conflict with the new Commercial Terms.

**b. Indirect Procurement Goods and Services.** For Indirect Procurement Goods and Service transactions, Commercial Terms are list on your purchase order. Company will tender Goods to Meijer on the agreed upon delivery date at the location designated by Meijer. A list of preferred Meijer carriers may be found in the *Vendor Requirements and Reference Guide*. Risk of loss will pass to Meijer when the Goods are delivered and accepted at the applicable location designated by Meijer. If Meijer accepts Indirect Procurement Goods delivered to it at any time other than the specified delivery date, Meijer is entitled to receive from Company an administrative fee in the amount of 10% of the portion of the Order delivered and accepted. Meijer reserves the right to cancel any Order of Indirect Procurement Goods or Services without penalty by notice to Company on or before the cancellation date specified in the Order. If no cancellation date is specified, the cancellation date will be any time prior to the ship date (for Indirect Procurement Goods) or service date (for Services). Other than the payment of the amount on the face of the Order (“**Price**”), Meijer will have no obligation to pay Company any other amount in connection with the Order. Unless stated otherwise in the Order, payment terms are net 45 days. The Price will include all costs of Indirect Procurement Goods and all parts, supplies, materials and other charges and expenses required to complete any Services. The Price will include all taxes except those which Company is required by law to collect from Meijer. Company must pay any and all taxes collected from Meijer to the proper governing agencies. Such taxes, if any, will be separately stated in Company’s invoice. If Company fails to pay any such tax, Company will be responsible for the tax and all penalties and interest charges levied against Meijer because of the failure to pay the tax. Meijer may set off from the Price at any time any amount owed to Meijer by Company. Company may not charge Meijer for expenses incurred in the furnishing of the Goods and Services, unless expressly agreed to by Meijer in writing or via electronic consent and to the extent such expenses comply with the most current version of Meijer’s expense reimbursement policy posted on the VendorNet or online portal as directed by Meijer.. The Commercial Terms established as stated above will contractually bind the parties as a supplement to these Terms and Conditions.

**c. Pharmaceutical Goods.** Meijer may cancel any Order for Pharmaceutical Goods without penalty by notice to Company on or before the cancellation date specified in the Order. If, after cancellation, Company ships the Pharmaceutical Goods and Meijer accepts them, Company will, upon request, pay Meijer a warehousing fee of 5% of Company’s invoice cost or \$100, whichever is greater. Meijer may refuse to accept or pay for any unordered, excess or substitute Pharmaceutical Goods or Pharmaceutical Goods shipped that do not conform to all terms and conditions of the Agreement, including shipment and delivery dates. All shipments will be at the prices and the terms of sale set forth in the Agreement, but payment terms must be calculated to result in the lower cost based either on (1) the date that the Pharmaceutical Goods are physically received at Meijer’s designated facility or (ii) the Company’s invoice date. The specified prices include all taxes except those which Company is required by law to collect from Meijer. These taxes, if any, will

be separately stated in Company’s invoice and will be paid by Meijer unless an exemption is available.

**3. SET-OFFS FOR CLAIMS.** All amounts payable to Company will be subject to all Meijer claims and defenses. Meijer may set off and deduct against any such amounts all Company indebtedness to Meijer. By posting on the VendorNet or providing other notice, Meijer will provide a debit memo or vendor charge back to Company stating the amount of the setoff. If Meijer posts on the VendorNet or provides other notice, Company will have unconditionally accepted each debit memo or vendor charge back within 90 days following receipt unless it notifies Meijer in writing during that period as to why the deduction should not be made. This written notice and all other Company claims against Meijer must be submitted to Meijer only through the Claims Management System (“**CMS**”) on Meijer’s VendorNet or such other online portal as directed by Meijer. Company agrees to pay a reasonable administrative fee to Meijer for each claim submitted to Meijer in any manner other than through the CMS or online portal

**4. REPRESENTATIONS AND WARRANTIES.**

**a. Goods.** If Company supplies Goods, Company makes the following representations and warranties:

(1) The Goods shall be manufactured, tested, packaged, wrapped, inspected, marked, sold, stored, shipped, labeled, and registered accurately and in compliance with all Meijer policies, specifications, and standards referenced herein (collectively, “**Meijer Standards**”), and all applicable U.S. federal, state, and local and applicable foreign laws and regulatory requirements including, but not limited to, Title III of the American with Disabilities Act, 42 U.S.C. § 12101 and the Web Content Accessibility Guidelines (WCAG) 2.0 AA, as updated from time-to-time; and the requirements of the U.S. Food and Drug Administration; the U.S. Department of Agriculture; the U.S. Environmental Protection Agency; the U.S. Consumer Products Safety Commission; the U.S. Federal Trade Commission; the U.S. Customs and Border Protection; the U.S. Treasury; the U.S. Department of Labor regulations, and the International Labour Organization standards (collectively, “**Laws**”);

(2) The Goods shall be free from liens and encumbrances, defects, contamination, impurity, or adulteration; and are fit and sufficient for purposes specified herein or in any document incorporated by reference and, pursuant to 21 USC § 333, that all food, drugs, medical devices and tobacco supplied to Meijer are not adulterated or misbranded under the Federal Food, Drug and Cosmetic Act (FDCA) (21 USC §§ 301) and are not articles which may not be introduced into interstate commerce under FDA emergency permit control requirements (21 USC § 344) or FDA new drug registration requirements (21 USC § 355) and do not violate 21 USC § 331(a), (b), (c), (d), (i), (k) or any other provisions of the FDCA;

(3) Resale Goods Content and Pharmaceutical Goods shall be comprised of only those statements that are truthful, accurate, and not misleading and that have been substantiated, if necessary, at the time that such statements and claims are made;

(4) Pharmaceutical Goods shall be (a) sourced from manufacturers who are reputable and operate in accordance with current industry standard manufacturing practices, and who are duly registered with the United States Food and Drug Administration, or (b) meet all specifications of Company in accordance with best industry practice and applicable law;

(5) Goods shall be comprised of only intellectual property that is owned solely by Company or licensed from the owner/proprietor to Company and does not infringe or violate any intellectual property or other proprietary rights (including any utility or design patent, trademark, service mark, trade dress, trade name, copyright, trade secret, right of privacy, publicity, moral right, or any manufacturing or administrative process) so that Company may freely and lawfully grant to Meijer all intellectual property and proprietary rights necessary for Meijer's use permitted by these Terms and Conditions;

(6) Resale Goods shall be sold to Meijer at no less than fair value under U.S. anti-dumping law, and no foreign government has provided a countervailable subsidy for the Goods actionable under applicable Laws;

(7) Goods shall not be the result of forced labor, child labor, or prison labor and meet all other social compliance criteria and labor standards as determined under Meijer Standards and applicable Laws;

(8) Imported Resale Goods shall be not manufactured by a subcontractor of Company unless such subcontracting is disclosed to and approved by Meijer in writing or via electronic consent;

(9) If (1) sourcing from a new supplier, and (2) manufacturing/processing, packing or holding Goods in a facility not previously indicated to Meijer, Company shall notify Meijer no less than ninety (90) days in advance and shall provide the name of the supplier, location/address of the facility, and description of the Goods sourced;

(10) If furnishing Goods or Services to Meijer's pharmacy operations customers, Company warrants, represents, and covenants that Company is not currently and will not during the term of the Agreement be excluded from participation in federal or state health care programs and is not the subject of any known pending exclusion proceeding. Company, becoming aware of its violation of any of the foregoing requirements, warrants and covenants that, it will notify Meijer at PharmacyComplianceOfficer@meijer.com within 24 hours of receiving notice of Company's exclusion from a state or federal health care program;

(11) For all applicable Resale Goods, Company warrants, represents and covenants that Company understands and is and will remain compliant with the requirements of the *CPSC General Compliance Statement* located at <https://www.meijervendornet.com>; and

(12) If Company supplies food or food contact Goods it shall comply with and remain in compliance with the Food Safety Modernization Act and all of its implementing regulations (collectively "FSMA"). Company further represents and warrants to Meijer that it will only utilize vendors and service providers hereunder that will provide to Company an equivalent representation in regards to FSMA. Company also represents and warrants to Meijer that Company is not acting as an "exempt" business under FSMA and that it will only utilize vendors and service providers that comply with FSMA and do not claim exemptions (either complete or partial) even if they are or might be exempt based on the businesses' size and/or sales within a local marketplace. Meijer shall not serve as the Foreign Supplier Verification Program ("FSVP") importer pursuant to 21 CFR §1.500, nor shall Meijer be declared by Company or others as the FSVP importer in any entry documentation under any circumstances unless Meijer has expressly and explicitly notified Company in writing or via electronic consent that Meijer shall assume such FSVP and importing responsibilities. In the event of Meijer's assumption of such responsibilities, Company hereby agrees to cooperate with Meijer in facilitating compliance with Meijer's FSVP obligations and other requirements under the FDCA, including but not limited to FSMA. Company's cooperation shall include, but not be limited to, providing documents requested by Meijer to facilitate compliance with its FSVP obligations and other requirements under the FDCA, including but not limited to FSMA. Documents to be shared upon request by Company may include, but are not limited to, FDA registration forms, HACCP plans, product recall program documentation, supplier company details, supplier specifications hazard and risk analyses, food safety plans, audits reports, food safety records, inspections records and or reports, investigations, reports and other documents from government agencies, review of inspections and reports from third-parties, product or environmental sampling and testing results.

(13) In regards to food originating from Companies outside the U.S., Meijer's obligation to purchase said food hereunder shall not be binding upon Meijer until all verification procedures have been properly completed and never until after such goods have entered the customs territory of the U.S. Meijer shall reject any load for violations of the Sanitary Food Transportation Act of which Meijer is aware of, including failure to maintain required records. Company assumes responsibility for ensuring loads rejected by Meijer are not sold or distributed unless a qualified individual determines the food is not unsafe consistent with 21 CFR § 1.908. The term food, as used herein, means food as defined in section 201(f) of the Food Drug and Cosmetic Act which includes, but is not limited to, raw produce, processed foods and chewing gum (and components thereof, including raw materials and ingredients), articles of drink, game meats and food contact substances such as plates, cookware, food

packaging and utensils. The term food includes human and animal food.

**b. Services.** If Company supplies Services, Company represents and warrants:

(1) That all Services will be furnished in a good, timely, professional, and workmanlike manner in accordance with best industry standards and practices and the specifications provided to Company;

(2) Company will possess all required permits, certifications, and licenses, and sufficient education, skills, and experience, to fully and lawfully perform the Services;

(3) Unless otherwise agreed in writing or via electronic consent, Company will perform all Services in the United States of America;

(4) Company is responsible for the safety of any individual providing Services and will ensure that such individual complies with Meijer's Code of Conduct located on the VendorNet;

(5) Company will fully comply with the requirements of the Immigration Reform and Control Act and all related authority, including but not limited to required Form I-9 completion, re-verification and retention;

(6) Company will not file or claim a lien on Meijer property, and where applicable, will deliver to Meijer upon request lien waivers for any services furnished by or through Company;

(7) Company represents, warrants and guarantees to Meijer on behalf of itself and its suppliers and service providers that it and its suppliers and service providers, as applicable, comply with and remain in compliance with the Tariff Act, as amended by the Customs Modernization Act, its implementing regulations, and all other laws and regulations enforced by U.S. Customs and Border Protection; and

(8) Company will agree that Meijer has the right to verify Company's compliance, the compliance of Company's suppliers, and Company's verification of its suppliers with FSMA through the use of audits, review of food safety records, review of inspections, investigations, reports and other documents from government agencies, review of inspections and reports from third-parties, including auditors, product sampling and testing, review of environmental sampling and testing and use of other reasonable means. Company shall have the right to object to specific verification requests of Meijer to the extent that information Meijer is requesting is proprietary.

**c. Business Conditions.** Regarding its financial, legal, and other business conditions, Company further represents and warrants that:

(1) Company is solvent, is not under any threat of insolvency, is able to pay its obligations as they become due, and will notify Meijer immediately if Company becomes insolvent or otherwise becomes unable to pay its obligations;

(2) Company and its management personnel have not, for at least seven years before the date of Company's first shipment of Goods to Meijer, been found guilty, or pled guilty to any felony charge;

(3) Company, its subsidiaries, and their directors, officers, agents, employees, or other persons associated with or acting on behalf of the Company or any of its subsidiaries:

(i) Are not currently in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and its rules and regulations (collectively, "FCPA") by using corporate funds for unlawful contributions, gifts, entertainment, facilitation, or other unlawful expenses relating to political activity or to influence official action; making direct or indirect unlawful payment to a foreign or domestic government official or employee from corporate funds; or making a bribe, rebate, payoff, influence payment, facilitation payment, kickback, or other unlawful payment; and

(ii) Have disclosed to Meijer in writing any past violations of the FCPA or any other anti-bribery or anti-corruption law.

(4) Company's business license is validly issued from the requisite governing authority;

(5) Company and its principal operators are not included on any searchable denied party or politically exposed person watch list database and will not be at any time during Meijer's relationship with the Company;

(6) Company is not prohibited from consummating the transactions contemplated by (i) an Order; (ii) any applicable law, agreement, instrument, or restriction; or (iii) a judgment, order, or decree of any governmental authority having jurisdiction over Company or its property;

(7) Company's performance of its obligations under an Order will not be in violation of or cause a default under any applicable law, agreement, instrument, covenant, condition, restriction, judgment, order, or decree;

(8) Company has the right and authority to enter into these Terms and Conditions and to make all of the grants and assignments and to undertake the obligations required by these Terms and Conditions; and

(9) Company knows of no condition that would be likely to limit Company's ability to perform these Terms and Conditions.

Company hereby assigns to Meijer all assignable warranties, representations and indemnities granted to Company by manufacturers of the Pharmaceutical Goods (and any components thereof) shipped to Meijer hereunder and all remedies for breach of such warranties, representations and indemnities. To the extent Company is not permitted to assign any such warranties, representations and indemnities to Meijer, Company will enforce same on behalf of Meijer at Meijer's direction.

**d. Data.** If personal data of Meijer employees or customers, including personal health information, ("Data") is created or accessed by Company or is in any way connected to the fulfilling of an Order, Company represents and warrants:

(1) The handling, including the transfer itself, of any Data by Company to Meijer has been, and will continue to be, carried out in accordance with all applicable data protection and privacy laws and Meijer's standard protocol and practices;

(2) Company will treat all Data confidentially and handle all Meijer Data in accordance with all applicable data protection and privacy and security laws and applicable provisions of the Agreement;

(3) To deal promptly and properly with all reasonable inquiries from Meijer, a Meijer Data subject, or a competent supervisory authority relating to Company's handling of Meijer Data;

(4) Company will notify Meijer of any request for Meijer Data from any governmental agency and must obtain Meijer's consent prior to the release of Meijer Data to any governmental agency; and

(5) If credit card information is handled by Company, Company will comply with PCI Security Standards Council® standards for handling and processing credit card information;

(6) Prior to Protected Health Information or PHI (including E-PHI) being created, received, maintained, transmitted, used, accessed by or to Company, Company will sign Meijer's *Business Associate Agreement*, the terms and conditions of which are incorporated by reference in their entirety herein and binding upon Company.

The warranties contained in these Terms and Conditions or any document referenced herein are in addition to all other warranties, express, implied or statutory; will survive Meijer's payment, acceptance, inspection or failure to inspect the Goods; and will run to Meijer and its customers. Company cannot limit or disclaim these warranties. If supplying Resale Goods, Company will provide Meijer with adequate material for distribution to Meijer's customers regarding disclosure of warranty terms as required by all U.S. federal, state, and local laws, rules, and regulations. Meijer may avail itself of all remedies available at law or in equity for any breach of these warranties. At the request of Meijer,

Company will provide to Meijer reasonable evidence of Company's compliance with the above warranties. Company will be considered to have made these representations and warranties anew upon acceptance of each Order.

**5. INDEMNITY.** Company agrees to indemnify, defend, and hold harmless Meijer; its parent, subsidiary, and affiliated companies, and their respective officers, directors, shareholders, partners, employees, and agents ("**Related Parties**") from and against any and all claims, demands, actions, proceedings, lawsuits, fees, government-imposed fines or penalties, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable actual attorneys' fees, internal legal personnel and administrative costs, expert witness fees, costs associated with a recall – whether mandatory or voluntary – and all other costs) incurred by Meijer or any Related Party ("Losses"), including claims for bodily injury to, or sickness or death of, any person (including Company's employees or agents), or property damage or destruction (including loss of use and proprietary rights infringement) actually or allegedly arising out of (i) any breach of the Agreement; (ii) any breach of obligations under the FDCA, including FSMA; (iii) the infringement (directly, indirectly, contributorily, or by inducement), misappropriation or other violation, of any third party's patent, trademark, copyright, trade secret, or other proprietary rights involving the Goods or Services provided under the Agreement; (iv) the presence of Company's employees, agents, contractors, subcontractors, or equipment at a Meijer facility; (v) Company's violation of law; (vi) data breach; (vii) the negligent, willful or fraudulent act or omission of Company or any of Company's employees, agents, contractors, or subcontractors; (viii) the use, operation, placement, maintenance, repair or removal of any equipment owned by Company that is located on or about Meijer's (or its affiliates') premises; (ix) with respect to Pharmaceutical Goods, any defect or claim of defect in any Goods sold to Meijer, (x) any handling, shipment, delivery, stocking, consumption, or use of Goods sold or received or any Services; or (xi) any seizure, detention or destruction of any Goods, whether under the authority of any governmental authority, court order, or with the commercially reasonable approval of Meijer or any subsequent purchaser. These indemnity and defense obligations include claims of Company's employees, agents, contractors and subcontractors and claims alleging or involving Meijer's joint, concurrent, or comparative negligence. Company shall be responsible for incidental and consequential damages arising out of failure to deliver, or delay in delivery of goods, due to noncompliance with FSVP or any other violation of the FDCA. Company agrees to give Meijer the right to approve or select counsel for defending Meijer or the Related Parties against any and all claims, liability, and damages covered by this indemnity provision. The indemnification obligations under this section are not limited in any way by insurance limits or any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or anyone directly or indirectly employed by them under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**6. INSURANCE COVERAGE.**

**a. Required Coverages.** Company must keep in force, at Company's sole expense, insurance coverage covering claims arising out of Company's obligation under the Agreement, including the following insurance coverages ("Required Coverages"):

- (1) Commercial General Liability ("CGL"), including coverages for premises/operations, products/completed operations, independent contractors, property damage, personal/advertising injury, and contractual liability, in an amount not less than \$3,000,000.00US per occurrence (\$5,000,000.00US per occurrence for all own brand, control brand and manufacturing Goods), and \$5,000,000.00US in the aggregate. If Company is providing construction or site remediation Services, CGL coverage shall additionally include fire and explosion legal liability and explosion/collapse/underground hazard coverage. The CGL policy may not include any exclusions or endorsements that limit coverage for claims from incidents that are also covered by workers' compensation or employer's liability insurance. Meijer, Inc. and its subsidiaries must be named as additional insured's on an endorsement acceptable to Meijer that extends coverage to contractual liability and products liability. Meijer agrees that Company's CGL Policy may be maintained by a combination of Company's base policy in an amount no less than \$1,000,000.00US per occurrence and an umbrella or excess policy, provided that such umbrella or excess policy meets all the requirements of this Section.
- (2) If Company is domestically organized or incorporated, Automobile Liability coverage for all owned, hired, and non-owned vehicles with a combined single limit not less than \$1,000,000.00US.
- (3) If Company is domestically organized or incorporated, Workers' Compensation coverage (including an alternate employer endorsement) for Company's employees and contractors with statutory limits and Employer's Liability coverage in an amount not less than \$500,000.00US. If any state workers' compensation law requires an express waiver by Company for Meijer to obtain indemnity from Company under the indemnification provision contained in the Agreement, this provision will be considered such waiver.
- (4) Professional Liability Errors and Omissions with limits no less than \$5,000,000.00US per claim.
- (5) If Company will receive Meijer Data, Cyber Risk Insurance coverage with limits of no less than \$3,000,000.00US per occurrence.

- (6) If Company will perform environmental Services of any kind, Environmental Impairment/Pollution Liability coverage with limits not less than \$3,000,000.00US. A claims made policy is acceptable.

- (7) If Company will be providing intellectual property to Meijer or utilizing intellectual property on Meijer's behalf, Media Insurance, in an amount not less than \$5,000,000.00US per claim and annual aggregate, covering copyright and trademark infringement. Such insurance must be maintained in force at all times during the term of the Meijer's engagement of Company, and, if using a claims-made form, such insurance must be maintained for a period of 3 years following the term of the engagement.

**b. Policy Requirements.** Required Coverages must (1) be either an occurrence policy in effect through the expiration or termination of the Agreement or a claims-made policy to be maintained in force through and for three (3) years following the expiration or termination of the Agreement; (2) not contain a self-insurance retention; (3) not contain any exclusion for punitive damages where allowable by applicable law; (4) contain a specific provision that defense costs are supplemental and do not erode or exhaust the policy limits; (5) contain a specific provision waiving any and all rights of recovery, contribution, and subrogation against Related Parties and all of their respective insurers; (6) cover claims brought in the United States of America; (7) carry a commercially reasonable deductible or retention amount; (8) contain a provision that coverages evidenced will not be adversely modified or canceled without providing at least 10 days' prior written notice to Meijer; (9) afford primary coverage; and be underwritten by an insurance carrier with an A.M. Best® rating of "A-" or better. Company will be solely responsible for payment of any deductible or retention.

**c. Required Policy Certificates.** Company must, within ten (10) days following execution of the Agreement, and on each annual anniversary of the execution of the Agreement, provide evidence of all Required Coverages to Meijer's insurance consultant at [meijercerts@vanwykcorp.com](mailto:meijercerts@vanwykcorp.com). If Company fails to timely provide proof of insurance, Meijer will have the right (but not the obligation) to terminate the Agreement or to stop or delay any payments or Orders to Company until proof of insurance is received. Such termination, stop, or delay will not be grounds for a cause of action against Meijer. Meijer's failure to stop or delay any payment or Order, acceptance of an endorsement not compliant with this Section, or failure to identify non-complying coverage will not be construed as a waiver of Company's obligations under this Section. Promptly upon the request of Meijer, Company must provide full copies of all insurance policies and declarations that establish the Required Coverages.

**d. Effect on Indemnity Obligations.** Company's indemnity obligations and direct liability to Meijer specified in the Agreement will not be negated or reduced because Company has maintained the Required Insurance or because Company's insurance carrier denies insurance coverage for, or refusal to

defend, a claim for which Company is liable to Meijer under the Agreement.

**e. Company's Property.** Company agrees that Company's own equipment and personal property is at Company's own risk, wherever located. Company must insure Company's own equipment and other personal property. Company releases Meijer from any loss, theft, damage, or destruction to Company's equipment or other personal property Company brings onto facilities or locations of Meijer or Meijer's Affiliates in furtherance of furnishing Goods or Services.

**f. Waiver of Subrogation.** To the extent any claim and loss is covered by the Required Coverages, Company waives all rights against Meijer and Meijer's contractors, consultants, agents, and employees for damages, except for Company's right to the proceeds of the Required Coverage. Company must require that all of Company's contractors, consultants, agents, and employees give the same waiver in favor of Meijer.

**g. Increased and Additional Insurance Coverages.** Company acknowledges (i) that the insurance coverage requirements of this Section constitute Meijer's minimum requirements for insurance coverages required of Company and (ii) that a specific Good or Service may require increased or additional insurance coverages for the nature of the Goods or Services.

**7. CONFIDENTIALITY.** As used in this section, "Confidential Information" means all information in any form (written, verbal or graphic, including such information stored on videotape or computer media), whether or not marked "Confidential," including all product designs, product styles, product sourcing or product quantities; product plans, patterns or prints; computer software programs (both source and object code); computer hardware features and functionality; computer networks and systems; copyrights; trademarks; specifications; retail procedures; quality control data; trade and business secrets; financial and sales data; customer information including names, addresses, or other identifying information; personnel data; vendor relationships; business plans and projections; future new market areas; existing and contemplated investments; formulas; procedures; processes; contracts; correspondence; and similar or dissimilar information relating to a party's business that is labeled as confidential or that a reasonable person ought to know is confidential. The receiving party will not copy, publish, or disclose the Confidential Information and will hold it in strict confidence. The receiving party may disclose the Confidential Information only to those of its agents, representatives, and contractors having a need to know the Confidential Information and who have been advised of the receiving party's obligations herein. The receiving party will use the Confidential Information only for purposes directly related to the contemplated business transactions between the parties. Upon the disclosing party's request, the receiving party will promptly destroy all Confidential Information and deliver a sworn statement to the disclosing party describing the circumstances of the destruction. The restrictions

contained in this section do not apply to the receiving party's use or disclosure of information that: (i) the receiving party independently develops; (ii) the receiving party receives from a third party whose disclosure does not violate any confidentiality law or obligation; (iii) is or becomes generally available to the public or in the industry in which the either party operates by means other than the receiving party's unauthorized disclosure; (iv) at the time of disclosure the receiving party knew to be free of any obligation to keep it confidential, as evidenced by documentation in the receiving party's possession; (v) the disclosing party agrees in writing is free of such restrictions; or (vi) the receiving party is compelled to disclose by law, but the receiving party will give reasonable notice to the disclosing party with a reasonable opportunity to object before disclosing the Confidential Information. No license under any trademark, patent, copyright, or any other intellectual property right is either granted or implied by the disclosing party's disclosure of Confidential Information. Nor does disclosing Confidential Information constitute the disclosing party's representation, warranty, assurance, guarantee, or inducement concerning the non-infringement of trademarks, patents, copyrights, mask-work protection rights, any other intellectual property rights, or other rights of third persons. Confidential Information may be now protected or become protected by U.S. trademark, copyright, or patent laws. The receiving party will not (i) infringe or otherwise violate any valid trademarks, copyrights, or patents protecting the Confidential Information; or (ii) remove or otherwise alter any trademarks, service marks, serial numbers, logos, copyrights, proprietary notices, or other indicia affixed on or attached to any Confidential Information. The term of confidentiality will commence on the date that the disclosing party first discloses Confidential Information to the receiving party and will continue for three years after the last time that the disclosing party disclosed any Confidential Information to the receiving party. The receiving party's obligation to protect the disclosing party's Confidential Information consisting of trade secrets will survive the termination of this agreement for any reason and will continue according to trade-secret law. If the receiving party is acquired by, merges with, or acquires a third party during the term of this agreement, this agreement shall be binding on a party's successors and permitted assigns. The receiving party represents to the disclosing party that the receiving party is under no known obligation that would restrict it from complying with these confidentiality requirements.

## **8. GOVERNING LAW; DISPUTE RESOLUTION.**

**a. Governing Law.** Any Order, these Terms and Conditions, and all other contract documents referred to in those agreements, and all matters arising directly or indirectly from those agreements, including tort claims, will be construed only under Michigan law, excluding its choice of law provisions. The UN Convention on the International Sale of Goods will not apply to any transaction between the parties.

**b. Arbitration.** Any controversy or claim arising relating to any Order will be determined only by arbitration administered by the American Arbitration Association under its

Commercial Arbitration Rules. The dispute will be heard and determined by one arbitrator if the claim is less than US\$1 million (exclusive of interest) and three arbitrators if the claim is US\$1 million or more (exclusive of interest), at least one of whom will be an attorney. If there are three arbitrators, the parties agree that one arbitrator will be appointed by each of the parties, and the third arbitrator will be appointed by agreement of the party-appointed arbitrators. No arbitrator has the authority to: (i) award relief in excess of what the Agreement provides; (ii) award punitive damages or any other damages not measured by the prevailing party's actual damages; or (iii) order consolidation or class arbitration. Further, the arbitrators must give effect to any limitations on either party's liability stated in the Agreement or in any applicable tariff, law, or regulation. The arbitration will be in Kent County, Michigan. The arbitration hearing will be held within 120 days of the date of the initial or preliminary hearing or conference. Any judgment on the award rendered by the arbitrators will be final and may be entered in any court having proper jurisdiction. The existence or results of any arbitration and any evidence presented during the course of the arbitration is considered Confidential Information.

**c. Exceptions to Arbitration.** The arbitration provision above will not apply in the following situations:

**(1) Third Party Claims.** If a third party asserts a claim against either party in a court of law, the party over whom the claim is asserted by the third party may elect to submit any related dispute between the parties to the litigation by joining such dispute to the third party claim litigation rather than arbitrating such claim as required by this section.

**(2) Defend Trade Secrets Act.** If Meijer alleges Company, or its employee or agent, has misappropriated a Meijer trade secret, Meijer shall have the right to pursue all or any of its claims in Federal Court as permitted under the Defend Trade Secrets Act.

This section does not prevent either party from seeking injunctive relief, including specific performance, against the other party in any court of competent jurisdiction, before the commencement of arbitration or the joining of a dispute with a third-party claim.

**9. CONTENT LICENSE.** Resale Goods and Pharmaceutical Goods descriptions, knowledge sheets, feature/benefit information, photography, images, graphics, video animation or interactive media, graphics, audio, website addresses, trademarks, logos and other content or intellectual property furnished by Company to Meijer or its agent is considered "**Resale Goods Content.**" Company grants to Meijer a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use the Resale Goods Content (i) in any advertisement or display of the Resale or Pharmaceutical Goods on Meijer-owned websites and in any other marketing or advertising media that Meijer or its agent chooses in the exercise of its sole discretion to promote Resale or Pharmaceutical Goods sales, and (ii) with respect to own-brand or control-brand Resale Goods, on the packaging and labeling of a Goods.

**10. PROPRIETARY AND INTELLECTUAL PROPERTY RIGHTS; TRADE SECRETS.** Unless otherwise agreed in writing between the parties, all proprietary and intellectual property rights, title and interest in labels, plates, artwork, drawings, vignettes, specifications, patterns, recipes, formulae, packaging, designs, mask works, ideas, concepts, trade secrets, technical data, inventions (whether or not patented) works of authorship, processes, materials, specifications, reports, surveys, know-how, information relating to research and development, engineering, marketing, finances, financial models, pricing, customer lists, investors, employees, business and contractual relationships, business plans and strategies, or any other like item, if created by Meijer, created specially by Company for Meijer, or created jointly with Meijer, will vest absolutely, exclusively, and unconditionally with Meijer upon their creation without the need for any further act by Meijer. Company hereby assigns all such intellectual property rights it has in such work product to Meijer. Company agrees, at its expense, to perform all acts considered necessary by Meijer in obtaining and enforcing the full benefits, enjoyment, rights, and title throughout the world in the intellectual property rights assigned to Meijer under these Terms and Conditions. Company is permitted to retain copies of work product for archive purposes only. Company shall be liable for any misappropriation of a Meijer trade secret. However, Company shall have immunity from federal, state and local civil or criminal liability in such cases where a disclosure is made in confidence to a government official or an attorney solely for the purpose of reporting or investigating illegal activity or for use in a court proceeding filed under seal and disclosed only pursuant to court order.

**11. TRANSITION ASSISTANCE.** If these Terms and Conditions are terminated or an Order cancelled for any reason, Company will provide all reasonable transition assistance requested by Meijer, including the continued sourcing of the Goods for a period of time up to 90 days after the termination or cancellation. This transition assistance will be governed by these Terms and Conditions, except for those provisions that do not reasonably apply to transition assistance. Meijer will pay the Company for any resources used in performing the transition assistance at Company's documented cost.

**12. OWNERSHIP OF FIXTURES AND GOODS SAMPLES.** If Company provides Meijer with any materials, equipment, or fixtures to assist in any way with the resale of any Goods purchased from Company, then unless otherwise agreed in writing, Meijer will be considered the sole owner of such materials, equipment or fixtures, without charge, free and clear of any interest, of Company. This provision will apply regardless of whether the materials, equipment, or fixtures are shown on an Order. Company must pay for all samples and freight for samples that are part of the usual means of doing business. This includes samples for planogram, specification approval, production samples, ad samples and any other samples that need to be modified or corrected. Planogram samples must be sent to the Meijer Planogram Room freight prepaid.



**13. SURVIVAL.** The following will survive termination of these Terms and Conditions: (i) all obligations arising before termination and (ii) all provisions allocating responsibility or liability between Meijer and Company.

**14. ASSIGNMENT.** Meijer has the right to assign all or part of any Order to a parent, subsidiary, or affiliated entity with notice to Company. All other assignments by either party require the prior written consent of the other party. Any assignment contrary to this section is void.

**15. NOTICES.** Notices required to be sent to Company by these Terms and Conditions (except for routine business communications) must be in writing and may be sent to Company through email to the most current email address Company has provided to Meijer through the VendorNet or other online portal established by Meijer or by certified mail or by a national overnight courier providing evidence of delivery (such as Federal Express, UPS, DHL, or Airborne) to the most current address Company has provided to Meijer through the VendorNet or other online portal established by Meijer. Notices required to be sent to Meijer by these Terms and Conditions (except for routine business communications) will be sent by certified mail or by a national overnight courier providing evidence of delivery (such as Federal Express, UPS, DHL, or Airborne) to (a) in the case of Pharmaceutical Goods, 2350 Three Mile Road, Grand Rapids, Michigan 49544 to the attention of Vice President – Pharmacy and (b) in the case of all other Goods and Services, 2350 Three Mile Road, Grand Rapids, Michigan 49544 to the attention of Vendor Management with a copy emailed to Meijer’s Senior Vice President and General Counsel at [contractreview@meijer.com](mailto:contractreview@meijer.com). All notices will be considered to have been given on the day of receipt (or refusal to accept delivery).

**16. SEVERABILITY.** The invalidity or unenforceability of any term or provision of the Agreement will not affect or impair the validity of any other provision or term.

**17. NO PARTNERSHIP.** The relationship between Meijer and Company is that of an independent contractor. Meijer does not, in any way or for any purpose, become a partner joint venture, joint employer, fiduciary, or a member of a joint enterprise with Company. Company has no authority to bind or commit Meijer to any obligation with any third party.

**18. PUBLICITY.** Except for any announcement intended solely for internal distribution or any disclosure required by legal, accounting, or regulatory requirements beyond either party’s reasonable control, all media releases, public announcements, or public disclosures (including promotional or marketing material) by a party or a party’s employees or agents concerning the Agreement or its subject matter, or including the name, trade name, trademark, or symbol of the other party, are prohibited without the other party’s prior written consent.

**19. WAIVER.** A party’s failure to insist upon or confirm the other party’s performance of any provision of these Terms and

Conditions will not be considered a waiver of such provision. No act, omission, or oral statement constitutes a waiver unless confirmed in writing by the waiving party. No such waiver by either party is a waiver of any subsequent default unless specifically so stated in writing.

**20. LIMITATION OF ACTIONS.** Any legal action by Company against Meijer for nonpayment must be commenced within one year after Goods are shipped or Services are performed.

**21. TIME IS OF THE ESSENCE.** Time is of the essence in Company’s performance of its obligations under these Terms and Conditions.

**22. FORCE MAJEURE.** Meijer reserves the right to reject any shipment of any Goods or the furnishing of Services and will have no obligation to pay for the Goods or Services if Meijer’s business or operations are discontinued in whole or in part by reason of fire, flood, earthquake, war, civil disorder, labor unrest, or any other act or event beyond Meijer’s reasonable control.

**23. RIGHT TO AUDIT.** Meijer has the right to audit Company’s records to confirm compliance with the terms of these Terms and Conditions. Meijer or its designee may perform such audit at any time during regular business hours upon seven-days’ prior written notice.

**24. AMENDMENT.** Meijer may amend these Terms and Conditions (including the documents incorporated by reference herein) from time to time by posting an amended version at <https://www.meijervendornet.com> and sending Company notice. The amendment will be considered accepted and become effective 30 days after notice is given unless Company provides notice to Meijer. Company’s continued selling of Goods to Meijer following the effective date of an amendment will confirm Company’s consent to the amendment.

**25. SECURITY PROCEDURES.** For all imported Goods, Company will comply with Meijer’s C-TPAT current procedures and the terms of the U.S. Customs Service C-TPAT security recommendations, which can be found at: <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism>.

**26. ANTITRUST ASSIGNMENT.** Company hereby conveys, assigns and transfers to Meijer one hundred percent (100%) of all right, title and interest in and to all causes of action and any proceeds resulting from such causes of action which Company has or may have against any third party under the antitrust laws of the United States or the common or statutory law of any State arising out of or relating to Company’s purchase of Goods which were subsequently resold to Meijer at any time in the past, as well as during the term of these Terms and Conditions. This assignment of claims may be further evidenced by an agreement between Company and Meijer upon Meijer’s request, which Meijer agrees to execute to further evidence or effectuate this assignment. Meijer and Company agree that each party has

the full right and responsibility to prosecute its portion of any claim independent of the other party and that each has no obligation to coordinate with or notify the other of its actions. Nevertheless, the parties agree to cooperate with each other as reasonably necessary to assist the other with its portion of any claim. Each party will bear its own expenses, including without limitation the cost of responding to discovery, copying documents, data retrieval, and reasonable attorneys' fees that it incurs in connection with the prosecution of: i) its portion of any claim, or ii) its assistance with the prosecution of the other party's claim. Upon Meijer's request, Company agrees to provide all necessary records related to the claims assigned herein and to make witnesses available to be interviewed and testify.

**27. DISCOUNTS FOR PHARMACEUTICALS.** With respect to Pharmaceutical Goods, Meijer and Company agree that any product rebate or discount is intended to be a "discount or other reduction in price" as contemplated by U.S.C. § 1320a-7b(b)(3)(A) and as set forth in the "discount" Safe Harbor provided by 42 CFR §1001.952(h), regardless of how titled. All product discounts are arrived at as a result of arm's length transactions. Meijer agrees that to the extent it may be required to do so under applicable state or federal law, it will properly disclose and appropriately reflect the discount amounts in any costs claimed or charges made to Medicare, Medicaid, or other federal or state health insurance programs that cover patients of Meijer<sup>TM</sup> pharmacies and require disclosure, all as set forth in 42 C.F.R. §1001.952(h). Company will fully and accurately report these discounts on the invoice, coupon or statement submitted to Meijer. Company agrees that Meijer is not an entity that reports

costs on a cost report required by the U.S. Department of Health and Human Services ("DHHS") or a state agency and is not an individual or entity described in 42 CFR §1001.952(h)(2)(i) or (h)(2)(ii). Company has informed Meijer that it may be obligated to report the discounts and provide information upon request to the DHHS Secretary or state agency as appropriate. Company further agrees that it will refrain from doing anything that would impede Meijer's obligations under 42 CFR §1001.952. Meijer and Company will cooperate and assist each other in providing any necessary documentation related to the discounts. And neither party will inhibit the other party's compliance with applicable laws and regulations by failing to timely provide the necessary documentation.

**28. REMEDIES CUMULATIVE.** The remedies provided in these Terms and Conditions are cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by the party of any other rights or the seeking of any other remedies.

**29. ELECTRONIC SIGNATURES.** These Terms and Conditions may be signed in counterparts, each of which will constitute an original, and together will constitute one and the same document. Any signature or counterpart of these Terms and Conditions that is delivered by a party by facsimile transmission, email or electronic portable document format (PDF) will be considered an original signature of the party and binding upon the party for all purposes.

(end)