Agreement Number 000000

State of Oregon
SUPPLEMENTAL REBATE AGREEMENT

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This Agreement is between the State of Oregon, acting by and through the Oregon Health Authority (OHA) and

Manufacturer Name
d.b.a. Facility or Assumed Name
Address
City, State Zip
Telephone Number:
Facsimile Number:
E-mail Address:

hereinafter referred to as "Manufacturer".

Work to be performed under this Agreement relates principally to the

Oregon Health Authority
500 Summer St. NE, E-35
Salem, OR 97301
Contact Person: Kyle Hamilton or delegate
Telephone Number: 503-801-5906
Facsimile Number: 503-947-1119
E-mail Address: kyle.hamilton@dhsoha.state.or.us

RECITALS

WHEREAS, OHA has the authority to enter into agreements with pharmaceutical manufacturers to collect supplemental rebates for the benefit of the State'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 OHA based on the actual dispensing of Manufacturer's Covered Product(s) under the State of Oregon's 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. Effective Date and Duration.

A. **Effective Date.** This Agreement shall be effective on **January 1, 2023**, when executed by every party and, when required, approved by the Department of Justice, subject to any necessary federal approval and State Plan Amendment. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on **December 31, 2023**.

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 OHA 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 OHA, 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 and Amendment.** This Agreement shall be binding only upon signature by both parties. This Agreement (including Attachments), or any provision, may be altered, amended, or waived only by a written amendment executed by both parties as authorized by CMS.

E. In as much as the State Supplemental Rebates required by this Agreement are for utilization by Oregon Medicaid beneficiaries, it is agreed that the State Supplemental Rebate does not establish a new Best Price for the purposes of the participating Manufacturer's CMS agreement.

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. **"Agreement"** means this Supplemental Rebate Agreement, including all documents attached or incorporated by reference.

B. **"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.

C. **"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.

D. **"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)).

E. "**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).

F. "**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).

G. **"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.

H. "**Day**" shall mean calendar day.

I. "**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.

J. "**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 WAC as mutually agreed by both parties.

K. **"Medicaid Recipient"** shall mean any person enrolled in the State of Oregon's Medicaid Program and eligible to receive prescription drug benefits.

L. "**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 Attachment A irrespective of when the Covered Product was dispensed. The Medicaid Utilization Information to be supplied to Manufacturer 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; 5) Total amount paid during the Quarter by NDC number; and 6) Date of Service. This shall include the NDCs of all physician-administered drugs (J-codes).

M. **"Net Price"** means the amount a drug cost OHA and is calculated using the following formula: Estimated Acquisition Cost (-) CMS Basic Rebate (-) CMS CPI Rebate (-) State Supplemental Rebate.

N. **"OAR"** means the Oregon Administrative Rules. All references in this Agreement to OAR chapters or sections shall include any successor, amended, or replacement regulation.

O. **"Pharmacy"** shall mean a facility or person licensed to dispense legend drugs, and enrolled as a State of Oregon Medicaid provider.

P. "**Practitioner Managed Prescription Drug Plan (PMPDP)"** shall mean the list of preferred drugs in specified classes identified by the Oregon Pharmacy & Therapeutics Committee and adopted into rule by OHA. See OAR 410-121-0030.

Q. "**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.

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 OHA 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 mean the Manufacturer's list price for a drug or biological to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, for the last day of the Quarter as published by First DataBank, MediSpan or Red Book or its successor publication, if any.

3. OHA Obligations

A. **Plan Drug List.** To be eligible for the Supplemental Rebates specified in Attachment A:

(1) OHA shall place, and for the duration of the Agreement maintain, Covered Product(s) on the PMPDP Plan Drug List, it being agreed that utilization of Covered Product(s), as set forth in Attachment A, 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) OHA shall maintain this Agreement in accordance with all CMS requirements and the State Plan Amendment approval process.

(3) If prior authorization is required 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.** OHA 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.** OHA will maintain Medicaid Utilization Information applicable to the Covered Product(s) for use in calculating the State Supplemental Rebate. OHA 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.

E. **Invoicing.** OHA 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 D and E of this section 3. OHA 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.

Any amended invoice shall be submitted by OHA or its contractor within twelve months after the end of the calendar Quarter in which Covered Product(s) was paid.

(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. OHA 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 OHA's approved state plan.

G. OHA 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 OHA 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 OHA 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 OHA or its contractor pursuant to paragraph 3.E. Manufacturer's obligation to pay OHA 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 OHA the State Supplemental Rebate to which OHA is entitled in accordance with the terms of this Agreement, within thirty days of Manufacturer's receipt of OHA's rebate invoice pursuant to paragraph 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 OHA invoice and interest will continue to accrue until the postmark date of the Manufacturer's payment.

E. **Disputes.** Any disagreement about the rebate invoice or any failure to make timely payment in full of the amount due shall constitute a dispute. For purposes of this paragraph 4.E., 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, OHA will refund any such overpayment to Manufacturer within sixty days of the parties' acknowledgement of the overpayment. Manufacturer will remit any underpayment to OHA 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 OHA prior to such actions.

H. Manufacturer shall refrain from doing anything that would impede OHA's ability to meet its obligations under Section 3 of this Agreement.

5. Terms and Conditions

A. **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. Any claim, action, suit or proceeding collectively, "Claim" between OHA or any other agency or department of the State of Oregon, or both, and Manufacturer that arises from or relates to this Agreement shall be brought and conducted solely and exclusively

within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this paragraph be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. MANUFACTURER, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

B. **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.

C. **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. All provisions of this Agreement remain intact for Covered Product(s) not affected by the changes in law described in this paragraph.

D. **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.

E. **Representations and Warranties.** OHA and Manufacturer each represent and warrant to the other that the person signing below has all requisite legal power and authority to execute this Agreement on behalf of that party and that party shall thereby be bound.

F. **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 the State of Oregon 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.

G. **Default; Remedies; Termination**

(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 termination of this Agreement.

(2) **Without Cause.** Either party may terminate this Agreement without cause as of the end of any 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.

H. **CONFIDENTIALITY AND RECORD KEEPING**

(1) **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.

(2) **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 OHA, 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.H.(2), Manufacturer shall cooperate with OHA as necessary to enable OHA to respond to a state or federal audit of OHA where the subject of such audit pertains to this Agreement or where this Agreement is the subject of litigation involving OHA. 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.

(3) **Medicaid Recipient Health Information.** OHA, 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 OHA, as that term is used in the HIPAA Privacy Rules, 45 CFR Parts 160 and 164.

(4) **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. OHA will treat trade secret information as confidential consistent with the Uniform Trade Secrets Act, ORS 646.461 to 646.475.

(5) **Agents.** If the services of a third party are used by either party to administer any portion of this Agreement, paragraphs 5.H.(1) through 5.H.(4) of this Agreement shall apply to the third party.

(6) **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.

I. **Force Majeure.** No party is responsible for delay or default caused by an event beyond its reasonable control. OHA may terminate this Agreement upon written notice after reasonably determining the delay or default reasonably prevents performance of this Agreement.

J. **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.

K. **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 waiver 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.

L. **Integration.** This Agreement contains the entire agreement and understanding 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 agreement between the parties, 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.

M. **Notices.** Any notice required or permitted to be given by either party to the other shall be given in writing by personal delivery, facsimile, or postage prepaid first class mail or express delivery, addressed to the other party at the address set forth below. Notwithstanding the foregoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party.

Oregon Health Authority (OHA)

Office of Contracts & Procurement
635 Capitol St. NE, Suite 350
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

Oregon Health Authority
500 Summer St. NE, E-35
Salem, Oregon, 97301
Contact Person: Kyle Hamilton
Telephone: 503-801-5906
Facsimile: 503-947-5221
E-mail Address: kyle.hamilton@dhsoha.state.or.us

Manufacturer: Name
Address
Address
Telephone:
Facsimile:
Contact Person:
E-mail Address:

N. **CMS Approval Contingency.** The effectiveness of this Agreement shall be contingent on receipt of CMS approval of OHA's State Plan Amendment for the Supplemental Rebate Program.

Signatures

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

Manufacturer Name
By:

Authorized Signature	Title	Date

State of Oregon, acting by and through the Oregon Health Authority
By:

Authorized Signature	Title	Date

Approved for Legal Sufficiency

Jeff Wahl, Sr. AAG, approved 12/6/2021 via email dated 12/7/2021

Assistant Attorney General	Date

Reviewed by OHA Contract Specialist

Signature	Name (printed)	Date

ATTACHMENT A [alternate version 1 - CCO]
Rebate Formula & Covered Products

The Supplemental Rebate is the amount paid on a calendar Quarter basis by Manufacturer to the OHA for utilization by the Oregon Medicaid program pursuant to this Agreement. Utilization is based on fee-for-service claims paid by OHA during a calendar Quarter and on data supplied by a Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO) for the PHP or CCO's reimbursement for, or utilization of, a Covered Product. Claims shall be based upon the Quarter the Covered Product was paid or utilized by either OHA, PHP or CCO and may not necessarily be the same Quarter in which the Covered Product was actually dispensed to a Medicaid client. For purposes of this Attachment, "Managed Care Organization" (MCO) means a contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO). "Coordinated Care Organization" means a corporation, governmental agency, public corporation or other legal entity that is certified as meeting the criteria adopted by the Oregon Healthy Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members. Inclusion of a Covered Product on an Oregon Medicaid PHP or CCO's formulary is not required for payment of a Supplemental Rebate for a Covered Product reimbursed or utilized by a PHP or CCO.

The total Supplemental Rebate Amount Per Unit shall be determined by Manufacturer utilizing either of the two calculation options below or as mutually agreed upon by the Manufacturer and OHA based upon the CMS approved terms and conditions within the Supplemental Rebate Agreement. The Supplemental Rebate Amount to be paid for each drug is set forth in the table below. The Supplemental Rebate Amount per Unit shall remain in effect for a full calendar year.

Option 1: Supplemental Rebate Amount Per Unit (=) a negotiated Percentage of WAC.

Option 2: Supplemental Rebate Amount Per Unit (=) WAC (-) CMS Rebate (-) Guaranteed Net Price.

The Covered Product(s) to which this Supplemental Rebate Agreement shall apply are the following:

National Drug Code	Drug Description	Rebate Option X (1 or 2)

ATTACHMENT A [alternate version 2 - FFS]
Rebate Formula & Covered Products

The Supplemental Rebate is the amount paid on a calendar Quarter basis by Manufacturer to OHA for utilization by the Oregon Medicaid program pursuant to this Agreement. Utilization is based on fee-for-service claims paid by OHA during a calendar Quarter. Claims shall be based upon the Quarter the Covered Product was paid or utilized by OHA and may not necessarily be the same Quarter in which the Covered Product was actually dispensed to a Medicaid client.

The total Supplemental Rebate Amount Per Unit shall be determined by Manufacturer utilizing either of the two calculation options below or as mutually agreed upon by the Manufacturer and OHA based upon the CMS approved terms and conditions within the Supplemental Rebate Agreement. The Supplemental Rebate Amount to be paid for each drug is set forth in the table below. The Supplemental Rebate Amount per Unit shall remain in effect for a full calendar year.

Option 1: Supplemental Rebate Amount Per Unit (=) a negotiated Percentage of WAC.

Option 2: Supplemental Rebate Amount Per Unit (=) WAC (-) CMS Rebate (-) Guaranteed Net Price.

The Covered Product(s) to which this Supplemental Rebate Agreement shall apply are the following:

National Drug Code	Drug Description	Rebate Option X (1 or 2)

Sovereign States Drug Consortium
Addendum to Member States' Supplemental Rebate Agreements

WHEREAS, the states of Delaware, Iowa, Maine, Mississippi, North Dakota, Ohio, Oregon, Utah, Vermont, West Virginia, and Wyoming are members in the Sovereign State Drug Consortium (all together hereinafter the "Member States"); and

WHEREAS, through the Sovereign States Drug Consortium, the Member States have used a single vendor to negotiate to procure drug rebate bids; and

WHEREAS, those negotiations that have resulted in agreements by one or more states with **MANUFACTURE** ("Manufacturer"); and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge by signing below, the parties agree as follows:

TERMS AND CONDITIONS

1. Period of Addendum: This Addendum shall be effective for the period specified in each Member State Supplemental Rebate Agreement (SRA) when this Addendum is finally executed by the parties.

2. CMS Authorization. Each Member State uses its individual Centers for Medicare & Medicaid Services (CMS) authorized State SRA to enter into an agreement with a drug manufacturer providing drugs to the Medicaid program.

3. Addendum Submission. The Member States shall submit a template of this Addendum to CMS as part of their SRA submission for authorization.

4. Changes or Modifications. Any changes or modifications to the SRA or this Addendum must be authorized by the Centers for Medicare and Medicaid Services. Solely adding new Member States to this Addendum does not constitute a change or modification to the Member State SRA or this Addendum.

5. Integration. Except as expressly set forth herein, all other terms and conditions of each Member State's SRA shall remain in full force and effect.

As evidence of their agreement to the foregoing terms and conditions, the parties have signed below:

Manufacturer: _____
By: _____ Date: _____
Name: _____
Title: _____

STATE, RESPONSIBLE AGENCY/DEPARTMENT/OFFICE/BUREAU:
_____

By: _____ Date: _____
Name: _____
Title: _____