

**SERIAL 06068 IGA PHARMACEUTICALS, C-90-06-644-1**

**DATE OF LAST REVISION: April 02, 2009**

**CONTRACT END DATE: April 30, 2009**

**CONTRACT PERIOD BEGINNING JUNE 14, 2006  
ENDING ~~MARCH 31~~, APRIL 30, 2009**

**TO: All Departments**

**FROM: Department of Materials Management**

**SUBJECT: Contract for PHARMACEUTICALS, C-90-06-644-1**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the Maricopa Integrated Health System Contract C-90-06-644-1. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at:  
[http://www.maricopa.gov/materials/Awarded\\_Contracts/search.asp](http://www.maricopa.gov/materials/Awarded_Contracts/search.asp).

**Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use NIGP CODE 2690001.**

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).

***Cardinal Health\****

***and***

***Maricopa County Special Healthcare  
District***

***DBA Maricopa Integrated Health  
System***

***Prime Vendor Agreement***

## PRIME VENDOR AGREEMENT

This Prime Vendor Agreement (the "Agreement") is made April 1, 2006, between Maricopa County Special Healthcare District DBA Maricopa Integrated Health System ("Buyer") and Cardinal Health\* ("Cardinal Health"), who hereby agree as follows:

**1. Designation as Primary Wholesaler**

During the term of this Agreement, Buyer will designate Cardinal Health as the primary wholesale pharmaceutical supplier to all pharmacies, hospitals, nursing homes, clinics and/or other facilities whether now or hereafter owned, managed or operated by Buyer (collectively, the "Facilities" and individually, a "Facility"). A current list of the Facilities is attached hereto as **Exhibit A**. Additional facilities may be made parties to this Agreement from time to time subject to the prior approval of Buyer and Cardinal Health.

**2. Sale of Merchandise**

Buyer will purchase from Cardinal Health during the term of this Agreement its Primary Requirements of pharmaceuticals ("**Rx Products**") and, may, at its option, purchase certain other inventory carried by Cardinal Health ("**Non-Rx Products**") and, together with Rx Products, collectively the "**Merchandise**") for delivery directly to the Facilities. The term "**Primary Requirements**" means that Buyer will purchase for each Facility all of its requirements of Rx Products from Cardinal Health. Cardinal Health reserves the right at all times to determine what Merchandise it will carry based upon product quality, manufacturer indemnity, insurance, and other policies, and other standards determined by it, and may delete from its available inventory items of Merchandise with limited or no movement activity.

**3. Purchase Price**

Buyer will pay a purchase price for all Merchandise purchased under this Agreement in an amount equal to Cardinal Health's Cost plus the percentage specified in the pricing matrix attached hereto as **Exhibit B** (the "**Pricing Matrix**"). For purposes of this Agreement: (a) the term "**Cardinal Health's Cost**" will mean the manufacturer's published wholesale acquisition cost for Merchandise at the date of Cardinal Health's invoice to the Facility, adjusted to reflect any then-applicable contract pricing, but without reduction for cash discounts; and (b) the term "**Qualified Purchases**" will mean all purchases made and paid for by Buyer and/or the Facilities under the terms of this Agreement, net of all returns, credits, rebates, late charges, or other similar items, on an annual, quarterly, or monthly basis, as applicable.

The purchase price for selected Merchandise, including but not limited to multisource pharmaceuticals, private label products, certain antibiotics, medical/surgical

supplies, home health care/durable medical equipment, drop-shipped Merchandise, Merchandise acquired from vendors not offering customary cash discount or other terms, and other slow moving, specialty, and non-pharmaceutical Merchandise will not be based upon the Cardinal Health's Cost-plus pricing described above but will instead be net-billed in accordance with the terms and conditions established by Cardinal Health (including applicable mark-up) for such Merchandise. Merchandise described in this paragraph is sometimes referred to as "**Specially Priced Merchandise.**" Buyer may, but will have no obligation to, purchase any specified volume or percentage of its requirements for Specially Priced Merchandise.

The pricing specified in the Pricing Matrix does not reflect administrative fees for membership in any group purchasing organization (a "**GPO**"). If any Facility affiliates with a GPO, the appropriate administrative fee will be added to the percentages specified in the Pricing Matrix.

All orders must be electronically transmitted via cardinal.com or other electronic order entry system approved by Cardinal Health to qualify for the pricing specified in the Pricing Matrix. Non-electronically transmitted orders are subject to Cardinal Health's Cost plus 10% pricing (excluding Schedule II and emergency orders).

#### **4. Payment Terms**

(a) *Generally.* The payment terms initially applicable to Buyer will be jointly determined by Cardinal Health and Buyer based on Buyer's payment preferences (among the selections offered in this section and the Pricing Matrix), the historical purchasing and weighted average payment data for Buyer ("**Matrix Slotting Data**") and credit considerations deemed relevant by Cardinal Health. Buyer will deliver to Cardinal Health the Matrix Slotting Data not less than 30 days prior to its initial purchases of Merchandise under this Agreement. Following the determination of Buyer's initial payment terms, all payments for the Merchandise will be due in accordance with those terms unless and until otherwise agreed by Buyer and Cardinal Health. Buyer may from time to time (but not more often than once per calendar quarter) request that its payment terms be changed as to future Merchandise purchases (among those choices specified in this section and the Pricing Matrix), subject to Cardinal Health's prior written consent. In such event, Buyer acknowledges and agrees that Buyer's Cost of Goods may be adjusted by Cardinal Health to reflect Buyer's new payment terms and credit considerations deemed relevant to Cardinal Health.

(b) *Optional Extended Payment Terms.* Subject to Subsection (a), Buyer may elect to cause Cardinal Health to receive payment on a weekly, semi-monthly or monthly basis.

(i) *Weekly.* If Buyer selects a weekly payment option, Buyer will cause Cardinal Health to receive payment in full by the Friday of each week of the amount

due for all Merchandise delivered and services provided during the immediately preceding week (i.e., Monday through Friday).

(ii) *Semi-Monthly.* If Buyer selects a semi-monthly payment option, Buyer will cause Cardinal Health to receive payment in full: (1) by not later than the twenty-fifth (25<sup>th</sup>) day of each calendar month of the amount due for all Merchandise delivered and services provided during the first (1<sup>st</sup>) fifteen (15) days of such calendar month, and (2) by not later than the tenth (10<sup>th</sup>) day of each calendar month, of the amount due for all Merchandise delivered and services provided during the period beginning on the sixteenth (16<sup>th</sup>) day of the preceding calendar month and ending on the last day of such preceding calendar month.

(iii) *Monthly.* If Buyer selects a monthly payment option, Buyer will cause Cardinal Health to receive payment in full by the tenth (10<sup>th</sup>) day of each calendar month, of the amount due for all Merchandise delivered and services provided during the immediately preceding calendar month.

(c) *Prepayment Terms.* If Buyer is utilizing Prepayment Terms, in addition to the requirements set forth under “Extended Payment Terms” above, Buyer will, at least five (5) business days prior to the effective date of this Agreement, make an advance payment to Cardinal Health. The advance payment will be held by Cardinal Health as a deposit (the “**Deposit**”), and Cardinal Health shall have a security interest in the Deposit to secure payment of all of Buyer’s obligations, now existing, and arising in the future, under this Agreement. The Deposit will be in an amount equal to the good faith estimate, as mutually agreed by Buyer and Cardinal Health, of the anticipated dollar volume of Merchandise to be purchased by Buyer for the selected payment cycle (i.e., weekly, semi-monthly, or monthly).

At the end of each calendar quarter, beginning with the first full calendar quarter after Cardinal Health receives the Deposit, Cardinal Health will produce a statement which compares the Deposit with Buyer’s average dollar volume of Merchandise purchased from Cardinal Health for each payment cycle during that calendar quarter (“**Average Volume**”). If the Average Volume exceeds the Deposit, Cardinal Health will send a copy of the statement to Buyer requesting payment of the difference. Buyer will, within ten (10) days of the date of such statement, pay the difference to Cardinal Health and the difference will be added to the Deposit upon receipt by Cardinal Health. If the Average Volume is less than the Deposit, Cardinal Health will send a copy of the statement to Buyer with payment of the difference in the form of check or credit memo as mutually determined by Buyer and Cardinal Health.

(d) *Cost of Goods Adjustments.* At the end of each calendar quarter, Cardinal Health will evaluate Buyer’s payment history based on actual weighted average payment days and average Qualified Monthly Purchases. Prospective adjustments to the then-applicable Cost of Goods will be made as appropriate. No retroactive adjustment will be applied with respect to purchases by Buyer, absent bad faith on the part of Buyer.

(e) *Service Charges.* All payments for Merchandise delivered and services provided by Cardinal Health will be made to the applicable servicing division specified in Cardinal Health's invoice (or as otherwise specified by Cardinal Health) by electronic funds transfer or other method acceptable to Cardinal Health so as to provide Cardinal Health with good funds by the due date. Deductions for Merchandise returns or shipping discrepancies (quantity and price) may not be taken until a valid credit memo is issued by Cardinal. Buyer will pay a service charge calculated at the rate of 1.5% per month (or the maximum rate allowed by law, if such rate is less than 1.5% per month) on any amount not paid by Buyer to Cardinal Health when due under the terms of this Agreement from the first day of delinquency until such amount is paid in full, along with reasonable attorney fees associated with any such delinquency. Failure or delay by Cardinal Health to bill Buyer for any such service charge will not waive Cardinal Health's right to receive the same. Cardinal Health retains the right to place Buyer on C.O.D. status, and/or refuse orders or cease its supply relationship with Buyer if Cardinal Health has not received payment when due for Merchandise delivered or services provided to Buyer, or based upon credit considerations deemed relevant by Cardinal Health.

## 5. *Ordering and Delivery*

Cardinal Health will deliver the Merchandise F.O.B. to the Facilities and exercise its good faith efforts to provide an efficient delivery schedule designed to meet the mutual needs of Cardinal Health and the Facilities, in accordance with Cardinal Health's general delivery schedules established from time to time by the applicable Cardinal Health servicing division (exclusive of holidays, etc.). All deliveries will be accompanied by an invoice and all delivery costs (not including emergency deliveries) absorbed by Cardinal Health. Facilities having Qualified Monthly Purchases in excess of \$10,000.00 will be eligible to receive one delivery per day, five (5) days per week, except the Inpatient Pharmacy which will receive two (2) deliveries per day. Buyer will incur a separate delivery charge, not to exceed Cardinal Health's actual cost, for additional deliveries. Delivery schedules and purchase order deadlines may be reviewed and changed from time to time as mutually agreed upon by Cardinal Health and Buyer. Cardinal Health will make every reasonable effort to accommodate individual order entry and delivery requirements. It is possible, depending on the servicing Cardinal Health division, that cutoff times may be later than (but not before) 7:00 p.m., and that morning deliveries may be earlier than (but not later than) noon.

Buyer will submit all orders, except for orders for Schedule II drugs, for all Merchandise to Cardinal Health via cardinal.com or other mutually agreeable electronic means. Cardinal Health will provide Buyer with access to cardinal.com at no additional charge to Buyer; provided, however, Buyer must supply, at its own expense, all hardware required to access cardinal.com, all required Internet access and any required interfaces or

other network enhancements. Buyer agrees not to use cardinal.com or any other electronic order entry system for any purpose unrelated to this Agreement. Buyer's right to use cardinal.com will be immediately terminated (i) upon expiration or termination of this Agreement for any reason or (ii) in the event Cardinal Health reasonably believes security of the cardinal.com site or its proprietary rights are threatened due to Buyer's access. In the event that electronic order entry is temporarily interrupted for reasons beyond the control of Buyer or Cardinal Health, Buyer may place orders manually and both parties will use reasonable efforts to rectify the problem.

DEA Form 222 may be mailed to the applicable Cardinal Health distribution center or given to the delivery driver. Schedule II orders will be delivered within one (1) day of Cardinal Health's receipt of the signed original DEA Form 222. Buyer acknowledges that if Buyer gives the DEA Form 222s to the delivery driver, such forms will not be received by Cardinal Health until such time that the delivery driver physically delivers the DEA Form 222 to the applicable Cardinal Health distribution center. Notwithstanding the foregoing, no Schedule II orders will be delivered other than in compliance with DEA regulations.

**6. *Other Services***

Cardinal Health will provide comprehensive support services to Buyer and the Facilities in accordance with Cardinal Health's customary terms and practices for institutional customers.

**7. *Emergency Deliveries***

Cardinal Health will provide a twenty-four (24) hour, seven (7) day per week emergency delivery service. The courier charge for such orders will be F.O.B. prepaid and added to the invoice. A listing of key management personnel and emergency order procedures will be supplied to each Facility.

**8. *Contract Administration***

Cardinal Health will recognize and administer manufacturer contracts between Buyer and any manufacturer (collectively, "**Manufacturer Contracts**") subject to their continued validity in accordance with applicable laws, provided such manufacturer is an approved vendor of Cardinal Health and subject to such credit considerations concerning the applicable manufacturers as Cardinal Health may consider appropriate; however, if manufacturers' chargebacks for contract items submitted by Cardinal Health are disallowed, uncollectable, or unreconcilable, then the applicable charge will be billed back to Buyer. Cardinal Health reserves the right, at any time, to decline to sell or carry any manufacturer's merchandise, based upon credit considerations deemed relevant to Cardinal Health. Buyer will notify Cardinal Health of all Manufacturer Contracts. In addition, Buyer or the Facilities will provide Cardinal Health with a copy of all new Manufacturer Contracts entered into after the Commencement Date and manufacturer

verification of all renewals, replacements or terminations of Manufacturer Contracts not less than forty-five (45) days prior to the effective date of such new Contract, renewal, replacement or termination. Failure to comply with these notice requirements will entitle Cardinal Health to discontinue the service level provisions herein until forty-five (45) days after delivery of accurate usage data for the new items.

In order to facilitate Cardinal Health's inventory management requirements, Buyer will provide Cardinal Health with respect to each Facility accurate six (6) months' usage figures (including NDC numbers) on both contract and non-contract items in compatible electronic (disk) format thirty (30) days prior to participation under this Agreement by that Facility. All purchases under this Agreement by Buyer will be for the Facilities' "own use" as that term is defined in judicial or legislative interpretation, and Buyer will comply with applicable manufacturers' pricing criteria and policies.

**9. *Service Level***

Cardinal Health will exercise all reasonable efforts to provide the Facilities with an aggregate average monthly service level on Rx Products of at least ninety-eight percent (98%) calculated quarterly in accordance with the standards and procedures specified in **Exhibit C**.

**10. *Returned Goods Policy***

Cardinal Health will accept Merchandise for return from Members in accordance with the Standard Cardinal Health Returned Goods Policy (the "**Cardinal Health Returns Policy**") in effect from time to time during the term of this Agreement. A current copy of the Cardinal Health Returns Policy is attached as **Exhibit D**. In addition to the terms and conditions described in the Cardinal Health Returns Policy, Cardinal Health will be entitled to a returned goods processing fee (determined in accordance with the Cardinal Health Returns Policy).

**11. *Term***

The initial term of this Agreement will be for a period of three (3) years beginning April 1, 2006 (the "**Commencement Date**") with an option to extend for an additional two (2) years in one (1) year increments, upon mutual agreement of the parties. Either party may effect an early termination of this Agreement upon the occurrence of a material breach by the other party. The non-breaching party must give written notice to the breaching party of the occurrence of such breach. The notice must describe in detail the nature of the breach. The breaching party will have the opportunity to cure its breach to the reasonable satisfaction of the non-breaching party during a thirty (30) day period beginning on the date the breaching party receives the written notice (the "**Cure Period**"). If the breach is not cured by the expiration of the Cure Period, or the breaching party has not begun the cure process if it cannot be cured in thirty (30) days, then the non-breaching party may provide written notice to the breaching party that this Agreement

will be terminated in thirty (30) days following the expiration of the Cure Period. Notwithstanding the foregoing, with respect to payment defaults by Buyer or other credit considerations deemed relevant to Cardinal Health, Cardinal Health may terminate this Agreement in thirty (30) days upon written notice to buyer. Additionally, either party may terminate this contract at any time with ninety (90) days notice to either party.

## **12. *Notices***

Any notice or other communication required or desired to be given to either party under this Agreement shall be in writing and shall be deemed given when: (a) received by the recipient, after being sent via certified mail, return receipt requested, and addressed to Maricopa Integrated Healthcare District, Attn: Contracts Administration, 2611 East Pierce Street, Phoenix, Arizona 85008 for the Buyer and Cardinal Health, 7000 Cardinal Place, Dublin, Ohio 43017 for Cardinal Health; (b) received by the recipient after being sent via Federal Express, Airborne, or any other similar overnight delivery service for delivery to that party at that address; or (c) received by facsimile transmission, as evidenced by electronic confirmation, to that party at its facsimile number set forth at the end of this Agreement. Either party may change its address or facsimile number for notices under this Agreement by giving the other party notice of such change.

## **13. *Taxes/Compliance with Laws***

Buyer will pay when due any sales, use, excise, gross receipts, or other federal, state, or local taxes or other assessments (other than any tax based solely on the net income of Cardinal Health) and related interest and penalties in connection with or arising out of the transactions contemplated by this Agreement. If Cardinal Health pays any such amounts which Buyer is obligated to pay under this section, then Buyer will promptly reimburse Cardinal Health in an amount equal to the amount so paid by Cardinal Health.

Buyer and Cardinal Health shall comply with all federal and state laws, rules and regulations applicable to the storage, distribution, purchase, sale and use of pharmaceutical products.

If and to the extent any discount, credit, rebate or other purchase incentive is paid or applied by Cardinal Health with respect to the Merchandise purchased under this Agreement, such discount, credit, rebate or other purchase incentive shall constitute a "discount or other reduction in price," as such terms are defined under the Medicare/Medicaid Anti-Kickback Statute, on the Merchandise purchased by Buyer or any Facility under the terms of this Agreement. Cardinal Health and Buyer agree to use their best efforts to comply with any and all requirements imposed on sellers and buyers, respectively, under 42 U.S.C. § 1320a-7b(b)(3)(A) and the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h). In this regard, Buyer may have an obligation to accurately report, under any state or federal program which provides cost or charge based reimbursement for the products or services

covered by this Agreement, or as otherwise requested or required by any governmental agency, the net cost actually paid by Buyer and/or each Facility.

**14. *Warranty Disclaimer and Limitation of Liability***

CARDINAL HEALTH DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL CARDINAL HEALTH BE LIABLE TO BUYER OR ANY FACILITY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL CLAIMS, LIABILITIES OR DAMAGES.

**15. *Force Majeure***

Cardinal Health's obligations under this Agreement will be excused if and to the extent that any delay or failure to perform such obligations is due to fire or other casualty, product or material shortages, strikes or labor disputes, transportation delays, change in business conditions (other than insignificant changes), manufacturer out-of-stock or delivery disruptions, acts of God, seasonal supply disruptions, or other causes beyond the reasonable control of Cardinal Health. During the period of any such delay or failure, Buyer may purchase the Primary Requirements for the affected Facilities from others, but will recommence purchasing from Cardinal Health upon cessation of such delay or failure.

**16. *Records and Audit***

Cardinal Health will maintain records pertaining to the pharmaceutical products purchased by Buyer under this Agreement as required by applicable FDA requirements. Not more than once in any twelve (12) month period, and following sixty (60) days' advance written notice to Cardinal Health, Buyer will have the right to appoint one (1) or more of its employees to review those relevant records applicable to its pharmaceutical purchases for the sole purpose of verifying compliance with the pricing terms of this Agreement. Any such review will be limited to twelve (12) months of historical information as of the date such review begins and will be subject to a confidentiality agreement prepared by Cardinal Health and signed by the Buyer and its employee(s) who will have access to the information prior to beginning the review.

**17. *Entire Agreement; Successors***

This Agreement and its exhibits constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, proposals, bids/bid responses, and understandings between the parties relative to the subject matter of this Agreement. This Agreement will be governed by Arizona law. Neither Cardinal Health nor Buyer may assign its obligations under this Agreement without the written consent of the other;

provided, however, that Cardinal Health may delegate its rights and obligations to any entity that is controlled by or under common control with Cardinal Health, Inc. This Agreement will be binding on, inure to the benefit of, and be enforceable by and against the respective successors and assigns of each party to this Agreement.

**18. *Amendments***

No changes to this Agreement will be made or be binding on any party unless made in writing and signed by each party to this Agreement.

**19. *Waiver***

The failure of either party to enforce any provision of this Agreement will not be considered a waiver of any future right to enforce such provision.

**20. *Announcements***

Neither party shall issue any press release or other public announcement, verbally or in writing, referring to the other party or any entity which controls, is controlled by or under common control of such party. Nothing contained herein shall limit the right of either party to issue a press release or public announcement if, in the opinion of such party's counsel, such press release or public announcement is required pursuant to state or federal securities laws, rules or regulations, or other applicable laws, in which case the party required to make the press release or public announcement shall use its commercially reasonable efforts to obtain the approval of the other party as to the form, nature and extent of the press release or public announcement prior to issuing the press release or making the public announcement.

21. *Independent Contractors*

This relationship is that of independent contractors. This Agreement does not create any employment, agency, franchise, joint venture, partnership or other similar legal relationship between Buyer and Cardinal Health. No party has the authority to bind or act on behalf of the other party except as otherwise specifically stated in this Agreement.

**Maricopa County Special Health Care  
District d.b.a. Maricopa Integrated  
Health System  
Telecopy: (602) 344-5040**

By *Jeff Ellis*  
Title *Procurement Dir*  
Date *3/31/06*

**Cardinal Health\*  
7000 Cardinal Place  
Dublin, Ohio 43017  
Telecopy: (614) 757-6000**

By *Tom Strade*  
Title *Region Vice President*  
Date *4/6/06*

\*The term "Cardinal Health" means the following pharmaceutical distribution companies including: Cardinal Health 106, Inc. (formerly known as James W. Daly, Inc.), a Massachusetts corporation (Peabody, Massachusetts); Cardinal Health 103, Inc. (formerly known as Cardinal Southeast, Inc.), a Mississippi corporation (Madison, Mississippi); Cardinal Health 110, Inc. (formerly known as Whitmire Distribution Corporation), a Delaware corporation (Folsom, California) and any other subsidiary of Cardinal Health, Inc., an Ohio corporation ("CHI"), as may be designated by CHI.

**Facilities**

All facilities operated under the guidance of the Maricopa County Special Healthcare District and DBA Maricopa County Integrated Healthcare System.

Account Name

Maricopa Medical Center  
Avondale Family Health Center  
Chandler Family Health Center  
Comprehensive Health Care  
Desert Vista Hospital Pharmacy  
Glendale Primary Care Center  
Mesa Primary Care Center  
Maricopa Med. Ctr. Outpatient  
Seventh Ave. Primary Care Center  
South Central Primary Care  
Maricopa Health System, PCC PHS  
Maricopa Contrast Media  
Maricopa Exceptions (new)  
Maricopa MCCP IV

**Pricing Matrix**

| <b><u>PAYMENT TERMS</u></b>   | <b><u>COST OF GOODS</u></b> |
|-------------------------------|-----------------------------|
| Monthly Prepay (-30 DSO/WAPD) | -3.36%                      |
| Weekly (7 DSO/WAPD)           | -2.43%                      |
| Semi-Monthly ((17.5 DSO/WAPD) | -2.23%                      |

**An additional 0.025% will be applied for every day that WAPD exceeds the contracted WAPD as defined in this Exhibit. Payment terms will be reviewed and adjusted on a quarterly basis as needed.**

**Service Level Definition**

For purposes of this Agreement, the service level percentage will be calculated by dividing total lines of Rx Products shipped by the number of lines of Rx Products ordered. The following items will be excluded from the service level calculation:

1. Manufacturer back orders/temporary outs;
2. Non-stock and/or discontinued items due to non-movement or discontinuation by manufacturer;
3. Rx Products shipped within two (2) working days of initial order (including those filled by an affiliate of Cardinal Health), which will instead be counted as a line filled;
4. Items where a Facility has failed to provide accurate usage figures;
5. Items where a Facility's historical demand is exceeded by 125% over the preceding two (2) months; and
6. Same item ordered more than once within three (3) days.

The service level for Buyer will commence ninety (90) days following the later of the Commencement Date or Cardinal Health's receipt of accurate usage data. The service level for Facilities added to this Agreement after the Commencement Date will commence sixty (60) days following receipt by Cardinal Health of accurate usage data. This will allow Cardinal Health to gain usage information and adjust inventory levels appropriately.

Upon Buyer's request, if Cardinal Health does not meet its service level for any quarter, Cardinal Health and Buyer will jointly develop a service level action plan for the following quarter. During the implementation of the service level action plan, Buyer may not terminate this Agreement for cause.

Buyer will notify Cardinal Health at least forty-five (45) days prior to the expiration of any manufacturer's contract which is being replaced with a different contract, and will cooperate with and assist Cardinal Health in disposing of any excess inventory of Merchandise previously stocked at Buyer's or a Facility's request. Failure to comply with these notice requirements will entitle Cardinal Health to discontinue the service level to the Facilities until ninety (90) days after delivery of accurate usage data for the new items.

**Cardinal Health Pharmaceutical Distribution  
Returned Goods Policy**

Products in "merchantable condition" (as defined below) and originally purchased from Cardinal Health may generally be returned to the customer's servicing Cardinal Health distribution center in accordance with, and subject to, the terms and conditions of this policy.

| <b>Return Made Within:</b>               | <b>Normal Credit Amount:</b>  |
|--|---|
| 1 - 30 Days from Invoice Date            | 100% of original invoice amount paid by customer. This policy covers all ordering/filling errors if reported within two (2) business days and such products are returned within ten (10) business days of the date of the applicable invoice. |
| 31 Days - 13 Months from Invoice Date    | 75% of original invoice amount paid by customer. Provided, however, if applicable mark-up is greater than 0%, credit will be based on customer's contract cost or Cardinal Health's then-current base cost, as applicable.                    |
| Greater Than 13 Months from Invoice Date | 50% of the invoice amount that would be paid by customer as of the date of the return.  |

"*Merchantable condition*" will be determined by Cardinal Health based upon its ability to return the product to its inventory for resale in the normal course of its business, without special preparation, testing, handling, or expense and will **exclude** the following:

- A. Any product purchased from any supplier other than Cardinal Health.
- B. Any product which has been used or opened; is a partial dispensing unit or unit of sale; is without all original packaging, labeling, inserts, or operating manuals; or that is stickered, marked, damaged, defaced, or otherwise cannot readily be resold by Cardinal Health for any reason.
- C. Short-dated (less than seven (7) months expiration dating), outdated, or seasonal products and products purchased on a "special order" basis, including non-stock and drop-shipped products.
- D. Any product not intended for return to a wholesaler in accordance with the return policies of the applicable manufacturer.
- E. Any product listed by any state or federal regulatory agency as a high-risk pedigree item that is returned without a valid invoice number that cannot otherwise be verified by Cardinal Health.

**Unmerchantable Products**

Any product not eligible for return in accordance with this policy (i.e., the product is not in "merchantable condition" as set forth above) will require return directly to the manufacturer. If any such products are returned to Cardinal Health, they will be returned to customer and customer will be assessed an \$8.00 per line handling fee, with the exception of stickered products, which will be handled as follows. Cardinal Health will remove the sticker and retain the product, credit the customer (as applicable pursuant to this policy), and customer will be assessed an \$8.00 per line handling fee. If the product is damaged during the removal of the sticker, no credit will be issued to customer, the product will be returned to customer, and customer will be assessed an \$8.00 per line handling fee.

Any product listed by any state or federal agency as a high-risk pedigree item that is returned without a valid invoice number that cannot otherwise be verified by Cardinal Health will not be issued credit, and will be returned to customer, and customer will be assessed an \$8.00 per line handling fee.

Notwithstanding the foregoing, in any case where Cardinal Health accepts the return of such products and agrees to return such products to the applicable manufacturer on behalf of customer (provided the manufacturer allows the return of such products), any credit issued to customer will be determined by Cardinal Health.

### **Required Return Documentation**

Prior to returning any product to Cardinal Health, customer must execute and deliver to Cardinal Health a **Cardinal Health Returned Goods Authorization Ongoing Assurance** verifying that all returned products have been kept under proper conditions for storage, handling, and shipping.

All requests for credit must be submitted via EOE, Cardinal.com, CardinalCHOICE®, or approved EDI interface.

A fully completed and signed **Merchandise Return Authorization Form** (the "MRA Form") must accompany all products to be returned. **Note:** A fully completed MRA Form must include a valid invoice number.

- Returned products associated with an MRA Form without a valid invoice number that can otherwise be verified by Cardinal Health will be charged a 25% re-stocking fee.
- Any credit issued for returned products associated with an MRA Form without a valid invoice number that cannot otherwise be verified by Cardinal Health will be based on Cardinal Health's then-current base cost, minus a 50% restocking fee.
- Where applicable laws, rules or regulations limit the return of specific products, no credit will be issued for returns of those products without a valid invoice number, and in all instances, customer will be assessed an \$8.00 per line handling fee.

### **Third Party Return Processors**

At the request of customer, Cardinal Health will work with third party return processors for returns of unmerchantable products. Such arrangement will be subject to mutually agreed upon terms and conditions, to include administrative fees payable to Cardinal Health.

### **Controlled Substances**

Credit for the return of controlled substances requires a separate MRA Form and such returns must comply with all applicable laws, rules and regulations in addition to the terms and conditions of this policy. Schedule II to V controlled substances will be charged the applicable restocking fees, plus an \$8.00 per line handling fee.

### **Refrigerated, Chemotherapy and Hazardous Products**

Refrigerated, chemotherapy and hazardous products will be charged the applicable restocking fees, plus an \$8.00 per line handling fee. All such products must be returned in packaging that complies with applicable regulatory requirements. All such products that are not returned in packaging that complies with applicable regulatory requirements will be considered damaged and unsaleable. This product will be destroyed, no credit will be issued and customer will be assessed an \$8.00 per line handling fee.

### **Shorts and Damaged Products**

Claims of order shortages (e.g., products invoiced but not received), other ordering/filling errors and damage must be reported within two (2) business days from the applicable invoice date, or no credit will be issued. Returns of damaged products or products shipped in error must be received by the Cardinal Health servicing distribution center within ten (10) business days from the applicable invoice date, or no credit will be issued. Controlled substance shortage claims must be reported immediately per DEA requirements. Pricing and other errors/mistakes must be reported within two (2) business days from the applicable invoice date, or no credit will be issued. In all instances, credit will not be issued until verification of the claim by Cardinal Health.

No deductions may be taken by customer until a valid credit memo is issued by Cardinal Health.

## Shipping of Return Products

Products to be returned must be placed in a proper shipping container and signed for by the driver when picked up.

Signed MRA Forms shall be included in totes with the returned products . Only one (1) MRA Form shall be included in each tote.

- If the MRA Form is not signed, no credit will be issued. The products will be returned to the customer and customer will be assessed an \$8.00 per tote handling fee.
- If there is more than one (1) MRA Form per tote, customer will be assessed an \$8.00 handling fee for each additional MRA Form.
- If the MRA Form is not inside the tote with the returned products, Cardinal Health will attempt to identify the customer that returned the products. The tote will then be returned to the customer with a request for a completed MRA Form(s), and customer will be assessed an \$8.00 per tote handling fee.
- No credit will be issued for products returned but not listed on the accompanying MRA Form. Such products will be returned to the customer, and customer will be assessed an \$8.00 per line handling fee.

All MRA Forms will be reviewed by Cardinal Health for compliance with this policy. The acceptability and valuation of any return is at the sole discretion of Cardinal Health.

Products must be returned to the customer's servicing Cardinal Health distribution center within thirty (30) days from the date of customer's request for an MRA Form, or no credit will be issued.

In addition to the requirements set forth in this policy, Customer shall comply with all return procedures required by the Cardinal Health servicing distribution center.

## Other Restrictions

Products with an invoice price of \$1.00 or less will not be accepted for return. If any such product is returned, no credit will be issued and the product will not be returned to the customer.

Excessive returns may result in higher restocking fees as deemed necessary by Cardinal Health.

This policy is subject to change without notice by Cardinal Health. This policy is further subject to modification as may be deemed necessary or appropriate by Cardinal Health to comply with applicable federal and/or state regulations, FDA guidelines, state law, and other restrictions applicable to returned products.

## Cardinal Health Returned Goods Authorization Ongoing Assurance

The undersigned customer ("Customer") of one or more of the Cardinal Health companies identified below ("Wholesaler," whether one or more) hereby agrees that this document is being delivered to confirm Customer's compliance with applicable federal, state, and local laws / guidelines concerning returned goods and shall apply to all returns by Customer to Wholesaler from time to time and shall supersede any inconsistent provisions which may be contained in any credit request, purchase order, or other documents pertaining to the supply relationship between Customer and Wholesaler.

1. Customer represents, warrants, and guarantees to Wholesaler that: (a) each such return shall be made only to the specific Wholesaler from which the item was originally purchased; (b) each such return shall be accompanied by Wholesaler's credit request form (the "Return Form"), which shall specify both Customer's and Wholesaler's name and address, the date of the return, the quantity and description of the product returned, and such other information as may reasonably be requested on Wholesaler's Return Form; (c) Customer shall retain a copy of each Return Form and related credit memo and make such documentation available to the manufacturer and to authorized federal, state, and local law enforcement officers upon request; (d) the credit claimed or accepted by Customer for any such return shall not exceed the original purchase price paid to Wholesaler; and (e) all merchandise returned to Wholesaler has been stored and handled by Customer in accordance with all applicable federal, state, and local laws, manufacturer guidelines when disclosed to customer by the manufacturer or wholesaler, and good trade practices, and such merchandise has not been adulterated or misbranded by customer within the meaning of the Federal Food, Drug, and Cosmetic Act and meets all FDA, state, and other applicable requirements and guidelines.

2. Customer shall indemnify and defend Wholesaler against and from any expense, claim, liability, or penalty (including reasonable legal fees) arising from any failure of Customer to properly comply with the provisions specified in this document.

3. \*The term "Cardinal Health" means the following pharmaceutical distribution companies: Cardinal Health 106, Inc. (formerly known as James W. Daly, Inc.), a Massachusetts corporation (Peabody, Massachusetts); Cardinal Health 103, Inc. (formerly known as Cardinal Southeast, Inc.), a Mississippi corporation (Madison, Mississippi); Cardinal Health 110, Inc. (formerly known as Whitnire Distribution Corporation), a Delaware corporation (Folsom, California) and any other subsidiary of Cardinal Health, Inc., an Ohio corporation ("CHI"), as may be designated by CHI.

Dated: 3/31/06

Stephen Ellis

Customer's Name (Print)

Stephen Ellis Procurement  
By Authorized Signature / Title Dir