State of Louisiana Supplemental Rebate Agreement

This Supplemental Rebate Agreement ("Agreement"), by and between the State of Louisiana, Department of Health, hereinafter referred to as the "State" and «Current_Legal_Company_Name», hereinafter referred to as the "Manufacturer", is for the provision of STATE OF LOUISIANA SUPPLEMENTAL REBATES, as further defined below.

WHEREAS, State desires to negotiate and collect rebates in addition to the Federal Rebates provided for in Title XIX, Section 1927 of the Social Security Act (42 U.S.C. 1396r-8) for Covered Products utilized by Louisiana Medicaid Recipients.

WHEREAS, Manufacturer desires to provide State a Supplemental Rebate(s) for the utilized Covered Product(s).

WHEREAS, this Agreement between State and Manufacturer shall be separate and distinct from the Federal Rebate Agreement between Manufacturer and the Federal Secretary of Health and Human Services.

WHEREAS, the parties hereto intend for this Agreement to comply with the requirements of Title XIX, Section 1927 of the Social Security Act (42 U.S.C. 1396r-8).

WHEREAS, it is the intent of this Agreement that rebates paid in compliance with this agreement do not affect Best Price and are paid to the State in addition to the rebates received under the CMS Rebate Agreement, pursuant to Section 1927 of the Social Security Act (42 U.S.C. § 1396r-8), for the Manufacturer's Supplemental Covered Product(s).

NOW, THEREFORE, State and Manufacturer agree as follows:

Article I - DEFINITIONS

1. Average Manufacturer Price" or "AMP" shall mean the Average Manufacturer Price as defined in 42 U.S.C. 1396r-8 and shall exclude rebates paid under CMS authorized Supplemental Rebate Agreements and final regulations promulgated by CMS thereto, if any, and as such statute or regulations may be amended from time to time.

2. "Best Price" or "BP" shall mean the Best Price as defined in 42 U.S.C. 1396r-8 and shall exclude rebates paid under CMS authorized Supplemental Rebate Agreements and final regulations promulgated by CMS thereto, if any, and as such statute or regulations may be amended from time to time.

3. "Centers for Medicare & Medicaid Services" or "CMS" shall mean the agency within the Federal Department of Health and Human Services that is charged with overseeing the Medicaid programs administered by states.

4. "Consumer Price Index-Urban" or "CPI-U" shall have the same meaning as in the Federal Rebate Agreement.

5. "Agreement" shall mean this Agreement, including all documents attached or incorporated by reference.

6. "Covered Product(s)" shall mean the pharmaceutical product or products listed in Attachment A, which is attached hereto and incorporated herein by reference.

7. "Covered Outpatient Drug" will have the meaning as set forth in 42 U.S.C. 1396r-8(k)(2),(k)(3) and (k)(4) and regulations promulgated by CMS thereto, if any, and as such statute or regulations may be amended from time to time.

8. "FDA" shall mean the U.S. Food and Drug Administration.

9. “Federal Rebate” shall mean any monetary payment remitted by Manufacturer pursuant to the Federal Rebate Agreement and made in accordance with 42 U.S.C. 1396r-8(c) and final regulations promulgated by CMS thereto, if any, and as such statute or regulations may be amended from time to time.

10. “Federal Rebate Agreement” shall mean the contractual agreement between Manufacturer and the Federal Secretary of Health and Human Services entered pursuant to 42 U.S.C. 1396r-8.

11. “Guaranteed Net Unit Price” or “Net Unit Price” means, with respect to Covered Product, the amount per unit for each NDC set forth in Attachment A and used in the Supplemental Rebate Calculation, Attachment B.

12. “Manufacturer” shall have the meaning set forth in 42 U.S.C. 1396r-8(k)(5); it shall also mean the entity holding legal title to or possession of the NDC(s) for the Covered Product(s).

13. “Medicaid MCO” means a Medicaid managed care organization that is responsible for coverage of Covered Outpatient Drugs for Medicaid Recipients who are enrolled with the managed care entity, as further described in 42 U.S.C. § 1396b(m), as may be amended from time to time.

14. “NDC Number” or “NDC” shall mean the identifying drug number maintained by the Federal Food and Drug Administration (FDA). For the purposes of this Agreement, NDC shall mean the complete eleven (11) digit number including the Manufacturer code (first segment of 5 digits), the product code (middle segment of 4 digits) and the package code (last segment of 2 digits).

15. “Participating Medicaid MCO” means a Medicaid MCO where the Medicaid State Plan permits the inclusion of Medicaid MCO utilization in the State Utilization Data, and that the State’s contracts with Participating MCOs do not prohibit such inclusion. In order to qualify as a “Participating Medicaid MCO”, the Medicaid MCO must have aligned its formulary and/or preferred drug list, as applicable, with the PDL, assuring access to Supplemental Covered Product is no more restrictive than the State’s PDL requirements applicable to the Supplemental Covered Product.

16. “Pricing Information” shall include Average Manufacturer Price (AMP), Best Price (BP), Consumer Price Index-Urban (CPI-U), Wholesale Acquisition Cost (WAC), Unit Rebate Amount (URA), Rebate Per Unit (RPU), Unit Rebate Off-Set Amount (UROA), Guaranteed Net Unit Price, Rebate Amount Per Unit, and any methodology utilized to calculate a Supplemental Rebate pursuant to this Agreement as set out in Attachment A, which is attached hereto and incorporated herein by reference.

17. “Quarter” or “Quarterly” or “Quarters” shall mean the four (4) calendar quarters that end on March 31, June 30, September 30 and December 31 of each calendar year, unless otherwise specified.

18. “State Utilization Data” shall mean the information provided on the total number of units of each dosage form and strength, as identified by National Drug Code (NDC) for each of Manufacturer’s Covered Products reimbursed by State during a Quarter where Covered Product was listed as preferred on the State Preferred Drug List. State Utilization Data shall exclude claims from covered entities identified in 42 U.S.C. 256b(a)(4) in accordance with 42 U.S.C. 256b(a)(5)(A) and 42 U.S.C. 1396r-8(a)(5)(C).

19. “Supplemental Rebate” shall mean any monetary payment remitted by Manufacturer, pursuant to this Agreement, that supplements, or is in addition to, the Federal Rebate.

20. "Supplemental Rebate Amount" means, with respect to the Covered Product(s), the amount(s) specified in Attachment A, and Supplemental Rebate Calculation, Attachment B, that the Manufacturer has agreed to reimburse State per unit of drug in accordance with the formula detailed in the above Attachments.

21. "Supplemental Rebate Per Unit" or "SRPU" is calculated for each NDC of a Covered Product according to the formula in Attachment B.

22. "Supplemental Rebate Invoice" shall mean the report that itemizes and aggregates, by NDC number, the claims reimbursed by State for each Covered Product during a Quarter and any cover letter that accompanies said report. The Supplemental Rebate Invoice shall comply with the requirements for Medicaid Utilization Information as set forth in the Federal Rebate Agreement.

23. "Louisiana Enrollee", or "enrollee", or "recipient" shall mean any person enrolled in the State Medicaid or Waiver Program and eligible to receive prescription drug benefits.

24. "State Preferred Drug List" or "State PDL" shall mean the list of pharmaceutical products, designated as preferred or non-preferred, which is adopted or amended by State pursuant to La. R.S. 46:153.3.

25. "Unit" shall mean the drug unit in the lowest identifiable amount on which the rebate is calculated (e.g., tablet or capsule for solid dosage forms, milliliter for liquid forms, gram for ointments or creams) as reported by Manufacturer to CMS.

26. "Unit Rebate Amount" or "URA" shall mean the computed unit amount to which the State Utilization Data is applied for the Federal Rebate or Supplemental Rebate payment due. For the purposes of this Agreement, unit rebate amount shall be synonymous with the terms Rebate Per Unit (RPU) and Rebate Amount Per Unit and encompass said terms.

27. "Unit Rebate Off-Set Amount" or "UROA" shall mean the unit amount calculated by CMS pursuant to 42 U.S.C. 1396r-8.

28. "U.S.C." shall mean the United States Code. All references in this Agreement to U.S.C. shall include any successor, amended or replacement statute.

29. "Wholesale Acquisition Cost" or "WAC" shall mean the manufacturer's list price for the Covered Product to wholesalers or direct purchasers in the United States, not including prompt pay or other discounts, rebates or reductions in price, that was in effect on the last day of the subject Quarter as reported by First Data Bank, Medi-Span or other publications of drug pricing data.

ARTICLE II - RESPONSIBILITIES OF MANUFACTURER

1. Manufacturer shall pay a Supplemental Rebate per unit to State for each Covered Product reimbursed by State for each Quarter, or any part thereof, that the Covered Product is designated as preferred on the State Preferred Drug List (State PDL). Preferred status does not exclude the utilization of prior authorization, step therapy or quantity limits. Manufacturer shall pay to State the Supplemental Rebate per unit as calculated in accordance with the formula set out in Attachment A, which is attached hereto and incorporated herein by reference.

2. Nothing in this Agreement shall be construed to relieve Manufacturer of its obligation to pay Federal Rebates for utilization by Recipients. Furthermore, at no time shall the Supplemental Rebates paid by Manufacturer, pursuant to this Agreement, diminish the amount of Federal Rebates due and owing pursuant to the Federal Rebate Agreement and 42 U.S.C. 1396r-8.

3. Manufacturer shall remit Supplemental Rebate payments to State or its designee within thirty (30) days of Manufacturer's receipt of State's Supplemental Rebate Invoice. With each payment, Manufacturer shall provide State or its designee with documentation, utilizing a format substantially similar to that used to reconcile the Federal Rebate, which reconciles each payment to the applicable State Supplemental Rebate Invoice. Manufacturer shall remit payment to the address specified by the Supplemental Rebate Invoice.

4. Interest on Supplemental Rebates payable begins to accrue on the thirty eighth (38th) day from the postmark date of State's Supplemental Rebate Invoice. Interest stops accruing and is calculated up to the postmark date of Manufacturer's mailed check. Interest will be calculated in accordance with the CMS guidelines that apply to Federal Rebates.

5. If State, or its designee, does not receive Supplemental Rebates as set forth in this section, including interest due and owing, within sixty (60) days of the postmark date of State's Supplemental Rebate Invoice and, if Manufacturer does not file a dispute in accordance with Article IV of this Agreement, Manufacturer will be deemed to be in breach of this Agreement and the Agreement may be terminated by State in accordance with Section D.4 of this Agreement.

6. Manufacturer shall continue to pay Supplemental Rebates for so long as this Agreement is in force, the State Utilization Data evidences that State has paid for the Covered Product, and Covered Product is as in Article III, regardless of whether Manufacturer continues to market and sell the Covered Product. In the event Manufacturer sells, or otherwise transfers, the Covered Product to another manufacturer, Manufacturer shall continue to be responsible for the payment of Supplemental Rebates for the Covered Product for the duration of the term of this Agreement. Nothing in this Agreement shall be construed to prohibit Manufacturer from discontinuing the production of a Covered Product. In the event Manufacturer elects to discontinue production of a Covered Product, Manufacturer shall make a reasonable effort to notify State prior to the discontinuance of the Covered Product.

7. During the term of this Agreement and for a minimum of five (5) years after the termination of this Agreement, Manufacturer shall maintain records that will permit State to verify Pricing Information and Supplemental Rebate unit rebate amounts. If an audit, litigation or other action involving the records is begun before the end of the five (5) year period, Manufacturer shall retain all records until all issues of the action are resolved. Manufacturer shall cooperate with State in any such verification that may be required to resolve issues regarding Pricing Information. Any such verification will be at State's expense and only upon reasonable notice to Manufacturer.

ARTICLE III - RESPONSIBILITIES OF STATE

1. All Supplemental Rebates collected by State, pursuant to this Agreement, which are in excess of those required by the Federal Rebate Agreement will be reported to and shared with the Federal government on the same percentage basis as the Federal Rebate under the Federal Rebate Agreement.

2. Covered Product will accrue Supplemental Rebates when listed as preferred on the State Preferred Drug List and when not disadvantaged to other preferred drugs on the State PDL unless described in Attachment A. At the sole discretion of State, and without notice to Manufacturer, Covered Product can be moved from preferred to non-preferred status on the State PDL. Rebate accrual begins and ends on the effective date noted on the State PDL.

3. State represents and warrants that it is in compliance with Title XIX, Section 1927 of the Social Security Act (42 U.S.C. 1396, et seq.) and the Federal Rebate Agreement.

4. State, or its designee, shall invoice State Supplemental Rebates separately from the Federal Rebates, on a Quarterly basis, utilizing an invoice format substantially similar to that of the Federal Rebate invoice. State, at its option, may compute the total Supplemental Rebate anticipated but it shall remain the responsibility of Manufacturer to correctly calculate the Supplemental Rebate amount based on the applicable methodology set out in Attachment B. State, or its designee, shall submit the Supplemental Rebate invoice to the Manufacturer's invoice contact, as identified by Manufacturer to CMS, within sixty (60) days of the last day of the Quarter in which State provided reimbursement for the Covered Product.

5. During the term of this Agreement and for a minimum of five (5) years after the termination of this Agreement, State or its designee shall maintain State Utilization Data and the supporting paid claims for the most recent four (4) Quarters that will permit Manufacturer to verify, through an audit process, the Supplemental Rebate invoices submitted by State or its designee. If an audit, litigation or other action involving the records is begun before the end of the five (5) year period, State or its designee shall retain all records until all issues of the action are resolved. State or its designee shall cooperate with Manufacturer in any such audit that may be required to resolve issues regarding State Utilization Data or the calculation of any Supplemental Rebate unit rebate amount. Any such audit will be at Manufacturer's expense and only upon reasonable notice to State.

6. If, during the term of this Agreement, a generic equivalent of the Covered Product should become available, State, at its sole discretion, may allow the applicable Covered Product to remain preferred on the State PDL

ARTICLE IV - DISPUTE RESOLUTION

1. If either party discovers an error in the payment of Supplemental Rebates by Manufacturer, the discovering party shall notify the other party of such error. Manufacturer shall deduct any overpayment from subsequent Supplemental Rebates due and owing pursuant to this Agreement. In the event no subsequent Supplemental Rebates become due and owing, State, or its designee, shall refund the overpayment within thirty (30) days of State's acknowledgement of such overpayment. In the event of any underpayment, Manufacturer shall remit payment to State or its designee within thirty (30) days of Manufacturer's acknowledgement of such underpayment.

2. The parties hereto shall attempt to reconcile all differences related to State Utilization Data and / or Pricing Information through discussion and negotiation. If said process fails in regard to disputes relating to State Utilization Data, the parties shall resolve their dispute in accordance with the applicable practices and procedures established by CMS for resolution of disputes of the Federal Rebate. If said process fails in regard to disputes relating to Pricing Information, the Manufacturer shall pay the State any portion of the rebate that is not in dispute by the required date. The balance of the dispute shall be paid by the due date of the next Quarterly payment and accompanied by, or preceded by, a written request for review of the disputed amount, along with any other materials, supporting its position to the State. The State shall review the written request, argument and materials and issue a decision in the matter.

ARTICLE V - AGREEMENT LENGTH, PAYMENT TERMS, TERMINATION

1. Agreement Term. This Agreement shall be effective for the period commencing on «AgreementStartDate» and ending on «AgreementEndDate».

2. Manufacturer shall pay a Supplemental Rebate per unit to State for each Covered Product reimbursed by State in accordance with Article II.

3. Required Approvals. The State is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Louisiana State laws and regulations.

4. Modification and Amendment. This Agreement may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Louisiana State officials in accordance with applicable Louisiana State laws and regulations as authorized by CMS.

5. Termination. Manufacturer may not terminate this Agreement before the agreement end date unless mutually agreed upon in writing and executed by all parties hereto. Said termination shall not be deemed a Breach of Agreement by the State. The State, at its sole discretion and without prior notice to Manufacturer, can move a Covered Product to non-preferred status and require prior authorization. Supplemental Rebate accrual will end on the effective date of the change in PDL status (date which prior authorization commences). Should the State exercise this provision, the State shall have no liability to the Manufacturer. Notwithstanding any termination of this agreement, the obligation to provide supplemental rebates shall remain in full force and effect in regards to prescriptions that have been issued prior to said termination effective date. Upon such termination, the Manufacturer shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

6. Termination for Cause. If the Manufacturer fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Manufacturer violates any terms of this Agreement, the State shall have the right to terminate the Agreement. The Manufacturer shall compensate the State for adjudicated services and shall remit any and all outstanding rebates that are due and / or may become due on prescriptions that have provided to Medicaid recipients as of the termination date.

   a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Manufacturer with an opportunity to cure, which must be requested in writing no less than ten (10) days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Manufacturer fails to correct the breach. The Manufacturer must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Manufacturer intentionally withholds its payments or otherwise refuses to perform. The State will not consider a request to cure Agreement performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

   b. Notwithstanding the foregoing, the Manufacturer shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Agreement by the Manufacturer.

ARTICLE VI – GENERAL PROVISIONS

1. Conflicts of Interest. The Manufacturer warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Louisiana as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Manufacturer in connection with any work contemplated or performed relative to this Agreement other than as required by Section A. of this Agreement.

2. Nondiscrimination. The State and the Manufacturer hereby agree, warrant, and assure that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of the State

or the Manufacturer on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Louisiana State constitutional, or statutory law.

3. Records. The Manufacturer shall maintain documentation for its transactions with the State under this Agreement. The books, records, and documents of the Manufacturer, insofar as they relate to work performed or money paid under this Agreement, shall be maintained for a period of five (5) full years from the final date of this Agreement and shall be subject to audit, at any reasonable time and upon reasonable notice, by the state agency, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

4. Strict Performance. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision.

5. Independent Contractor. The parties hereto, in the performance of this Agreement, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

6. State Liability. The State shall have no liability except as specifically provided in this Agreement. Notwithstanding, all parties agree that the Manufacturer's sole remedy against the State for violations of this agreement is termination of same and the State is not liable for any other damages or remedies whatsoever.

7. State and Federal Compliance. The Manufacturer and the State shall comply with all applicable State and Federal laws and regulations in the performance of this Agreement.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana, except for its conflict of law provisions. The Manufacturer agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Louisiana in actions that may arise under this Agreement. The Manufacturer acknowledges and agrees that any rights or claims against the State of Louisiana or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, per Section 6 above.

9. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral. Notwithstanding the foregoing, Attachment A shall be amended or supplemented as a new Covered Product, or NDC becomes available on the market, and is incorporated by reference herein as an amendment to this Agreement,

10. Severability. If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.

11. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.

ARTICLE VII – SPECIAL TERMS AND CONDITIONS

1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Agreement, these special terms and conditions shall control.

2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by overnight courier service, electronic mail or by first class mail, postage prepaid, addressed to the respective party at the appropriate address as set forth below or to such other party, or address as may be hereafter specified by written notice.

The State:

Louisiana Department of Health
Medicaid Pharmacy Director
P.O. Box 91030
Baton Rouge, LA 70821-9030
(225) 342-6159

The Manufacturer:
[Manufacturer's Agreement contact name and title]
«Current_Legal_Company_Name»
[Agreement contact's mailing address]
[Agreement contact's city, state and zip code]
[Agreement contact's direct telephone number]

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing.

3. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Manufacturer by the State or acquired by the Manufacturer on behalf of the State shall be regarded as confidential information in accordance with applicable provisions of state and federal law and ethical standards and shall not be disclosed, regardless of whether it has been disclosed or made available to the Manufacturer due to intentional or negligent actions or inactions of agents of the State or third parties, and all necessary steps shall be taken by the Manufacturer to safeguard the confidentiality of such material or information in conformance with applicable state and federal law and ethical standards.

The Manufacturer will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Manufacturer exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section and relevant state and federal law.

The Manufacturer's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach of this Agreement by the Manufacturer; previously possessed by the Manufacturer without written obligations to the State to protect it;

acquired by the Manufacturer without written restrictions against disclosure from a third party which, to the Manufacturer's knowledge, is free to disclose the information; independently developed by the Manufacturer without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Agreement.

Pursuant to 42 U.S.C. 1396r-8(b)(3)(D) and any other applicable state and federal law, the parties to this Agreement agree to maintain the confidentiality of this Agreement and not to disclose its terms, conditions and Pricing Information to third parties without the express written consent of the other party except that State may share Pricing Information with any of its agents, designees or consultants who participate in the negotiation of this Agreement, in the administration of its Supplemental Rebate program or in the development and maintenance of a prior authorization program.

Manufacturer shall hold State Utilization Data confidential. If Manufacturer audits this information or receives additional information on such data, all information obtained shall also be held confidential.

For the purposes of this Section, "third party" shall include, but is not limited to: (i) any person or entity that is not an employee of a party to this Agreement or under Agreement with a party to this Agreement, and (ii) any individual or entity, including an employee of any party to this Agreement, who does not have a reasonable need to know the confidential information involved.

The confidentiality obligations set out in this Agreement shall not apply to information that is or becomes public through no breach of this Agreement that is received from a third party free to disclose said information, that is independently developed by the receiving party, or that is required by law to be disclosed. In the event either party is required by law to make a disclosure, such party shall provide written notice to the other party sufficiently in advance of the proposed disclosure to allow the non-disclosing party to seek a protective order or other relief applicable to its information that may be disclosed.

4. Bankruptcy and Insolvency. State shall have the right to immediately terminate this Agreement, without prior notice, in the event Manufacturer is adjudicated bankrupt or makes an assignment for the benefit of creditors without State's prior express written consent or if a receiver is appointed for Manufacturer.

5. Governmental Action. If any governmental entity, whether state or federal, demands, requests or advises the parties hereto, or either party, to suspend, materially alter or otherwise materially revise its performance under this Agreement so as to be in compliance with any governmental law, action, regulation, or opinion, that party may take whatever action its deems necessary, in its sole discretion, including termination of the Agreement, to comply with the demand, request, or advice, and such action shall not constitute a breach of this Agreement or otherwise give rise to any liability of any nature whatsoever, Each party hereto agrees to notify the other party of such demand, request or advisory with seven (7) days upon learning of the demand, request or advisory.

6. Effect on Accrued Obligations. Termination of this Agreement shall have no effect on the rights and responsibilities of the parties hereto arising out of any transactions that occurred prior to the effective date of such termination including, but not limited to, Supplemental Rebates due and owing.

7. Remedies. The fact that either party exercises any right of termination it may be entitled to under this Agreement shall not prevent such party from seeking any other remedy it may have in law or equity, nor shall any provision under this Agreement which provides a remedy to a party for the other party's non-performance be deemed to be a sole and exclusive remedy, unless specifically stated as such.

8. Effect of Termination or Non-Renewal. At the sole discretion of State, termination or non-renewal of this Agreement may result in Manufacturer's Covered Product(s) being available to State Enrollees / Recipients only through prior authorization.

9. Agreement Rights and Remedies. This Agreement is between the parties hereto and is not intended to create any rights or remedies in favor of any other person or entity, including without limitation, any person who has received, or is eligible to receive, benefits from State.

10. Use of Names and Trademarks. Neither party shall use the name of the other in any type of promotional or advertising material without the express, written consent of the other party. Manufacturer agrees to not use the name of the State of Louisiana, the State Medicaid Program or State in any manner without the express, written consent of State. State may use the trade name of any Covered Product to communicate the Covered Product's inclusion on the State PDL or other mechanism that would remove the Covered Product from the requirements of prior authorization.

11. Best Price Contingency. The effectiveness of this Agreement shall be contingent on Manufacturer's Best Price not being affected by supplemental rebates paid pursuant to CMS authorized Supplemental Rebate Agreements.

12. Agreement Execution. This Agreement may be executed in two (2) counterparts, each being deemed an original, and these counterparts shall constitute but one and the same instrument.

13. Force Majeure. A party shall not be deemed to have breached this Agreement if its delay or failure to perform all or any part of its obligations hereunder results from a condition beyond its reasonable control, including without limitation, acts of God or the public enemy, acts of terrorism, fire, earthquake, flood, storm, strike or other labor unrest, power or communication line failure, or statute, or rule or action of any federal, state or local government or agency.

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Louisiana Department of Health

Signature: _____

Printed Name: _____

Title: _____

Date: _____

«Current_Legal_Company_Name»

Signature: _____

Printed Name: _____

Title: _____

Date: _____

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Attachment A

Supplemental Rebate Covered Pharmaceuticals and Calculation Methodology

The pharmaceuticals to which this Supplemental Rebate Agreement shall apply are the following:

Label Name	NDC	SRPU Calculation Type	Position	Rate per Unit	Effective Date

State Supplemental Rebates shall be calculated according to the following formula:

State Supplemental Rebate = # of Units dispensed x SRPU (Supplemental Rebate Per Unit)

The SRPU Calculation Type of **GNUP based on WAC** means:

SRPU = WAC per unit – National Rebate per unit – Rate per unit

Alternative SRPU Calculation Type [FORMULA] means:

SRPU = [FORMULA]

Define alternative SRPU terms here: [DEFINITION]

The term "Rate per Unit" as shown in the heading row table of Attachment A and in the formula preceding this note is defined as the offer made by the manufacturer which, when used in the formula, results in a SRPU.

A "Position" of NONE shown in the table of Attachment A above means that there is not any offer language or positioning requirements in addition to the standard terms as defined in this Supplemental Rebate Agreement.

Positioning: For [***Insert Product Name***] and associated NDCs, the following terms shall apply:

Position 1: [*Insert detailed description of positioning offer from Manufacturer*]

Attachment B

Supplemental Rebate Calculation

This Attachment B to the STATE OF LOUISIANA SUPPLEMENTAL REBATE AGREEMENT provides as follows:

The Supplemental Rebate Per Unit (SRPU) is calculated for each NDC of a Covered Product according to the formula described in Attachment A as applicable:

SRPU will be greater than or equal to zero.

Supplemental Rebate Amount due = Supplemental Rebate Per Unit times State Utilization Data.

The "Position" is determined based on the following variables:

The product position, (1 of 1, 1 of 2, etc.) of a Covered Product will be determined by comparing the PDL status of the other products listed on the State PDL to the Net Unit Price position in Attachment A. Manufacturer will pay Supplemental Rebates on Covered Products associated with their Product's(s') position held from the first day Covered Product was listed on the PDL as a preferred drug. In addition, should the number of Covered Products change during the applicable Quarter, for the purpose of invoicing, the preferred count shall be determined by the number of Covered Products during the majority of the preferred period. By way of example; In 1st Quarter, Covered Products A and B are preferred and invoiced at the Net Unit Price corresponding with a 1 of 2 position. In the 2nd Quarter, Covered Product C is added to the State PDL during the first 30 days of the Quarter. Upon invoicing, Covered Products A, B and C will all be invoiced at the 1 of 3 position (Covered Product A and B invoiced for 90 days and Covered Product C invoiced for 60 days). Conversely, in 3rd Quarter, Covered Product C is removed from the PDL during the first 30 days of the Quarter. Upon invoicing, Covered Products A and B will be invoiced at the 1 of 2 position while Covered Product C is invoiced at the 1 of 3 position (Covered Product A and B invoiced for 90 days and Covered Product C invoiced for 30 days).

ATTACHMENT C
ATTESTATION OF INCLUSION/EXCLUSION OF MEDICAID MCOS

The State of Louisiana hereby represents and warrants the following with respect to Medicaid MCOs **(must check one):**

☐ Effective for utilization dispensed to State Medicaid MCO members on or after _____ (date*), the State Medicaid Program will include utilization of State Medicaid MCO(s) for State Supplemental Drug Rebates under this Agreement for:

☐ All preferred Supplemental Covered Products, OR

☐ Limited to the following Supplemental Covered Product(s) or Product Category(ies):

1. _____
2. _____

I certify on behalf of the State of Louisiana Medicaid Program, that the State Medicaid Plan permits the inclusion of Medicaid MCO utilization in State Supplemental Drug Rebates, and that the State's contracts with Participating MCOs do not prohibit such inclusion. I further certify on behalf of the State of Louisiana Medicaid Program that the State has reasonably determined that: (i) the utilization of any Participating Medicaid MCO submitted hereunder is eligible for National Rebates under 42 U.S.C. § 1396r-8 and (ii) each such Participating Medicaid MCO shall align their respective formulary(ies) and/or preferred drug list(s), as applicable, assuring access to preferred Supplemental Covered Product is no more restrictive than the State PDL, for any period with respect to which the State of Louisiana Medicaid Program will invoice for Supplemental Rebates for utilization under this Agreement. It is the intent and expectation of the State of Louisiana Medicaid Program that Supplemental Rebates hereunder shall be excluded from Manufacturer's calculation of Best Price or AMP. ***If this option is checked, the State must have documented the above determination via applicable regulation, law, contract, or other formal state agency issuance and the State must attach hereto: (1) a copy of such documentation, as well as (2) a copy of the applicable Participating Medicaid Program's Medicaid Plan (and/or amendment thereto) permitting the election of this option.***

☐ The State of Louisiana will exclude utilization from all of its Medicaid MCOs under this Agreement.

☐ The State of Louisiana has no Medicaid MCOs.

MANUFACTURER CONSENT SHALL NOT BE REQUIRED FOR A STATE TO AMEND THIS ATTACHMENT A-2

So Certified:

State of Louisiana, Department of Health:

By: _____

Title: _____

Date: _____

* *Effective date for including Participating MCO utilization shall not predate the date this Attachment A-2 is executed by the State*