

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION/MMCAP CONTRACT  
AMENDMENT 3**

This amendment is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Cardinal Health, 7000 Cardinal Place, Dublin, OH ("Vendor").

MMCAP has a contract with the Vendor identified as MMS24001 ("Original Contract"). The Original Contract is being amended to modify Attachment A. MMCAP and the Vendor are willing to amend the Original Contract as stated below.

**Amendment**

Attachment A of the Original Agreement is deleted and replaced with Attachment A of this amendment, which is attached and incorporated.

Except as amended, the terms and conditions of the Original Contract and any previous amendments remain in full force and effect.

**Cardinal Health**

By: *David R. Dine*

Title: *EVP*

Date: *5/27/2004*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MMCAP**

By: *Bryan Arsen*  
(with delegated authority)

Title: *AMS*

Date: *06-01-2004*

**Commissioner of Administration**

By: *Heather Chickett*

Date: *June 1, 2004*

## Attachment A

### “STATE” Volume

Service Fees are based on the payment option selection by the facility and the total monthly purchasing volume of the MMCAP Member Entity.

State Pricing Matrix (Monthly Purchase Volume)						
Payment Terms	Up to \$750,000	\$750,001 to \$1,500,000	\$1,500,001 to \$3,000,000	\$3,000,001 to \$7,500,000	\$7,500,001 to \$10,000,000	\$10,000,001 and above
PrePay (-20 DSO)	-1.43%	-1.71%	-2.15%	-2.45%	-2.65%	-2.65%
Weekly Payment (9.5 DSO)	-1.01%	-1.29%	-1.73%	-2.03%	-2.23%	-2.23%
15 Day Net (15 DSO)	-0.93%	-1.21%	-1.65%	-1.95%	-2.15%	-2.15%
Standard Terms (17.5 DSO)	-0.83%	-1.11%	-1.55%	-1.85%	-2.05%	-2.05%
Monthly Terms (25 DSO)	-0.71%	-0.99%	-1.43%	-1.73%	-1.93%	-2.03%
30 Day Net (30 DSO)	-0.63%	-0.91%	-1.35%	-1.65%	-1.85%	-2.00%
45 Day Net (45 DSO)	0.07%	-0.21%	-0.65%	-0.95%	-1.15%	-2.10%
60 Day Net (60 DSO)	0.77%	0.49%	0.05%	-0.25%	-0.45%	-0.60%

DSO = Days Sales Outstanding is a measure used to determine how a customer pays Vendor. For example, a 15 DSO shows that a customer pays, on average, within 15 days of the date of invoice. A -20 DSO indicates that the customer is on a pre-pay and funds worth at least 20 days of purchases are on deposit.

**Total MMCAP Volume Incentive (Millions)**

\$700 – \$900	0.25 %
\$ 900- \$1100	0.35 %
\$ 1100 - \$1300	0.45 %
\$ 1300 – Above	0.55 %

Pricing outlined above in table titled “State Pricing Matrix,” is based upon the total purchases made by an MMCAP participating entity that selects Vendor as its MMCAP pharmaceutical supplier. Any adjustments to a participating an MMCAP participating entity’s cost of goods will be calculated during the month of April during each year of this agreement and based upon the annualized purchase volume for the prior 11 months of the contract year. (May – April). Any adjustment to a participating an MMCAP participating entity’s cost of goods will be reflected no later than June 1 of each contract year. Vendor will issue a pro-rated credit to each participating account for purchases made between May 1 and the date of the actual pricing adjustment. No retroactive adjustment will be applied with respect to purchases by MMCAP facility, absent bad faith on the part of MMCAP facility.

The additional discount outline in the table titled, “Total MMCAP Volume Incentive” is based upon the aggregated purchase volume of all participating MMCAP entities utilizing Vendor as their selected pharmaceutical supplier. This incentive will be calculated during the month of April during each year of this agreement and based upon the annualized purchase volume for the prior eleven (11) months of the contract year. (May – April). Any adjustment to a participating State’s cost of goods will be reflected no later than June 1 of each contract year. Vendor will issue a pro-

rated credit to each participating account for purchases made between May 1 and the date of the actual pricing adjustment.

In the event an individual MMCAP Entity or Facility institutes a law or policy requiring rebates or administrative fees, the distributor may deduct the amount of the rebate or administrative fee from the above contract pricing and work directly with the individual MMCAP Entity or Facility with regard to the rebate or administrative fee.

**Payment Terms**

(a) *Generally.* The payment terms initially applicable to the MMCAP facility, will be jointly determined by Vendor and MMCAP facility based on MMCAP facility's payment preferences (among the selections offered in this section and the Pricing Matrix), the historical purchasing and weighted average payment data for MMCAP facility ("Matrix Slotting Data") and credit considerations deemed relevant by Vendor. MMCAP facility will deliver to Vendor the Matrix Slotting Data not less than 30 days prior to its initial purchases of Merchandise under this contract. Following the determination of MMCAP facility's initial payment terms, all payments for the Merchandise will be due in accordance with those terms unless and until otherwise agreed by MMCAP facility and Vendor. MMCAP facility 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 Vendor's prior written consent. In such event, MMCAP facility acknowledges and agrees that MMCAP facility's Cost of Goods may be adjusted by Vendor to reflect MMCAP facility's new payment terms and credit considerations deemed relevant to Vendor.

(b) *Optional Extended Payment Terms.* Subject to Subsection (a), MMCAP facility may elect to cause Vendor to receive payment on a weekly, 15 day, net, semi-monthly or monthly or 30 day net, 45 day net or 60 day net basis.

(i) *Weekly.* If MMCAP facility selects a weekly payment option, MMCAP facility will cause Vendor 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 MMCAP facility selects a semi-monthly payment option, MMCAP facility will cause Vendor 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 MMCAP facility selects a monthly payment option, MMCAP facility will cause Vendor 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.

(iv) *15 Day Net.* If MMCAP facility selects a 15 day net payment option, MMCAP facility will cause Vendor to receive payment in full by the within 15 days of the date of invoice.

(v) *30 Day Net.* If MMCAP facility selects a 30 day net payment option, MMCAP facility will cause Vendor to receive payment in full by the within 30 days of the date of invoice.

(vi) *45 Day Net.* If MMCAP facility selects a 45 day net payment option, MMCAP facility will cause Vendor to receive payment in full by the within 45 days of the date of invoice.

(vii) *60 Day Net.* If MMCAP facility selects a 60 day net payment option, MMCAP facility will cause Vendor to receive payment in full by the within 60 days of the date of invoice.

(c) *Prepayment Terms.* If MMCAP facility is utilizing Prepayment Terms, in addition to the requirements set forth under "Extended Payment Terms" above, MMCAP facility will, at least five (5) business days prior to the effective

date of this Agreement, make an advance payment to Vendor. The advance payment will be held by Vendor as a deposit ("Deposit"), and Vendor shall have a security interest in the Deposit to secure payment of all of MMCAP facility'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 MMCAP facility and Vendor, of the anticipated dollar volume of Merchandise to be purchased by MMCAP facility 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 Vendor receives the Deposit, Vendor will produce a statement which compares the Deposit with MMCAP facility's average dollar volume of Merchandise purchased from Vendor for each payment cycle during that calendar quarter ("Average Volume"). If the Average Volume exceeds the Deposit, Vendor will send a copy of the statement to MMCAP facility requesting payment of the difference. MMCAP facility will, within ten (10) days of the date of such statement, pay the difference to Vendor and the difference will be added to the Deposit upon receipt by Vendor. If the Average Volume is less than the Deposit, Vendor will send a copy of the statement to MMCAP facility with payment of the difference in the form of check or credit memo as mutually determined by MMCAP facility and Vendor.

*(d) Cost of Goods Adjustments (MMCAP facility Payment Terms).* At the end of each calendar quarter, Vendor will evaluate the MMCAP facility's payment history based on actual weighted average payment days and average Qualified Monthly Purchases. With 3 days written notice 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 MMCAP facility, absent bad faith on the part of the MMCAP facility.

*(e) Service Charges.* All payments for Merchandise delivered and services provided by Vendor will be made to the applicable servicing division specified in Vendor's invoice (or as otherwise specified by Vendor) by electronic funds transfer or other method acceptable to Vendor so as to provide Vendor 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 Vendor. MMCAP facility 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 MMCAP facility to Vendor 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 Vendor to bill MMCAP facility for any such service charge will not waive Vendor's right to receive the same. With 3 days' written notice, Vendor retains the right to place MMCAP facility on C.O.D. status, and/or refuse orders or cease its supply relationship with MMCAP facility if Vendor has not received payment when due for Merchandise delivered or services provided to MMCAP facility, or based upon credit considerations deemed relevant by Vendor.

*(f) Submission of Financial Statements.* MMCAP facility will provide Vendor with financial statements and/or tax returns with all notes and schedules and such further information as Vendor may reasonably request from time to time.

### Delivery Charges

**All facilities will receive one free delivery per week.**

Detail additional delivery charges:

Vendor will deliver the Merchandise F.O.B. to the MMCAP facility and exercise its good faith efforts to provide an efficient delivery schedule designed to meet the mutual needs of Vendor and the MMCAP facility, in accordance with Vendor's general delivery schedules established from time to time by the applicable Vendor servicing division (exclusive of holidays, etc.). All deliveries will be accompanied by an invoice and all delivery costs (not including emergency deliveries) absorbed by Vendor. All Invoiced orders less than \$750 will be subject to a \$20 delivery fee, unless the participating State makes other arrangements with the servicing Vendor distribution center (suggested options are listed below). For facilities having qualified monthly purchases less than \$15,000, the number of actual deliveries will be calculated each month. Should that number be four or less, all delivery fees will be credited within the first 15 business days of the following month. Facilities having qualified monthly purchases in excess of

\$15,000 will be eligible to receive not less than one delivery per day, 5 days per week (Monday through Friday). For facilities located outside of the contiguous United States or other Facilities mutually agreed upon by the parties from time to time, the MMCAP facility will incur a separate delivery charge, not to exceed Vendor'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 Vendor and the MMCAP facility. Vendor will make every reasonable effort to accommodate individual order entry and delivery requirements. It is possible, depending on the servicing Vendor 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.

#### Optional Delivery Fees

A \$20 service fee will be added on to all invoices for accounts that purchase less than \$15,000 per month and generate invoiced orders for less than \$750. Invoiced orders greater than \$750 are shipped at no cost to members, regardless of purchase volume.

1. Accounts will be credited for all deliveries less than four that were actually performed during that month. Vendor is attempting to develop system logic that would allow for low purchase volume orders to be shipped without generating a service charge. This system is not available, however at the time of this response.
2. Accounts purchasing less than \$15,000 per month can opt to increase their cost of goods by 13 basis points (0.13%) for each additional weekly delivery they choose. For example, if such an account wanted two no charge deliveries per week, their cost of goods would be increased by 52 basis points (0.52%).
3. A state or political subdivision may elect to pay a slightly higher cost of goods for all accounts in order to increase the number of no-charge deliveries offered to smaller accounts. Each situation need be handled on a case by case basis. The additional delivery charge will not exceed \$20 per extra delivery.
4. Low purchase volume customers could choose to purchase products from Vendor's Medical Products and Services Division should such an arrangement be agreeable to all parties. If the MMCAP Office would like to pursue this option, Vendor agrees to explore this option as well.

MMCAP facility will submit all orders, except for orders for Schedule II drugs, for all Merchandise to Vendor via cardinal.com or other mutually agreeable electronic means. Vendor will provide MMCAP facility with access to cardinal.com at no additional charge to MMCAP facility; provided, however, MMCAP facility 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. MMCAP facility agrees not to use cardinal.com or any other electronic order entry system for any purpose unrelated to this Agreement. MMCAP facility'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 Vendor reasonably believes security of the cardinal.com site or its proprietary rights are threatened due to MMCAP facility's access. In the event that electronic order entry is temporarily interrupted for reasons beyond the control of MMCAP facility or Vendor, MMCAP facility may place orders manually and both parties will use reasonable efforts to rectify the problem.

DEA Form 222 may be mailed to the applicable Vendor distribution center or given to the delivery driver. Schedule II orders will be delivered with the next scheduled delivery of Vendor's receipt of the signed original DEA Form 222. MMCAP facility acknowledges that if MMCAP facility gives the DEA Form 222s to the delivery driver, such forms will not be received by Vendor until such time that the delivery driver physically delivers the DEA Form 222 to the applicable Vendor distribution center. Notwithstanding the foregoing, no Schedule II orders will be delivered other than in compliance with DEA regulations.

**Taxes/Compliance with Laws**

The MMCAP facility 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 Vendor) and related interest and penalties in connection with or arising out of the transactions contemplated by this Agreement. If Vendor pays any such amounts that the MMCAP facility is obligated to pay under this section, then the MMCAP facility will promptly reimburse Vendor in an amount equal to the amount so paid by Vendor.

The MMCAP facility and Vendor 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 Vendor 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 MMCAP facility or any Facility under the terms of this Agreement. Vendor and MMCAP facility agree to use their best efforts to comply with any and all requirements imposed on sellers and MMCAP facility, 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, MMCAP facility 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 MMCAP facility and/or each Facility.

**Electronic Order Entry/Ordering Software/Hardware:**

Cardinal.com Ordering  
Hardware for use with Cardinal.com

No Charge All MMCAP members  
Facilities can lease hardware for \$99 monthly, or provide their own hardware.  
The PC hardware charge only applies to new customers.  
\$300 per month, per five licensed users  
\$100 per month per unit, 36 month lease  
\$ 99 per month

entelligence (Version 5.0 or later)  
Mobile Solutions  
erceiver  
erecovery

Hospital	\$350	
Satellite	\$125	Must use same physician & patient database as primary. Fees billed to primary account number
Basic Program + Institutional PAP (Bulk Ship) Module	\$500	\$350 for basic program + \$150 for bulk program