**Purchase Agreement**

**For Distribution Center (“DC”) Scan-Based Trading (“SBT”) Suppliers of CVS Pharmacy, Inc.**

This purchase Agreement (this “Agreement”) is entered into by and between [Legal Name of DC SBT Supplier] (“Supplier”) with Supplier ID No. [xxxxx] (“SupplierID”) and CVS Pharmacy, Inc., a Rhode Island corporation, on its own behalf and on behalf of its relevant store subsidiaries and affiliates (“CVS” or “Retailer”), and will be effective until terminated by either party upon thirty (30) days’ written notice to the other party.

**The parties agree that the following terms and conditions shall apply to all sales for scan-based trading of merchandise by the Retailer from the Supplier, except where otherwise prohibited by local, state or federal laws or regulations**:

**1.** **GENERAL**

This Agreement, in concert with any other written and signed agreements between the parties, governs the terms pursuant to which Retailer will sell merchandise purchased from Supplier using SupplierID under a Scan-Based Trading (“SBT”) model, as described in further detail below. For avoidance of doubt, this Agreement applies only to product sales and purchases involving SupplierID.

Should a conflict arise involving the Supplier ID specifically in relation to the purchase of SBT merchandise under this Agreement, and any terms or conditions set forth in any confirmation, acknowledgement, sale or invoice form of the Supplier, or any correspondence related to the aforementioned forms or the merchandise itself, the terms and conditions outlined in this Agreement shall control. No waiver of any breach of any terms or conditions of this Amendment shall be construed as a waiver of any subsequent breach of that term or condition or other term or condition of the same or different nature.

**2. PRICING/ORDERS/DELIVERY**

1. Item, DC, Price and Promotion Synchronization. The Retailer Item Catalog will be used as the central repository for item, authorization, price, and promotion information as well as DC and DC to store alignment. Supplier will be responsible for submitting and maintaining the item, price, and promotion data contained in the Retailer system, subject to the approval of Retailer. The parties agree that Retailer holds the Item, DC, and price of record data to be used for SBT invoicing/payments purposes. All wholesale cost changes and deals shall be submitted by Supplier to Retailer by such time as to ensure that the changes are reflected in the Retailer system prior to the price change effective date. Retailer and Supplier shall mutually agree upon the specific DC locations to carry Supplier’s products. Any Supplier requests for revisions to such DC alignments shall be submitted by Supplier to Retailer by such time as to ensure alignments are in effect in Retailer system prior to service date of DC. Retailer shall have the final discretion to establish the prices to be charged for retail sale of merchandise covered by this Agreement.
2. Purchase Order. CVS will not be purchasing Merchandise from Supplier via the issuance of a purchase order. All purchase orders issued by the Retailer to the Supplier under this Agreement shall solely serve the purpose of instructing the Supplier to replenish the inventory of products at Retailer’s DCs. Such purchase orders do not constitute a transfer of ownership or liability for the Merchandise from the Supplier to the Retailer. Supplier shall fulfill all such purchase orders by delivering the ordered merchandise to the specified Retailer's locations for the purpose of inventory replenishment.
3. Invoices. Retailer will be solely responsible for generating daily invoices on behalf of the Supplier. These invoices will be based on the daily scan data collected at each of the Retailer's individual stores, reflecting the products sold. The invoice amounts will correspond to the cost of the items as per the Retailer's records at the time of the sale. For the avoidance of doubt, no other party will be involved in the generation of these invoices; it will be the sole responsibility of the Retailer under this Agreement. Payment of invoices will be made according to the payment terms set forth in subsection (d). POS date will equal invoice date.
4. Payment. The terms for payment for all Supplier SBT merchandise shall be eligible for the next scheduled CVS payment run, [xxxx] days after the invoice date. Payment timing will be calculated based on the date indicated on the invoice for the supplied SBT merchandise.
5. Merchandise Delivery. Merchandise shall be shipped directly to such CVS or third-party locations as may be designated by CVS. Supplier commits to deliver approved product to allocated locations. All goods are to be delivered F.O.B. Destination. Acceptance of the merchandise by CVS shall not constitute a waiver on the part of CVS of its rights hereunder. Supplier shall be responsible for all shipping and freight costs. **If any** Merchandise is delivered prior to the specified shipment date set forth on a Purchase Order, CVS shall have the right in its discretion to accept or reject any such delivery.
6. Removal of Store Product. Supplier will not have ability to remove product from stores unless both parties agree. Removal of product must be returned to supplier following established reverse logistics processes. Product will be shipped to CLS facility for proper disposition of goods. CVS shall maintain right to charge a fee for having to destroy/dispose or remove supplier’s inventory, or if CVS incurs CLS charges.
7. Inventory Ownership. All products delivered by the Supplier to the Retailer's DCs or stores remain the sole and exclusive property of the Supplier until such time as they are scanned and sold at the Retailer's individual retail locations. This covers products stored both within the Retailer's stores and within the Retailer's DCs.

 (f) Products Destroyed by Casualty and Returns

* 1. If any of the Products are damaged or destroyed, after delivery to Retailer’s DCs or within CVS stores in accordance with this Agreement and before being sold at retail, as a result of fire or other casualty which would be covered by an industry standard form of “all risk” or equivalent property insurance policy (an “Insurable Loss”), Retailer shall pay to Supplier the previously agreed-upon wholesale price for such Products, less any applicable credits or allowances in effect at the time of the Insurable Loss, within 30 days after the occurrence of the Insurable Loss, whether or not such loss is actually covered by insurance.
	2. Each party shall give prompt notice to the other of any complaint, inquiry, suit, claim, or notice of violation which it receives regarding any of the Products delivered to Retailer’s DC or store pursuant to this Agreement and shall cooperate with each other in resolving any such issue.  In the event of a Product recall or other withdrawal, Supplier will be responsible for all costs of removing such Products from the stores and DCs and properly storing or otherwise disposing of such Products as detailed in the CVS Pharmacy Recall policy set forth in Appendix 1. Retailer shall have the option of canceling undelivered merchandise in whole or in part.
1. Any merchandise rejected by Retailer shall be held, at Supplier’s risk, subject to Supplier’s instructions or, at Retailer’s option, returned to Supplier without notice to Supplier and at Supplier’s expense and such return will be adequate notice of rejection of the merchandise.

**3.** **INFORMATION SYSTEMS AND DAILY TRANSACTION PROCESSING**

1. Inventory Movement. In order to maintain an accurate count of Supplier’s merchandise on a regular basis, daily EDI 852 documents will be provided to supplier at each movement of inventory (DC delivery, DC adjustments, DC shipment to stores.) Movement type will be designated by EDI qualifier.
2. Store to DC realignments and overrides shall be governed by the following terms:
	* 1. Realignment: In the event of a permanent change, such as a CVS store switching its program from pay-on-scan to pay-on-ship or vice versa, where the supplier's program does not align with the new store program, a systematic and permanent adjustment will be made. This adjustment will include an update to the inventory records as well as a financial reconciliation to reflect the transfer of ownership for the existing inventory. This will be based on the value of the balance on hand of the inventory at the time of changes as reflected in CVS records.
		2. Override: In the case of a temporary deviation from the standard program alignment, due to exceptional circumstances or operational requirements, an override adjustment will be executed. This adjustment will temporarily modify the inventory records and financial accounts to reflect the change in program, ensuring continuity of operations. This override will incorporate a financial reconciliation process, similar to that in subsection (i) above, adjusted for the duration of the temporary period.
3. Inventory Data Reporting and Delays.
4. Inventory Data Reporting: Retailer and Supplier agree that inventory data for a store will only be transmitted to Supplier once all inventory data has been collected for that particular store for a particular day.
5. Inventory Data Reporting Delays: Supplier acknowledges that interruptions to normal processing schedules may occur, and may include but are not limited to, technical, business, and third-party interruptions, that may result in a delay of Inventory Data Reporting. In either case, Retailer shall work in good faith to ensure all inventory data is delivered as soon as delays are cleared.
6. Data Research: Inventory Data information may be made available upon request in the event Retailer and Supplier are collectively researching an issue. Backups of Data shall be available for up to six (6) months in Retailer’s systems.
7. Data Integrity. Retailer shall maintain the systems and electronic processes necessary to accurately and reliably scan and record each sale of Supplier’s products in Retailer’s stores. Retailer shall use commercially reasonable efforts to ensure that products which cannot be scanned are accurately recorded by manually keying in Supplier’s UPC codes that have been properly assigned to Retailer SKUs at the time and point of sale, provided, however, the manual keying process may not adversely impact customer service. Refunds will be scanned at store level to record and send negative scan quantities, to ensure that each UPC is correct from the manufacturer and that no data is inaccurately deemed lost.
8. Lost Data. Both parties agree to use their best efforts to maintain the accuracy of the data and to resolve any discrepancies. If scan data for a particular day and store cannot be retrieved, processed, or is corrupted, Retailer will calculate sales based on the most current, factually valid information available.
9. **TERMINATION**

Retailer may terminate this Amendment at any time for any reason by giving at least thirty (30) days written notice to Supplier. Upon termination, Supplier will be required to remove all product on the SBT program from Retailer’s stores and DCs on or prior to the termination date set forth in the notice.

In the event of a breach by Supplier of (i) this Agreement or (ii) any Retailer policies as set forth at [[www.cvssuppliers.com](http://www.cvssuppliers.com)], Retailer may terminate this Agreement immediately upon written notice, . In the event of a termination for breach, all Supplier products on the SBT program must be removed from the store as promptly as possible, in any event no later than ten (10) days from the date of the termination notice.

Additionally, either party shall have the right to terminate this Agreement immediately if the other party (i) announces its intention or otherwise acknowledges that it is no longer willing or able to fulfill its obligations pursuant to this Agreement; (ii) admits its inability to pay its debts generally as they become due; (iii) announces its intention to dissolve or to discontinue operations material to its performance under this Agreement; (iv) makes a general assignment for the benefit of creditors; (v) institutes proceedings to be adjudicated a voluntary bankrupt, or consents to the filing of a petition of bankruptcy against it; (vi) seeks reorganization under any bankruptcy act, or consents to the filing of a petition seeking such reorganization; or (vii) has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of its property or providing for the liquidation of its property or business affairs.

Any SBT Merchandise remaining in Retailer’s warehouses or stores after thirty (30) days have elapsed since the termination or expiration of this Agreement shall immediately become the property of Retailer, and Retailer may, at its sole discretion, sell, or discard any such inventory.

1. **SUPPLIER PORTAL**

In addition to executing this Agreement, Supplier shall fully and accurately complete the associated information gathering and onboarding forms, including without limitation any forms for reporting of shelf life, expiration date requirements and other item-specific details, provided to Supplier as part of onboarding (“**Supplier Onboarding Forms**”) and adhere to all requirements and relevant guidelines, policies and programs as may be updated from time to time and set forth on cvssuppliers.com including, but not limited to those policies identified in Appendix 1. The terms and conditions contained therein are hereby incorporated by reference and constitute valid and legally binding obligations, enforceable against Supplier. Updates to the documents on the site are made on a regular basis and may impact or alter the terms and conditions applicable to future purchases. Supplier is expected to make site visits regularly in order to remain informed concerning the CVS requirements and programs applicable to the Merchandise. If Supplier accepts any Purchase Order (or Order, as applicable) from CVS after such an update, Supplier shall be deemed to have agreed to such update and, as applicable, the terms that may have been amended by such update. CVS shall be entitled to rely on the statements made by Supplier on any Supplier Onboarding Forms as if set forth herein, and Supplier shall be solely responsible for any omissions, as well as for updating the information appearing on any Supplier Onboarding Form should any product details change over time.

1. **REPRESENTATIONS AND WARRANTIES**

Supplier makes the following representations, warranties and covenants with respect to Merchandise and transactions pursuant to this Agreement:

1. Authority

Supplier has full power, capacity and authority to enter into and perform this Agreement and to make the grant of rights contained herein, and Supplier’s performance of this Agreement does not violate or conflict with any agreement to which Supplier is a party.

1. Compliance with Law

Supplier shall comply with all applicable federal, state, county, and municipal statutes, laws, regulations, codes, ordinances and orders, and obtain all applicable permits and licenses required in connection with the manufacturing, supply, distribution or promotion of the Merchandise, including without limitation regulations concerning the marketing, packaging and labeling of the Merchandise, applicable requirements for appropriate expiration dating of Merchandise, consumer and product safety, product testing, pricing and packaging and similar requirements in connection with this Agreement.

1. Compliance Certificate

Supplier shall file with CVS, where required, a manufacturer’s Compliance Certificate stating that each product conforms to each applicable product safety standard as is required by the Consumer Product Safety Act.

1. Non-infringement

Supplier has obtained all relevant permissions, licenses, rights (including without limitation any applicable intellectual property rights) and approvals to sell the Merchandise for resale, including via CVS websites and other digital tools. All Merchandise shall be free of the claim of any person for infringement or misappropriation of any license, patent, copyright, trademark, trade secret, trade dress, rights of privacy or publicity or other third party rights.

1. Conformance

Merchandise shall conform to any affirmations of fact or promise, any descriptions and any samples or models shown or made to CVS, whether or not such affirmations, descriptions or samples are otherwise contained or referred to herein, and such affirmations, descriptions and samples shall constitute part of the basis of the bargain between CVS and Supplier. For avoidance of doubt, Supplier hereby represents, warrants and covenants that it has provided full and accurate information concerning each product SKU on all applicable Supplier Onboarding Forms. Supplier shall be solely responsible for all liabilities, losses or claims of any type, including reasonable attorneys’ fees, which result from or are associated with Supplier’s failure to provide all information requested on the Supplier Onboarding Forms associated with any Merchandise.

1. Territory Compliance.

Supplier acknowledges that CVS currently sells the Product or may sell the Product in all fifty states and territories of the United States (the “Territory”).  As of the Effective Date, Supplier represents and warrants that there are no restrictions , limitations, or conditions imposed by any governmental authority on the sale or distribution of the Product in any Territory.  Supplier shall promptly notify CVS of any such limitations or restrictions on the sale of Product by CVS in the Territory.

1. Merchantability

The Merchandise shall be (i) merchantable, of good quality and free of defects; (ii) fit for the purpose for which sold and (iii) function in accordance with the material specifications referenced in any applicable Product description.

1. Title

Supplier has clear title to the Merchandise being sold to CVS, free of all liens or security interests.

1. **AUDIT**

Supplier shall maintain complete and accurate books and records relating to the costs charged to CVS under this Agreement and shall keep such records for not less than three (3) years, even if this Agreement is terminated during such three (3) year period. CVS and its duly authorized representatives may, at a mutually agreed upon date and time, during the term of this Agreement and for a period of three (3) years thereafter examine and copy such books and records. The cost for any such on-site audit shall be borne by CVS. Should an audit reveal Supplier has overcharged CVS, whether intentionally or inadvertently, then CVS shall be entitled to a prompt refund of the overcharge. In the event of an overcharge in excess of ten percent (10%) of the amounts actually due Supplier hereunder, Supplier shall reimburse CVS for the reasonable cost of the audit.

1. **GOVERNING LAW/VENUE**
2. This Agreement shall be interpreted in accordance with the internal laws of the State of New York, without giving effect to the conflict of law principles thereof.
3. Any legal action between the parties relating to this Agreement or the Merchandise shall be heard in the state or federal courts located in the State of Rhode Island, and by execution of this Agreement, each party hereby accepts unconditionally for itself and in respect of its property the jurisdiction of the aforesaid courts. Each party hereby irrevocably waives any objection, including without limitation any objection to the laying of venue or based on forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE TRIAL BY JURY IN CONNECTION WITH ANY LITIGATION ARISING UNDER OR RELATED TO THIS AGREEMENT.
4. **INDEPENDENT CONTRACTOR**

The relationship of the Parties is one of independent contractors, and neither Party is or shall be construed or held to be a partner, joint venturer, affiliate or associated of the other in the conduct of its business.

1. **INTELLECTUAL PROPERTY**

Any use of CVS brands, including the CVS name, logos, signage or other proprietary or trademarked images, by Vendor is expressly forbidden without prior approval from the CVS Corporate Communications Department. Vendor grants to CVS a limited license to use applicable Supplier names and logo trademarks solely for purposes of (and solely to the extent necessary for) marketing the Products pursuant to this Agreement. Vendor may not attempt to register any trademarks or service marks or other brand identifiers (including domain names) that are confusingly similar in any way (including, but not limited to, sound, appearance, and spelling) to any of the CVS brands.

1. **PUBLICITY**

Supplier shall not say to anyone, in writing or orally, anything critical of CVS, its business, or any of its then-current shareholders, officers, employees, and customers and shall not issue press releases or other publicity or press-related materials regarding the Agreement or its subject matter without the prior written approval of CVS.  This Section 12 does not prevent Supplier from exercising rights that by law Supplier cannot waive by contract or from disclosing information to the extent required to comply with law.

1. **INDEMNIFICATION AND INSURANCE**
2. The terms and conditions set forth in the Indemnification Agreement entered into between the Parties and attached hereto as Appendix 2 to the Agreement govern matters concerning responsibility for claims arising out of any Merchandise as well as the insurance requirements Suppler must comply with. In the event any such claims are made against CVS, CVS reserves the right, in addition to other rights and remedies, to refuse further Merchandise and/or payment of purchase price.
3. CVS will hold Supplier to the terms of this Indemnification Agreement by virtue of CVS’s agreement to sell Supplier’s product(s), not solely by the formalization of the terms set forth in the Indemnification Agreement. Any supplier’s withholding of or refusal by Supplier to execute the Indemnification Agreement will not be deemed a waiver of the Supplier’s obligations, nor a waiver of rights by CVS in the event a claim should arise.
4. **CONFIDENTIALITY**

## Except as set forth below, all information disclosed by CVS to Supplier relative to theMerchandise or services provided or to anything relating to the CVS, its products, services, personnel or affiliates, will be treated as confidential and proprietary information of CVS, and Supplier will use such information only for the benefit of CVS in the rendering of services for CVS and will not at any time during the Term or thereafter, either directly or indirectly, otherwise use or disclose such information to others without express, written permission of an officer of CVS authorized to grant such permission. The foregoing limitations of confidentiality will not apply to: (i) information which, at the time of disclosure to Supplier, was already in the public domain; (ii) information, which at the time of disclosure to Supplier, was already known to Supplier (except information previously acquired by Supplier directly or indirectly from the CVS or from a third party under a continuing obligation of confidence to the CVS; (iii) information, which after disclosure to Supplier, becomes part of the public domain through no fault of Supplier; or (iv) information received by Supplier from a third party not owing a duty of confidence to the CVS. Upon termination of this Agreement, Supplier will immediately return to the CVS or destroy, at CVS’s discretion, all drawings, data, writings, recordings, and records of every type (including all copies, compilations or summaries thereof) embodying in any form any confidential information of the CVS. The obligations of confidentiality imposed under this Agreement shall survive for five years after termination or expiration of this Agreement.

1. **EQUAL OPPORTUNITY/NON-DISCRIMINATION**
2. **CVS and Vendor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability**.
3. Vendor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
4. The parties incorporate into this Agreement, as applicable, the obligations regarding the notice of employee rights under federal labor laws found at 29 CFR Part 471, Appendix A to Subpart A, and Vendor will likewise incorporate those obligations into all applicable subcontracts as required by 29 CFR Part 471.
5. Where Vendor will be providing services, deliverables or other items to CVS pursuant to this Agreement in connection with federal contracts or subcontracts of $100,000 or more, then CVS and Vendor must file VETS-100A reports by September 30 of each year, or any applicable extension deadline that VETS announces. 41 CFR Part 61-300.
6. Vendor agrees that it will comply with all laws, regulations, and applicable executive orders governing verification of an employee's authorization to work in the United States and agrees that it will allow only employees who are authorized to work in the United States to perform work pursuant to this Agreement.
7. **DIVERSE BUSINESS ENTERPRISE**
8. “Diverse Business Enterprise”

Shall mean any business located within the United States of America or US territory and that is at least fifty-one percent (51%) unconditionally owned and operated by a person(s) who is either a citizen or lawful permanent resident of the United States or of a U.S. territory and is recognized by the U.S. Government as a: Minority-Owned Business Enterprise (MBE), Woman-Owned Business Enterprise (WBE), Lesbian, Gay, Bisexual and/or Transgender Owned Business Enterprise (LGBTBE), Small Disadvantaged Business (DBE), Small Business Enterprise (SBE), Veteran-Owned Business (VBE), Service-Disabled Veteran-Owned Business (DVBE), or HUBZone Business.

1. Diverse Business Enterprise Utilization

In adherence to CVS’ commitment to supplier diversity, CVS’ suppliers must use all commercially reasonable efforts to further support the growth of Diverse Business Enterprises by the direct or indirect purchase of goods and/or services from Diverse Business Enterprises certified by one or more of the certification agencies recognized by CVS. Such spend with Diverse Business Enterprises will be monitored on a quarterly basis. In connection with such monitoring Vendor will be required to report to CVS in its sole discretion all direct and/or indirect certified spend with Diverse Business Enterprises.

1. **LIMITATION OF LI****ABILITY**

IN NO EVENT SHALL CVS OR ITS AFFILIATES BE LIABLE TO SUPPLIER FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, RESULTING FROM OR RELATING TO THE AGREEMENT OR ANY PURCHASES MADE HEREUNDER, WHETHER BASED ON BREACH OF CONTRACT, TORT, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1. **NOTICE**

All notices, requests, demands, claims, and other communications required hereunder shall be in writing and shall be deemed given if delivered personally or by mail or courier service, on the date of delivery to such party at the addresses set forth below or to such other address as either party may hereafter in writing notify the other party.

*Fill in contact information here*

To Supplier:

Address

Attn:

To CVS:

CVS Pharmacy, Inc.;

One CVS Drive; Woonsocket, RI 02865;

Attention: Category Manager Contact;

Copy to: Darin Smith, Vice President Corporate Law

**GENERAL PROVISIONS**

1. Entire Agreement

This Agreement (including any attachments, appendices, exhibits, schedules and documents incorporated therein, as well as each applicable Purchase Order) constitutes the sole agreement between the parties with respect to its subject matter. This Agreement may not be modified except in a writing signed by both parties.

THIS AGREEMENT SUPERSEDES ANY PRIOR OR CONTEMPORANEOUS WRITTEN OR ORAL AGREEMENTS, EMAILS, CONVERSATIONS OR OTHER COMMUNICATIONS BETWEEN THE PARTIES AND SUPPLIER ACKNOWLEDGES THAT IT MAY NOT REASONABLY RELY ON SUCH COMMUNICATIONS UNTIL THEY HAVE BEEN MEMORIALIZED IN A PURCHASE ORDER OR OTHER DULY EXECUTED AGREEMENT.

THIS AGREEMENT SUPERSEDES ANY FORECASTS OR PROJECTIONS OF ANTICIPATED VOLUMES TRANSMITTED BY EMAIL OR VIA EDI OR ANY OTHER MEANS OF COMMUNICATION.

1. Customs Trade Partnership Against Terrorism (C-TPAT)

Supplier agrees to develop and implement, within a framework consistent with the (C-TPAT) recommendations/guidelines, a verifiable, documented program to enhance security procedures throughout its supply chain process. Where the Seller does not exercise control of a production facility, transportation or distribution entity, or process in the supply chain, the Seller agrees to communicate the C-TPAT recommendations/guidelines to its suppliers and transportation/distribution service providers and, where practical, condition its relationships to those entities on the acceptance and implementation of the C-TPAT recommendations/guidelines. More information regarding CVS/pharmacy and its C-TPAT requirements can be found at https://cvssuppliers.com/import-suppliers.

1. No Assignment

Except as to the right to payment arising out of Supplier’s due performance of its entire obligation, Supplier shall make no assignment of any right arising hereunder and shall not delegate any duty owed by it to CVS and any such attempted assignment or delegation shall be wholly void and totally ineffective for all purposes, unless the prior written consent of CVS, signed by an officer of CVS, shall have been obtained. CVS reserves all of the rights and defenses of an account debtor as set forth in the Uniform Commercial Code. In any case involving a permitted assignment Supplier shall promptly provide CVS with such evidence of assignment, as CVS shall request.

1. Severability

If any provision of this Agreement be deemed invalid or unenforceable, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

1. Counterparts

This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Each party hereby agrees that, to the extent it chooses to execute this Agreement electronically, such electronic signature is equivalent to a handwritten signature on paper, and shall have the same binding legal effect as if the Agreement were personally signed by that party on paper, and each Party hereby waives any right to contest the validity or enforceability of this Agreement due to the lack of a handwritten signature. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

1. Headings

The headings of the various provisions of this Agreement are inserted merely for the purpose of convenience and do not, expressly or by implication, limit, define or extend the specific terms of the provisions so designated.

1. Remedies

The rights and remedies specifically provided in any of the terms and conditions of this Agreement are in addition to and not in substitution of all other rights and remedies given or implied by law, in equity or otherwise, and, in addition to all other rights given by law, CVS shall have the right to recover for any non-conformity in any individual merchandise or an entire order, the incremental cost of obtaining substitute merchandise and the loss of profit caused by such non-conformity. For purposes of this section, non-conformity shall include failure to deliver merchandise in the quantities, at the times, or to the locations specified on a Purchase Order.

1. No Waiver

No waiver of any breach of any terms or conditions of this Agreement shall be construed as a waiver of any subsequent breach of that term or condition or other term or condition of the same or different nature.

1. Third Party Beneficiaries

This Agreement benefits solely the parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

1. Third Party Distributors

Vendor shall not subcontract with any third parties for the supply or distribution of the Products without obtaining prior written approval from CVS, which will not be unreasonably withheld by CVS. In the event that CVS provides such written approval, Vendor shall ensure that such subcontractors (including the subcontractor’s suppliers) comply with the terms of this Agreement. Notwithstanding the foregoing, any written approval by CVS hereunder shall not relieve Vendor of its obligations under this Agreement with respect to the activities performed by such subcontractors.

1. Survival

The terms, conditions, and warranties contained in this Agreement that by their nature and context are intended to survive the expiration or termination of this Agreement. Without limiting the generality of the previous sentence, the following Sections shall survive any expiration or termination of this Agreement:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the signatures of their respective authorized representatives.

ACCEPTED AND AGREED TO: **CVS Pharmacy, Inc.**

SIGNATURE:

NAME:

TITLE:

DATE:

ACCEPTED AND AGREED TO: [Legal name of SBT Supplier]

SIGNATURE

NAME:

TITLE:

DATE:

**Appendix 1\***

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| --- | --- | --- |
| **Policies and Programs** | **Responsibilities** | **URL (may be updated from time to time)** |
| 1. **Ethical Standards**
 | CVS requires all suppliers to conduct business in accordance with applicable laws and CVS ethical standards. Please review CVS Health’s Supplier Ethical Standards and distribute copies to persons within your organization who participate in CVS business. | Details may be found at <https://cvssuppliers.com/node/391>, which are incorporated herein by reference. |
| 1. **CVS Pharmacy Recall Policy**
 | During the ordinary course of business certain items may need to be recalled from CVS stores, distribution centers, and CVS.com for various reasons, including quality and safety issues. This policy outlines CVS’ expectations for Suppliers, as well as procedures for initiating recalls.  | Details may be found at (<https://cvssuppliers.com/node/526>, which are incorporated herein by reference. |
| 1. **CVS Health Supply Chain Performance Program (“OTIF”)**
 | This policy describes the CVS Supply Chain Performance Program, the vendor portal designed to support the performance program, as well as instructions for disputes under the program. | Details may be found at https://cvssuppliers.com/document-library/supply-chain-performance, which are incorporated herein by reference |
| 1. **Unsaleable Merchandise and Minimization of Waste**
 | This policy describes the rights, responsibilities, and procedures for the handling, disposition and removal of Merchandise from all channels of distribution.  | Details may be found on cvssuppliers.com (at <https://cvssuppliers.com/node/551>), which are incorporated here by reference |
| 1. **Supplier Financial Relationship Policy and Guidelines**
 | This policy has been established to provide Suppliers with CVS policies and expectations relating to payments, supplier billing standards, returns, disputes, and electronic data interchange (EDI).  | Details may be found on cvssuppliers.com (at <https://cvssuppliers.com/node/741>), which are incorporated here by reference |
| 1. **Mandatory WERCS Registration Requirements**
 | WERCS is CVS’ program to ensure compliance with regulatory responsibilities related to consumer products. Supplier participation in this initiative is mandatory. All Suppliers must register your product and formulations with WERCS. | Details may be found on cvssuppliers.com (at https://cvssuppliers.com/node/996), which are incorporated here by reference |
| 1. **Ethical Sourcing & CTPAT Compliance Program**
 | Supplier agrees to participate in the CVS Ethical Sourcing & CTPAT Compliance Program to ensure factory compliance with local laws and international standards as it relates to human rights concerns, as well as CTPAT requirements. | Contact ethical.sourcing@cvshealth.com |

**\*In the event a link is not active, Supplier shall be directed to the relevant information located at cvssuppliers.com.**

**Appendix 2**

**Indemnification and Insurance Agreement**

 This Supplier Indemnification Agreement (the “Agreement”) is entered into between CVS Pharmacy, Inc. (“CVS”) and xxxxxxxx (hereinafter “Supplier”), and shall apply to all products, marketing collateral, product and marketing claims, fixtures and equipment, items and services which: (a) CVS has purchased from Supplier or its subsidiaries, assigns, or authorized resellers whether prior to, or after, the date of the execution of this Agreement or (b) have been made available to customers by or on behalf of Supplier or CVS through a CVS branded or operated store (including vending machines or other automated stores) or website or other direct shipment method, or through any other retail or distribution channel controlled by CVS, whether prior to, or after, the date of the execution of this Agreement (collectively, “Merchandise” or “Products”).

1. Supplier hereby agrees to defend, indemnify and hold harmless each of the following: CVS and all past, present and future parent corporations, subsidiaries and affiliates and each of their officers, directors, employees, and representatives (hereinafter individually and collectively “CVS” or “CVS Indemnitees”), from and against any and all liabilities, losses, claims, demands, judgments, settlements, costs, and expenses (including, without limitation, any costs or expenses incurred by CVS as a result of the defense of any action) whether sustained by CVS or a third party, of any type, including, but not limited to, personal injury, including death, and/or property damage (“Claims”), which allegedly result from or are associated with (i) the negligent acts or omissions of Supplier or its personnel (including any recklessness of willful misconduct) in connection with the performance of its obligations under any agreement by and between CVS and Supplier; (ii) any violation of applicable law by Supplier or its personnel; (iii) any breach of the terms or non-fulfillment of any representation, warranty or covenant by Supplier or its personnel in connection with the performance of its obligations under any agreement by and between CVS and Supplier; (iv) any defect, alleged or real, in any Supplier Products; (v) any defect, alleged or real related to any Supplier Products, including defects alleged associated with the manufacturing, design, instructions, packaging, and/or marketing, product claims, and/or marketing collateral, in connection with any Supplier Products; and (vi) any claim for infringement, alleged or real, that any trademark, trade dress, patent, copyright, trade secret, or other Supplier intellectual property right arising out of or used in the production of Supplier Products, or that is embodied in the Supplier Products, infringes or violates any intellectual property right of a third party.

1. Supplier shall not be obligated to CVS Indemnitees under this Agreement to the extent that said claim is a result of any gross negligence or willful misconduct on the part of the CVS Indemnitees.
2. CVS reserves the right to approve selection of or directly select outside counsel engaged to defend CVS.  In the event that allegations are made jointly against CVS and Supplier in relation to Supplier Products, CVS reserves the right to demand separate counsel if reasonably necessary.

1. CVS hereby agrees to notify Supplier in writing of all complaints, claims, or lawsuits within a reasonable time after CVS has received notice of said complaints, claims, or lawsuits. The notification to Supplier shall be sent to (as set forth in Section 19 of the Agreement).
2. As part of this Agreement, Supplier shall maintain appropriate insurance coverage, and shall provide CVS with a Certificate of Insurance which shall outline Supplier’s Commercial General Liability coverage including Public and Products Liability on an Occurrence form written on ISO Occurrence form CG 00 01 12 07 or equivalent, with a limit of not less than US$5,000,000 each occurrence, US$5,000,000 General Aggregate and US$5,000,000 Products Completed Operations Aggregate. Coverage limits may be in the form of a single primary policy or a combination of a primary policy and an Umbrella and/or Excess Liability policy. Further, Supplier shall maintain the following minimum insurance covering damages, costs, settlements, losses, suits, obligations, liability and defense expenses:

* 1. Workers Compensation, Employers Liability, Social Security and/or other insurance as required by law, statute or regulation in the jurisdiction(s) of operation and pertaining to or otherwise providing coverage to the Supplier and/or its employees including limits and/or benefits no less than those as required by applicable law statute or regulation. In no case shall Employers Liability be for less than US$1,000,000 or the minimum amount required by law, statute or regulation, whichever is greater. Coverage limits may be in the form of a single primary policy or a combination of a primary policy and an Umbrella and/or Excess Liability policy.

* 1. Automobile Liability insurance with limits of not less than US$5,000,000 each accident or the minimum amount required by law, statute or regulation, whichever is greater. The policies shall be underwritten by an insurance company that carries an A- or better rating from A.M. Best or otherwise accepted/approved by CVS.
1. Each policy (except for Worker’s Compensation) shall:

* 1. provide that CVS Health Corporation and its subsidiaries and affiliates shall be named as additional insureds;
	2. provide that not less than thirty (30) days' prior written notice shall be given to CVS Health Corporation (or its designated affiliate) in the event of any alteration of terms of such policy or of the cancellation or non-renewal thereof;
	3. provide that such insurance will be primary insurance with respect to CVS Health Corporation and its subsidiaries and affiliates;
	4. include a Waiver of Subrogation against CVS Health Corporation and its subsidiaries, affiliates, agents, officers, directors and employees for recovery of damages against these policies; and
	5. include worldwide coverage territory and jurisdiction, including, but not limited to, the United States of America, its territories, possessions, Puerto Rico and Canada.

1. Supplier shall furnish CVS with a Certificate of Insurance evidencing coverage and a Certificate of Insurance as evidence of renewal at least thirty (30) days prior to expiration of each policy. Certificates should be provided electronically to the Risk Management Department of CVS at the following email address: CVSCaremark\_Cert\_Ins@CVSHealth.com. Any insurance provided on a claims-made form shall have no prior acts exclusion. Supplier shall maintain in effect such insurance during the entire term of the applicable contract with CVS, and for not less than thirty-six (36) months after the last date that any product is supplied to CVS. Notwithstanding the foregoing, CVS reserves the right to require higher insurance coverages at any time.
2. The amount of such required insurance coverage under this section shall not limit or waive Supplier’s indemnification obligations hereunder. CVS’s failure to object to any lack of coverage, or to deficiencies in such coverage, shall not act to bar any claim by CVS for indemnity, or limit or waive Supplier’s obligation to secure any coverage set out in this Agreement. Failure of Supplier’s insurance provider to make payment to, for, or on behalf of Supplier will not act to limit, waive, or eliminate Supplier’s responsibility for such claim, nor will Supplier’s insurer’s denial of any claim be considered a valid denial by Supplier or a reason for Supplier to provide a denial.

1. This Indemnification Agreement shall survive the termination of the transaction of business between Supplier and CVS.

IN WITNESS WHEREOF, Supplier has caused this Agreement to be executed by the signature of its authorized representative.

ACCEPTED AND AGREED TO:

**[Legal name of SBT Supplier]**

SIGNATURE :

PRINT NAME :

DATE :

**Supplier #** :