

Contract Amendment

Date of Award: July 1st, 2012

Date of Amendment: April 3rd, 2019

Contract Number: 23316997

Buyer: David Thompson

Telephone: 785-864-2331

E-Mail Address: dthomps7@ku.edu

Web Address: www.procurement.ku.edu

Item: Preferred Scientific Supplies and Equipment Distributor

Agency: The University of Kansas/University of Kansas Medical Center

Location(s): Lawrence, Kansas/Kansas City, Kansas

**Period of Contract: July 1st, 2012 through June 30th, 2022
(with addition of two (2) optional two (2) year renewals)**

Contractor: Fisher Scientific Company L.L.C.

300 Industry Drive
Pittsburgh, PA 15275

Contact: Jordan Whitworth, Campus Sales Representative

Jordan.whitworth@thermofisher.com
816-491-3902

Financials ID: 0000003057

Prices: See Attached

Scope: This agreement is between the University of Kansas and University of Kansas Medical Center and Fisher Scientific L.L.C. for products listed in current catalogs and/or price books or other pricing media.

Subdivisions: Pricing is available to the subdivisions of the State of Kansas.

The above referenced contract award was recently posted to the University of Kansas website. Please contact the listed buyer for contract information.

**SECOND AMENDMENT TO PREFERRED SCIENTIFIC SUPPLY DISTRIBUTOR
AGREEMENT #23316997**

This SECOND AMENDMENT TO PREFERRED SCIENTIFIC SUPPLY DISTRIBUTOR AGREEMENT #23316997 (the "Amendment") is made by and between Fisher Scientific Company L.L.C., 300 Industry Drive, Pittsburgh, PA 15275 ("Fisher") and The University of Kansas ("KU") and the University of Kansas Medical Center ("KUMC"), ("University" or "Customer") (together, the "Parties") on this March 1st, 2019;

WHEREAS, on July 1, 2012 entered into a Preferred Scientific Supply Distributor Agreement #23316997 (the "Agreement"), as amended on September 16, 2014; and,

WHEREAS, the Parties desire to amend certain terms and conditions of the Agreement.

NOW, THEREFORE, the Parties agree that, effective as of the execution of this Amendment, the Agreement is amended as follows.

1. The term of the Agreement shall continue until June 30, 2022. Thereafter the term of the Agreement shall renew for up to two (2) additional two (2) year periods, upon the University providing written notice of its intent to renew. For clarity sake: If the extension and all renewals are used, this agreement will expire on June 30th, 2026.
2. Section III.B. is deleted in full and replaced with below.

Growth Incentive. Beginning in the first year that customer achieves at least \$5,000,000 (five million dollars) in sales of Catalog Products (specifically excluding Non-Catalog Products and Third Party Products) (the "Net Purchases"), Fisher agrees to pay Customer a 5% incremental growth incentive on such Net Purchases.

Fisher will measure Customer's Net Purchases for each contract year of the term of this Agreement and will compare the current year's Net Purchases (the "Current Net Purchases") against the previous contract year's Net Purchases (the "Previous Net Purchases"). In the event that Customer's Current Net Purchases meet or exceed the Previous Net Purchases, Customer will be entitled to a Growth Rebate calculated by multiplying the incremental Net Purchases (Current Net Purchases minus Previous Net Purchases) by five percent (5%). The baseline amount for the first year of the Agreement shall be \$5,000,000.

Notwithstanding the foregoing, after the first contract year, in no event will the current year's Net Purchases (to be used for purposes of calculating this incentive) ever be lower than the previous year's Net Purchases.

For clarity sake, and by way of example, if Customer achieves Net Purchases of \$6,000,000 of Catalog products in the first contract year, they will earn 5% on \$1,000,000 (\$6,000,000 – \$5,000,000) for a total incentive of \$50,000. If the Customer achieves sales

of \$8,000,000 of Catalog Products in the second contract year contract year, they will earn 5% on \$2,000,000 (\$8,000,000 - \$6,000,000) for a total incentive of \$100,000. If Customer were to then have \$7,000,000 in Net Purchases in the third contract year, there would be no growth incentive paid to Customer. In the fourth contract year the baseline will be \$8,000,000 which will always be the highest sales in any prior year.

Earned incentives shall be paid to Customer within forty-five (45) days of the end of the contract year.

3. Section IV. Vendor Status. Subsection C. of the Agreement is deleted in full and replaced with the following language:

As the Preferred Supplier of the University, Fisher shall have preferential status on University's e-commerce platform, included but not limited to prominent positioning among other catalogs and their products where possible. University is permitted to allow competing suppliers to Fisher to have "punch-out" catalogs including laboratory supplies, safety, instruments, and equipment, but shall use its best efforts to identify and remove exact match items to Fisher items from said suppliers' punch-out catalogs. This shall include, but is not limited to, the following actions:

- a. Every effort will be made to cross-reference items from competing laboratory, safety, instruments, and equipment ("Suppliers") to identify and manually approve purchases from suppliers; if an exact match item is identified by the purchasing manager, the order for the item will be switched to Fisher's exact match item as mentioned in Section IV Vendor Status. Subsection B.;
 - b. University will require competing suppliers to Fisher to block exact match items identified by the purchasing manager or Fisher from being listed on Supplier's punch-out catalog and University's e-commerce platform if proven to be technically possible and the suppliers are willing to comply. In the event a supplier is unable or unwilling to comply with a University request to remove an exact match item, University shall remove that supplier from any search results under the University's control.
 - c. University will notify Fisher of any additional Supplier punch-out catalogs, at least sixty (60) days prior to enablement, should the University find a business need to do so.
4. If, upon review, KU, KUMC or Fisher discover that exact match products are being supplied as contemplated by this Section IV. Vendor Status Subsection C., Fisher shall have the option to withhold incentive payments otherwise due to KU or KUMC (depending on which entity is purchasing the exact match items) pursuant to Section III Price of the Agreement until the Parties are able to review and come to terms over the path forward.
5. The terms of the Agreement, including any freight language and pricing, shall only apply to transactions within the continental United States.
6. This Amendment and the terms herein shall be effective as of the date of execution (i.e. the last signature by either Party).

7. All capitalized terms not otherwise defined herein shall be defined as set forth in the Agreement(s) and previous Amendment(s).
8. All other terms in the Agreement(s) and previous Amendment(s) shall remain in full force and effect.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Fisher and University have caused this Amendment to be executed the day and year first above written.

University of Kansas

DocuSigned by:
Rick Beattie

By: _____
F6229B1B661047C...

Name: Richard Beattie
Title: Chief Procurement Officer

Date: 4/3/2019

University of Kansas Medical Center

DocuSigned by:
F. Bryan Thomas
By: 92C723AAAD57423...
Name: F. Bryan Thomas
Title: Director of Procurement
Date: 4/3/2019

Fisher Scientific Company L.L.C.

DocuSigned by:
Gary M. Galluzzi
By: 6C3924654F264DD...
Name: Gary Galluzzi
Title: Vice President of Sales
Date: 3/27/2019

Contract Amendment

Date of Award: September 16, 2014

Contract Number: 23316997

Commodity Specialist: David Thompson

Telephone: 785-864-2331

E-Mail Address: dthomps7@ku.edu

Web Address: <http://www.purchasing.ku.edu/>

Item: PREFERRED SCIENTIFIC SUPPLIES & EQUIPMENT DISTRIBUTOR

Agency: The University of Kansas/University of Kansas Medical Center

Location(s): Lawrence, Kansas/Kansas City, Kansas

Period of Contract: July 1, 2012 to June 30, 2019
(With five Additional Optional Renewals)

Contractor: Fisher Scientific Company L.L.C., A Delaware limited liability company

Contact: Rich Grabbe Campus Sales Representative

Email: rich.grabbe@thermofisher.com

Contact Phone: 913-314-4425

Fax: 913-742-8380

PeopleSoft ID: 0000033396

Account Codes: Various

Prices: See Attached

Scope: This contract shall cover the procurement of scientific supplies, equipment, and services for the for the University of Kansas/University of Kansas Medical Center and affiliates during the contract period referenced above.

Political Subdivisions: Pricing is available to the political subdivisions of the State of Kansas

The above referenced contract award was recently posted to the University of Kansas website.
The document can be downloaded by going to: <http://www.purchasing.ku.edu/>

AMENDMENT TO LABORATORY SUPPLY PURCHASE AGREEMENT

THIS AMENDMENT TO LABORATORY SUPPLY PURCHASE AGREEMENT is dated and effective as of the **16th of September, 2014** (this "Amendment ") is between Fisher Scientific Company L.L.C. ("Fisher"), a limited liability company organized under the laws of the State of Delaware with an address at 300 Industry Drive, Pittsburgh, PA 15275, and The University of Kansas and The University of Kansas Medical Center ("Customer").

WHEREAS, Fisher and Customer entered into a Laboratory Supply Purchase Agreement effective as of July 1, 2012 (the "Agreement");

WHEREAS, Fisher and Customer wish to make certain amendments to the terms of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fisher and Customer, intending to be legally bound, hereby agree as follows:

1. The term of the Agreement is hereby extended to 30th June 2019. The term shall thereafter automatically renew for no more than five (5) additional renewal terms of 12 months each unless Customer gives written notice of non-renewal not later than sixty (60) days prior to the end of the initial term or any renewal term.
2. Fisher has agreed to extend the benefits of the Agreement to State of Kansas agencies, institutions, and departments ("Eligible Agencies") subject to such Eligible Agencies executing a letter of commitment ("LOC") in the form attached hereto at Exhibit 1. By executing an LOC, Eligible Agencies shall receive the benefit of the Agreement, subject only to the variations described in the relevant LOC. For the avoidance of doubt, purchases by Eligible Agencies will not count towards the incentives offered by Fisher to Customer under the Agreement.
3. The Milestone Bonus at Clause III.B of the Agreement shall be deleted and replaced with the following:

Milestone Bonus. Fisher agrees to pay Customer additional Milestone Bonuses based on its net purchases of Catalog Products (excluding any returns, freight and handling charges of any kind and excluding third party products purchased from vendors with whom Fisher does not maintain a franchise relationship) ("Net Purchases"). Fisher shall pay Customer the Milestone Bonuses based on Customer's achievement of the spend milestones ("Targets") described in the table below. For clarity, the Milestone Bonuses are one-time payments only which are payable on the first achievement of the relevant Target by the Customer.

<i>Net Purchases Target</i>	<i>Milestone Bonus</i>
<i>\$6 million in any contract year</i>	<i>\$50,000</i>
<i>\$8 million in any contract year</i>	<i>\$100,000</i>
<i>\$10 million in any contract year</i>	<i>\$100,000</i>
<i>\$12 million in any contract year</i>	<i>\$100,000</i>

The Milestone Bonuses shall be paid to Customer within thirty (30) days of the Customer's achievement of the relevant Target.

4. Customer shall strive to maintain minimum annual spend with Fisher on Catalog Products of not less than four million dollars (\$4,000,000).
5. With the exception of the modifications set forth above, all other elements of the Agreement will remain unchanged and in full force and effect.
6. Any capitalized terms used in this Amendment will have the meaning assigned to them in the Agreement.

AMENDMENT TO LABORATORY SUPPLY PURCHASE AGREEMENT
DATED SEPTEMBER 16, 2014

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this Agreement to be effective as of the day and year first written above.

FISHER SCIENTIFIC COMPANY L.L.C.

CUSTOMER

CUSTOMER

By: _____

By: _____

By: _____

Name: _____

Name: Richard Beattie

Name: Stephen Scanlon

Title: _____

Title: Director Procurement Services-KU

Title: Director Purchasing-KUMC

Date: _____

Date: _____

Date: _____

Preferred Scientific Supply Distributor Agreement # 23316997

This Agreement, made to be effective as of July 1, 2012 between The University of Kansas and The University of Kansas Medical Center ("Customer") and Fisher Scientific Company L.L.C., a Delaware limited liability company ("Fisher"), establishes terms for Customer's orders from Fisher of laboratory scientific supplies, chemicals (if price competitive), equipment and services, including: (a) those products listed in Fisher's current catalogs and/or price-books ("Catalog Products") and (b) products which are not Catalog Products, but which Fisher obtains for Customer from third parties ("Non-Catalog Products") (collectively "Products").

I. ORDERING, DELIVERY

A. Orders under this Agreement may be submitted from any of Customer's locations in the continental United States by telephone, facsimile, mail or electronic means, including Fisher's website. Customer may determine the status of its orders by calling Fisher's toll-free customer service number or using Fisher's website.

B. Orders for Catalog Products may be cancelled up until the time of shipment to Customer by Fisher or by Fisher's supplier. Cancellation of orders for Non-Catalog Products may require the consent of the supplier, and Customer shall reimburse Fisher for any cancellation charge imposed by the supplier.

C. Fisher offers a thirty (30) day "no hassles" return policy. Customer may return a Product within thirty (30) days of receipt by obtaining a return goods authorization ("RGA") number from Fisher and referencing the RGA number on return shipping documents. Returns made without an RGA number may be returned to the Customer, freight collect. Products returned beyond thirty (30) days for no fault of Fisher are subject to a fifteen percent (15%) restocking fee. Returns of Non-Catalog Products are at all times subject to a restocking fee equal to the restocking fee charged to Fisher by the manufacturer. Fisher's return policy does not apply to (i) Products which have been discontinued, (ii) Products which are personalized or customized, (iii) Products not purchased from Fisher, (iv) Refrigerated or temperature controlled Products, (v) Products which are outdated (unless products are received outdated), shelf-worn, used or defaced and, therefore, unsuitable for return to stock and resale as new, (vi) reagents, diagnostics, or chemicals, which have been opened, or (vii) Products that Customer has caused to be shipped outside of the United States.

D. Freight terms for Catalog Products shipped from Customer's assigned Fisher warehouse are F.O.B. Customer's U.S. destination, normal freight prepaid and absorbed by Fisher. Fisher shall waive all freight related charges such as regular ground shipping, dry ice, hazardous materials, integrity packing, etc. The only freight related charges Customer shall pay for deliveries of Catalog Products are rush charges. For orders of Non-Catalog Products, terms shall be F.O.B. shipping point, freight prepaid and charged to Customer at Fisher's standard freight rates. If Fisher or an affiliate acquires an additional business whose products are made available to Customer, delivery terms shall be separately established for those products

II. PRICE

A. Attached as Exhibit A is a schedule of Customer's high volume Catalog Products setting forth agreed net prices (the "Core List"). The prices set forth in Exhibit A will be held firm through December 31, 2012. Once Fisher is designated the preferred distributor on all supplier rebate

contracts for laboratory supplies Exhibit A pricing will be updated immediately. Prices will be adjusted at the beginning of each calendar year in accordance with any list price changes, provided that any price change (increase or decrease) shall reflect (on a weighted average basis), the 12-month average change in the Finished Goods Less Food and Energy Producer Price Index (Series ID WPUSOP3500) (the "PPI Index") over the previous 12 month period. All changes in price shall be communicated to Customer at least 30 days in advance. At Customer's request, on an annual basis, Fisher shall provide to Customer an updated version of Exhibit A showing the new net prices. Fisher shall work with Customer to review the Core List to ensure that it reasonably reflects end users' purchasing patterns and needs. Formal modifications to the Core List will be discussed not less than twice annually at the quarterly review meetings each year. Fisher will also proactively make recommendations outside of quarterly meetings if they observe new spend trends.

By way of example, if the PPI Index shows a percentage increase in prices for the 2012 calendar year of four percent (4%), then Fisher shall ensure that the net prices in Exhibit A will not increase (on a weighted average basis) by more than 4% using the following method: Fisher will run a usage report for the 2012 year. The proposed 2013 prices will be applied to the 2012 usage to provide a proposed annual spend for 2013. The percent difference will be calculated between the actual spend for 2012 versus the proposed spend for 2013. In this example, the percent difference will be held to a maximum annual price increase of 4%.

B. Attached as Exhibit B is a schedule of discounts for Catalog Products purchased by Customer from Fisher that are not listed in Exhibit A. Discounts shall apply to the current list prices and categories of Catalog Products. Customer may verify the net price calculated from Exhibit B either by calling Fisher's toll-free customer service line, through Fisher's Internet Web site or by requesting a quotation.

C. For Non-Catalog Products, the net price shall be as quoted by Fisher.

D. The pricing described above in Clause II.B shall be subject to increase in the event that the price extended to Customer hereunder results in a price to Customer below Fisher's cost plus 15%, in which event the price charged to Customer shall be Fisher's cost plus 15%.

E. Pricing Protection: In order to ensure maximum contract utilization and confidence in contract pricing, should a promotional or sales event take place for certain product categories or manufacturers, Customer end users shall receive either the contract price or the promotional / on sale priced advertised on Fisher's commercial website, whichever is lower.

F. Laboratory Startups: Fisher shall provide Customer with additional discounts and cost saving opportunities on new lab startups related purchases. Specific discounts and pricing related to lab startups shall be evaluated and addressed on a case by case basis.

G. Volume / Bulk Purchases for Stockroom Inventories: Fisher may provide additional discounts on volume or bulk purchase for Customer scientific supply stockrooms inventory ordering. Specific pricing and discounts for the bulk purchased stockroom supplies shall be determined on a case by case basis.

III. INCENTIVES

A. **Signing Bonus.** Upon execution of this Agreement, Fisher will pay Customer an incentive in the amount of \$600,000 ("Incentive"). Fisher will pay to Customer the Incentive within thirty (30) days of execution of this Agreement. The parties acknowledge and agree that Fisher is only willing to offer the Incentive to Customer in exchange for a long-term Agreement. In the event that Customer terminates this Agreement without cause prior to the end of the six (6) year initial term of this Agreement, Customer agrees to refund a pro-rata portion of the Incentive based on the time remaining in the initial term as of the effective date of the termination.

B. **Milestone Bonus.** Fisher agrees to pay Customer additional Milestone Bonuses based on its net purchases of Catalog Products (excluding any returns, freight and handling charges of any kind and excluding third party products purchased from vendors with whom Fisher does not maintain a franchise relationship) ("Net Purchases"). Fisher shall pay Customer the Milestone Bonuses based on Customer's achievement of the spend milestones ("Targets") described in the table below. For clarity, the Milestone Bonuses are one-time payments only which are payable on the first achievement of the relevant Target by the Customer.

Net Purchases Target	Milestone Bonus
\$8 million in any contract year	\$100,000
\$10 million in any contract year	\$100,000
\$12 million in any contract year	\$100,000
\$14 million in any contract year	\$100,000

The Milestone Bonuses shall be paid to Customer within thirty (30) days of the Customer's achievement of the relevant Target.

C. **Volume Rebate.** Fisher has agreed to offer Customer a volume rebate based on annual contract year net purchases (excluding any returns, freight and handling charges of any kind and excluding third party products from vendors with whom Fisher does not maintain a franchise relationship) (the "Net Purchases"). For each contract year of the term of this Agreement, Fisher will pay to Customer a Volume Rebate calculated by multiplying the Net Purchases (back to dollar one) by three percent (3%). Fisher will calculate this Volume Rebate on a quarterly basis and will make payment of any earned Volume Rebate within thirty (30) days of the end of each contract quarter.

IV. VENDOR STATUS

A. In consideration of the favorable pricing and services provided by Fisher, Customer agrees to designate Fisher as its Preferred Supplier of laboratory products of the type available from Fisher as Catalog Products. Customer shall cooperate with Fisher in encouraging Customer Products users and purchasing personnel to order Catalog Products from Fisher and shall strive for at least 80% of total spend on laboratory products of the type available from Fisher as Catalog Products to be with Fisher. For the avoidance of doubt, scientific supply chemicals are not included within this commitment. Fisher shall be given the opportunity to provide such scientific supply chemicals if cost competitive.

B. Without limiting the foregoing, Customer will make reasonable efforts to:

- Provide Fisher with the opportunity to move exact match items from competitor orders to Fisher;
- Provide Fisher with the opportunity to move exact match items from direct supplier orders to Fisher;
- Designate Fisher as the sole Distributor of Choice on supplier rebate contracts for laboratory supplies;
- Work to eliminate competitive part numbers in any e-commerce platform for exact match items that are available through Fisher's platform;
- Designate Fisher as the Preferred Supplier in e-commerce procurement platforms via icon highlighting or other form at the item level;
- Notify Fisher and provide Fisher with an opportunity to respond to all competitive offerings, quotes, programs, and proposals;
- Notify general contractors that Fisher is the university's Preferred Distributor and encourage built in equipment for new construction and remodels be ordered through Fisher;
- Ensure that Fisher is the preferred laboratory supplies and equipment distributor that is permitted to participate in product shows, seminars, and similar opportunities at any Customer sites. Other distributors will be permitted to produce product shows and seminars that showcase their exclusively-marketed products only; and
- Cooperate with Fisher in identifying additional methods to move as much of the 80% of the Customer's laboratory spend through Fisher as soon as possible after execution of this agreement.

C. As the Preferred Supplier on any e-commerce platform of the Customer, Fisher shall be the only "laboratory supplies and equipment" with a "punch-out" to its site.

D. All other direct competitors of Fisher Scientific will have access to any e-commerce platforms (primarily) for the products they market exclusively. Private label products will not be considered as exclusive products (except where Fisher cannot supply a technically and functionally equivalent product).

V. INVOICING AND PAYMENT

A. For all shipments or other deliveries to Customer, Fisher shall transmit to Customer a shipment-specific invoice of Products shipped.

B. Payment is due within thirty (30) calendar days of the date shown on shipment-specific invoices. Fisher will not be obligated to accept credit cards or purchase cards at any point beyond the point of order placement. The parties may, during the term of this Agreement, discuss in good faith the use of credit cards after the point of order placement, provided that such discussions shall take reasonable account of the credit card fees incurred by Fisher and the effective date of payment.

VI. SERVICE REQUIREMENTS

A. Account Management Team: Fisher shall provide a dedicated account management team to assist in all activities associated with the service and maintenance of the Customer account. The Fisher account management team will serve as Customer main point of contact and will work with Customer to resolve any issues that may arise. The account team will be present at all business review meetings.

B. Order Accuracy: Fisher shall maintain order accuracy (CS) at a rate of 98% or greater. A report of Order Accuracy rates shall be provided by the supplier at each Business Review Meeting, or when requested by Customer.

C. Order Completeness: Fisher shall maintain order accuracy at a rate of 95% or greater (for Catalog Products). A report of Order Fill rates shall be provided by the supplier at each Business Review Meeting, or when requested by Customer. Any known backorders shall be denoted during order entry.

D. Punch-out and Contract Web Portal: Fisher shall provide Customer with a punch-out site through its ecommerce platform as well as a designated contract pricing web order portal for Customer purchases. Pricing displayed on both sites shall be consistent at all times. Fisher shall not charge Customer for the maintenance of the relevant price-books for the Customer punch-out site and web order portal.

E. Pricing Audits: Fisher shall provide a compliance report, when requested by Customer, which will track service level commitments to actual performance and contract pricing to settlement. In the event pricing or discount levels reflected on invoices or the provided reports do not match the pricing levels as stated in the agreement, Customer and Fisher shall work together to calculate and issue an appropriate credit. Fisher shall, at Customer's request, provide a price compliance report (up to once per annum) for the previous 12 month period. In determining whether any credits are due, appropriate account will be taken of below-contract pricing and other undercharges that benefit Customer (special quotes, one time Fisher offer prices, volume discounts and new lab start-ups will not apply to the under charge credit). Reports from Fisher internal pricing audit team will be provided directly to Customer at no charge. In cases where Customer appoints an external consultant to conduct an audit, Fisher reserves the right to charge a reasonable hourly fee in respect of the support provided to such consultants by the Fisher internal audit team.

F. Quarterly Business Review Meetings: In order to maintain and enhance the long-term business relationship, the Fisher account management team and Customer shall meet once quarterly, at a minimum, to review reports, pricing, product updates, performance, service-related issues, etc. Fisher shall also provide cost reduction recommendations to further reduce costs related to Customer's account as they become apparent.

G. Reporting: Fisher shall make every effort to provide reporting, as requested by KU. If requested to provide usage reports, supplier shall deliver the report within five (5) business days of request at no additional charge to KU. At a minimum, the ability to report on the following criteria is required:

- Total dollar value of purchases and total number of orders
- Total value of purchases and total number of orders by each campus at Customer
- Total purchases by item number
- Total value of purchases of Core List Items
- Total purchases paid by purchase order vs. purchasing card
- # of orders made within the lead time requirement
- Overall Order Accuracy Rate = # orders with order accuracy rate of less than 98% vs. # orders with order accuracy rate of more than 98%
- Order Fill Rate = # orders with order fill rate of less than 95%
- # of orders returned due to errors by Customer
- # of Orders returned due to Fisher error

- Total dollar value of surcharges, transaction fees, delivery charges, and other miscellaneous charges.

H. Marketing and End User Education: Fisher shall partner with Customer to market and promote the new Preferred Scientific Supply Distributor agreement to facilitate a smooth and successful Preferred Scientific Supply Distributor implementation. Fisher shall continue to partner with Customer to educate and market to campus users via product shows and other promotion formats to ensure continued high-utilization of the Preferred Distributor agreement.

I. Technology Implementation: Upon execution of contract, Fisher will immediately begin working with Customer's eProcurement vendor SciQuest to implement this Agreement, including:

- Update pricing in the ecommerce platform for Customer
- Provide a specific contract web portal for Customer
- Ensure that Fisher pricing is consistent across all potential avenues where purchases can be made, with the exception of the Fisher website
- Model the Fisher Customer web portal to look as similar to the Customer KUPPS punch-out as possible
- Ensure that the new Fisher punch-out catalog will include the ability to save individual user preferences (i.e., favorite items by user).

VII. TERM AND TERMINATION

A. The initial term of this Agreement shall be for a period of six (6) years from July 1,, 2012 to June 30, 2018. This Agreement supersedes all prior or contemporaneous agreements, representations, or understandings, written or oral, explicit or implied, concerning the subject matter of this Agreement.

B. In the event that one party breaches a material provision of this Agreement and fails, within sixty (60) days of written notice specifying the nature of the breach, to cure such breach, then the non-breaching party may terminate this Agreement by subsequent written notice to the breaching party.

C. Termination of Agreement for Cause: Customer may terminate this Agreement, or any part of this Agreement, for cause where Fisher is in breach of its material obligations hereunder and fails to remedy such breach within thirty (30) days from receipt of such notice (or such longer period as the Customer may authorize).

D. Except in the event of termination because of breach by Customer, Fisher shall honor all orders that Customer has placed prior to the effective date of termination. Termination shall not affect the rights or obligations accrued as of such effective date or that may arise subsequently with respect to transactions initiated or completed prior to the effective date.

VIII. MISCELLANEOUS

A. Notices under this Agreement shall be in writing and transmitted in person or by registered or certified mail to the following addresses:

For Customer: University of Kansas Purchasing Services
Carruth O'Leary Hall, Room# 30
1246 West Campus Road,

Lawrence, KS 66045-7505

Attn: Director of Purchasing and Strategic Sourcing

For Fisher: 300 Industry Drive
Pittsburgh, PA 15275
Attn: VP – Academic Segment
With a copy Attn: General Counsel, RSD, at the same address.

B. Neither party may use the other party's name(s), logo(s) or mark(s) in any public communication or press release, or for any other marketing or promotional purpose, without such other party's express prior written consent.

C. Each party agrees that it shall not hire or solicit for hire in any capacity any person employed by the other party, or employed by the other party within six (6) months prior to such hire or solicitation for hire, except upon such other party's express written consent.


D. The terms and conditions of Exhibit C shall apply to each order for Products, except as modified by the express terms of this Agreement.

E. The Provisions found in Contractual Provisions Attachment (Form DA-146a, 10-11) Exhibit D, which is attached hereto, are hereby incorporated in this contract and made a part thereof.

F. The Provisions found in the KU & KUMC Memorandum of Terms, Exhibit E, which is attached hereto, are hereby incorporated in this contract and made a part thereof.

University of Kansas

Fisher Scientific Company L.L.C.

By: 

By: 

Title: _____

Title: _Vice President Academic

Date: 6/27/2012

Date: 06-26-2012

Exhibits

A – High Volume Catalog Pricing Schedule / Core List – are to be included on website.

B – Catalog Discount Pricing Schedule / CDC for Market Basket Items are to be included on website.

C – Terms and Conditions of Sale

D – State of Kansas Department of Administration Form DA-146a (Rev. 10-11)

E - KU & KUMC Memorandum of Terms

EXHIBIT B - Catalog Discount Pricing Schedule - Confidential

CDC Code	Description	Types of Products in CDC Code	Std Discount	Alt Discount
001	Fisher Mfg. Equipment	Centrifuges, rotors, incubator ovens, muffle furnaces, pH meters, isotemp ovens, water baths, and versa bath hotplates.	30.2%	30.2%
002	FSE Furniture	FSE Furniture.	17.1%	17.1%
003	FSE Live	FSE Live	19.8%	19.8%
005	Fisher Apparatus & Supplies	Mechanical balances, weights, burners, adapters, rotors, clamps, hotplates, stirrers, dry block, electrodes support stands, flexaframes.	29.0%	29.0%
007	Low Volume Apparatus	Low Volume Apparatus.	17.0%	17.0%
008	Low Volume Consumables	Low Volume Consumables.	18.0%	18.0%
009	Low Volume Equipment	Low Volume Equipment.	16.3%	16.3%
010	Equipment Accommodation	Centrifuges, rack cages, rotors, evaporators, furnace tubes, refrigerators.	18.0%	18.0%
011	Equipment	Vacuum pumps, centrifuges, stereo scopes, microscopes, tuttinauer autoclaves, furnaces, hotplates/stirrers, pH meters, circulators, freezers, turbidimeters, lab refrigerators.	23.8%	23.8%
012	Equipment	Vacuum pumps, microscopes/accessories, balances, centrifuges, conductivity meters, freezer dryers, furnaces, incubators, ovens, pH meters, motorized minipipet, freezers, water baths, blowers, hood protectors.	24.0%	24.0%
013	Apparatus & Supplies	Microwave knives, gloves, metering tubes/floats, floats, tube norprene, syringes, flask clamps, heaters.	15.0%	15.0%
014	Apparatus & Supplies	Scope accessories, adapters, chromatography paper, extract thimbles, filter paper, syringes, gloves, heaters, electrodes, culture tubes, cable covers, pipets turbidimeter.	23.8%	23.8%
015	Apparatus & Supplies	Belt guards, animal cages, weights, tissue grinder, Petri dishes, conductivity meters, filters, flasks, adapters, flow meter, heating tape, mantles, pump tube, electrodes, dispensers, stirrers, stoppers, needles, culture tubes, micropipets.	23.8%	23.8%
016	Apparatus & Supplies	Gloves, ampoules, filters, weights, balances, beakers, bottles, centrifuges tubes, serum bottles, Petri dishes, syringes, spectra mesh, gas samples bags, hotplates, heating tape, thermo flaks, UV lamps, aluminum ladders, scientific pens, repipets, HC tubes, safety stopper, tanks, probes.	25.0%	25.0%
017	Apparatus & Supplies	Statfree wear, vacutainer tubes, vials, bottles, centrifuge tubes, crucible, tissue grinder, dessicator plate, funnels, gloves, viscometers, pipets, pens, tempilstik, test tube holder, lattice rod, syringes, microdispenser.	28.0%	28.0%
018	Apparatus & Supplies	Lab coats, coveralls, twirlbags, weights, beakers, bottles, vials, burets, sieves, centrifuge tubes, cylinders, dessicators, flasks, funnels, gloves, jars, autoclave tape, cover glasses, RTK labels, tubing, stir bars, racks, tanks, hydron, connectors, micropipet.	34.0%	34.0%
019	Apparatus & Supplies	Anti-static coats, weights, vacutainer tubes, screw caps, bottles, gloves, magnifiers, electrodes, pipets, pumps, sieves, thermometers.	33.8%	33.8%
020	Apparatus & Supplies	Lab coats, weights, vials, burets, gloves, viscometers, C-flex tubes, swabs, thermometers, connector tubes.	37.0%	37.0%

021	Apparatus & Supplies	Lab coats, autoclaving bags, weights, beakers, bottle brushes, burets, centrifuge tubes, corks, bylinders dessicator, dissecting blades/kits, fire extinguishers, gloves, hydrometers, labels, tapes, magnifiers, thermometers, pens, pipets, scissors, forceps, rubber stoppers, tubings, spatulas, stopwatches, racks.	65.8%	65.8%
022	Corning Std. & Alt. Unit	Beakers, tube adapters, bottles, burets, centrifuge tubes, cylinders, Petri dishes, flasks, funnels, vycor glass, stoppers, stopcocks, pipets, test tubes, connecting tubes.	45.8%	45.8%
023	Kimble Std. & Alt. Unit	Beakers, weigh bottles, burets, condenser cylinders, flasks, funnels, glass tubing, graduate pharm, stoppers, test tubes, centrifuge tubes.	45.8%	45.8%
024	FSCO Pipets	OST pipets, TC-TD pipets, volumetric pipets, mohr pipets, bacteria pipets, sero pipets, kolmer pipets, lang pipets, kirk pipets.	35.0%	35.0%
025	FSE Chemicals	FSE Chemicals.	13.4%	13.4%
026	FSE Equipment	FSE Equipment > \$250.	18.8%	18.8%
027	Proprietary	Cell acetate, pump tubing, Cameo I & II, PTFE filters, glass filter, discs, emery roll, belts, cut-off wheel nylon, nylon membranes, membrane discs, weights, filter paper, UV lamps, lab ranger, adapter, storage box, shelves.	23.8%	23.8%
028	Proprietary	Fisher Private Label instruments - vacuum pumps, balances, reliances, pressure vessels, circulators, recorders, freezers, stirrers.	24.0%	24.0%
029	Platinum ware - Apparatus	Apparatus platinum ware.	24.0%	24.0%
030	Fisherbrand Hi Vol Consumables - 1	Cover glass, slides, vials, serum separators, pipet disposables, culture tubes, micropipet disposable, tips.	65.8%	65.8%
031	Fisherbrand Hi Vol Consumables - 2	Autoclave bags, PP beakers, tainer tops, filter paper, gloves, cover glass, nylon membranes, urisystem, test tubes, blood buffer, culture tubes.	65.8%	65.8%
032	ICN BioChemicals	Molecular Biology.	0.1%	0.1%
033	Acros Chemicals	Acros Chemicals.	4.0%	4.0%
034	Eastman Chemicals	Eastman Chemicals.	22.5%	22.5%
035	ICN RadioChemicals	Molecular Biology.	0.1%	0.1%
036	Vendor Diagnostics	Clinitest, animal blood, chemstrip, shigella, ames.	25.1%	25.1%
037	Vendor Diagnostics	Diagnostics includes: Bayer, BBI, Difco, Organon, Roche, Smithkline, Ciba Corning, Oxford Labware, Whale Scientific, Carter Wallace.	20.8%	20.8%
038	Vendor Diagnostics	ATI Orion, BBI, Edge Biological, Gugol Stain, Technical Products, Laboratory Diagnostics, L & F Prods., Medstat, Michclone Assoc., Pharmacia Adria Labs, Roche, Stanbio, Smithkline, Custom Labs, Ventrex, Precision Systems.	20.8%	20.8%
040	BW Bulk		0.0%	0.0%
041	Celline	Celline, saline solution, linear enzymatic, hemataill reagent, PNPP reagent.	45.8%	45.8%
042	Hemataill Reagents	Coulter cards, Hemataill reagents, carbol, iodine solution, safranin.	45.8%	45.8%
043	Hemataill Controls	Hemataill controls.	15.8%	15.8%
044	Specialty - Controls	Specialty - Controls	0.0%	0.0%
045	Bridgewater General Reagent	Bridgewater General Reagent	0.0%	0.0%
046	Bridgewater High Purity	Bridgewater High Purity	0.0%	0.0%
047	Corning/Costar Tissue Culture	Corning/Costar Tissue Culture	15.0%	15.0%
048	Falcon Tissue Culture	Falcon Tissue Culture	18.0%	18.0%
049	Nunc Tissue Culture	Nunc Tissue Culture	16.0%	16.0%
050	SPS Accom.	SPS Accom.	0.0%	0.0%

051	SPS Prod	SPS Prod	0.0%	0.0%
052	SPS Prod	SPS Prod	0.0%	0.0%
053	SPS Prod	SPS Prod	0.0%	0.0%
054	Stains & Fixatives	Stains, fixatives, solutions, buffers, decalcifying hematoxylin, propanol citric acid.	66.0%	66.0%
055	Life Science	Life Science.	2.0%	2.0%
056	Fisher Microscopes	Fisher Microscopes & Accessories, Stereo Master II.	24.0%	24.0%
057	Life Science Instruments	Life Science Instruments	0.1%	0.1%
058	Kontes	Kontes	7.0%	7.0%
059	Furniture - Fisher	Furniture.	37.3%	37.3%
060	Kontes Glassware	JT Inner, JT Outer, JT Ball, JT Sockets, o-rings, hose connectors, stopcocks, valve, tube connectors, discs, flasks.	21.0%	21.0%
061	Furniture - Fisher Hamilton	Furniture.	38.6%	38.6%
062	Kimble-Kontes	Kimble Deltaware (VN8059), adapters, flasks, thermometer, tissue grinder, vacuum.	25.8%	25.8%
063	Corning - Std. Unit Only	Corning, tubing, glass, stopcocks, tubes, beakers, bottles, burets, tube centrifuge, jar, condensers, cylinder, distilling, dessicator, flasks, funnels, joint o-rings, pipets, stirrers, stoppers.	37.0%	37.0%
064	Kimble Glass - Std. Unit Only	Kimble beakers, burets, columns, cylinders, flasks, stoppers, funnels, jars, kettles, pipets, stopcocks, grinder tubes, bottles, rods, condensers, dessicators, Petri dishes.	37.0%	37.0%
065	Life Science Exclusives/Premium Products	Life Science Exclusives/Premium Products	2.0%	2.0%
066	Mallinkrodt SB Small Bulk Solvents	SB Small Bulk Solvents.	21.7%	21.7%
067	Mallinkrodt CB Carboy Acids	CB Carboy Acids.	0.0%	0.0%
068	Mallinkrodt RP Precious Metals	RP Precious Metals.	0.0%	0.0%
069	Mallinkrodt SC Spill Control / Safety Products	SC Spill Control / Safety Products.	0.0%	0.0%
070	Mallinkrodt Silica Gels	SG-Silica Gels.	20.3%	20.3%
071	EM Science	Chromatography and specialty products.	16.3%	16.3%
072	EM Science	Chromatography and specialty products.	12.0%	12.0%
073	FSE Supplies		14.1%	14.1%
074	FSE Microscopes		14.2%	14.2%
075	Corning Micro Chemware (VN8481, VN2047)	Corning Micro Chemware (VN8481, VN2047), flasks.	15.1%	15.1%
076	Corning Plus Glassware (VN2049)	Corning Pyrex plus bottle reagents.	12.8%	12.8%
077	Promega I - Wizard Kits	Promega I - Wizard Kits.	20.8%	20.8%
078	Promega I - Enzymes and Markers	Promega I - Enzymes and Markers.	15.8%	15.8%
079	Electrophoresis	Electrophoresis	18.2%	18.2%
080	Electrophoresis	Electrophoresis	15.0%	15.0%
081	Life Science Biochemicals	Life Science Biochemicals.	28.0%	28.0%
082	Life Science Accommodation	Life Science Accommodation	0.8%	0.8%
083	Life Science Products	Life Science Products	2.0%	2.0%
084	Life Science Products	Life Science Products	5.0%	5.0%
085	FSD		8.8%	8.8%
086	Life Science Products	Life Science Products	12.0%	12.0%
087	Chromatography Supplies Accommodation Items	Chromatography APP., Americanbionet, Hewlett Packard, Linde Gases, SGE Inc., Universal Sci., I-Chem, J&W Scientific.	22.0%	22.0%
088	Chromatography Supplies	Chromatography APP., Hewlett Packard, Linde Gases, SGE Inc., Universal Sci., Competitive, J&W Scientific.	12.0%	12.0%
089	Chromatography Supplies	Exclusive proprietary chromatography competitive, Crossfield Chemical, SGE Inc.	22.0%	22.0%

090	Chromatography Supplies	Exclusive proprietary chromatography non-competitive, Crossfield Chemical, Linde Gases, SGE Inc., Universal Sci., Graphic Controls.	15.0%	15.0%
091	Chromatography Specialties	J&W Scientific.	10.8%	10.8%
092	Millipore	Millipore.	4.0%	4.0%
093	Specialty Products (DNA)	Outside vendor, Applied Immune Sciences, DNA <\$250, Micron Separations, New Brunswick Scientific.	2.0%	2.0%
094	General Distribution (DNA)	Koehler Instrument Co., outside vendor, Perstorp Analytical, DNA	2.0%	2.0%
095	Accommodation Items	Accommodation items.	8.0%	8.0%
096	First Aid	Portable eyewash stations, showers, fire blankets, stretchers, aspirin, inhalants, bandages, first aid kits, gauze, tape, Sqwincher.	21.7%	21.7%
097	FSE Preserved		13.9%	13.9%
098	Premier Products DNA	Microcentrifuge, ferrules union refric circulator heating dir.	2.0%	2.0%
099	Leather Safety Footwear	Leather shoes and boots.	0.0%	0.0%
101	Solvents ACS	ACS solvents.	80.8%	80.8%
102	Solvents, Laboratory	Laboratory solvents.	80.8%	80.8%
103	Solvents, Histological	Histological solvents.	80.8%	80.8%
104	Solvents, HPLC (purity)	HPLC solvents.	79.3%	79.3%
105	Solvents, 99% MOL	99% MOL solvents.	79.3%	79.3%
106	Solvents, Pesticide	Pesticide solvents.	79.3%	79.3%
107	Solvents, Spectroanalyzed	Spectroanalyzed solvents.	53.5%	53.5%
108	Solvents, NF / USP / FCC	NF / USP / FCC solvents.	50.8%	50.8%
109	Solvents, Optima	Optima solvents.	75.8%	75.8%
112	Solutions, Normality/Std.	Normality/std. solutions.	65.8%	65.8%
113	Solutions, Atomic Absorb.	Atomic absorption.	33.2%	33.2%
114	Solutions, Buffers	Buffers 4B.	50.8%	50.8%
115	Solutions, Other	KF reagents, iodine solution, sodium, formaldehyde.	51.0%	51.0%
119	Organics, Stains	Organics, stains.	54.0%	54.0%
120	Organics	Organics.	52.0%	52.0%
124	Inorganics, Salts, Drys, ACS	Salts, drys, ACS.	75.8%	75.8%
125	Inorganics, Salts, Drys-Tch	Purified calcium, ammonium, barium, iron, lithium, potassium, sodium, zinc.	51.0%	51.0%
126	Inorganics, Precious Metals	Precious metals (all grades), silver, gold, mercury, nickelous, platinum.	51.0%	51.0%
127	Inorganics, Absorbents	Absorbents, silica gels, rexyn, sieves.	51.0%	51.0%
128	Inorganics, NF / USP / FCC	NF / USP / FCC.	50.8%	50.8%
132	Big 5	Sulfuric acid, nitric acid, hydrochloric acid, acetic acid, ammonium hydroxide.	75.8%	75.8%
133	Other	Other - acids (formic, hydriodic, hydrofluoric, perchloric, phosphoric).	80.8%	80.8%
137	Bulk, Solvents 20L, 200L	Bulk, Solvents - 20 liter, 200 liter.	64.0%	64.0%
138	Bulk, Solutions 20L	Bulk, Solutions - 20 liter.	50.8%	50.8%
139	Bulk, Inorganic	Bulk, Inorganic drys - 10kg.	50.8%	50.8%
140	Bulk, Organics	Bulk, Organics.	21.0%	21.0%
141	Bulk, Acids	Bulk, Acids - 20 liter; 6.5 gallon.	50.8%	50.8%
142	Bulk, Absorbents	Bulk, Silica gel - 2.5kg to 25kg.	34.0%	34.0%
143	Bulk, Chemicals	Bulk, 200L & 50kg - 100 to 700lb.	57.5%	57.5%
144	Bulk, FL Specials	Bulk, FL Specials.	0.0%	0.0%
146	Proprietary Items	Acid spill, silicon oil solutions.	25.5%	25.5%
148	LSC Cocktails	LSC Cocktails.	35.0%	35.0%
149	Performance Cocktails		0.0%	0.0%
150	GC Resolv Solvents	Ultra Pure Solvents, chemical specialties, methanol P&T, acetone, methylene chloride.	50.8%	50.8%
151	Fisher Pak	Stainless steel systems - 30 liter to 200 liter.	36.8%	36.8%

152	PrepSep	Prep sep, empty prep.	5.8%	5.8%
153	TissuePrep	Tissue prep.	39.9%	39.9%
154	Chemicals 1	Aqualan hydranal, pestanal stds., acids, buffers, Lab Chem, Ultra Scientific.	25.2%	25.2%
155	Downsized Items	Downsized items.	50.8%	50.8%
156	Scinti Cocktails	Scintiverse, scintisafe.	25.8%	25.8%
157	Chemicals 2	Chemicals.	13.2%	13.2%
158	MSA & Scott and complete units	MSA & Scott and Complete Units.	17.2%	17.2%
159	MSA & Scott excluding complete units	MSA & Scott Excluding Complete Units.	24.1%	24.1%
160	Mallinkrodt, GE GenAR Products	Gen Ar Products, miscellaneous.	18.0%	18.0%
161	Mallinkrodt, SP Specialty Products	Specialty Products.	24.4%	24.4%
162	Mallinkrodt, GD Gen Line Drys	Dry Reagents LT 12kg.	35.6%	35.6%
163	Mallinkrodt, RA Reagent Acids	Reagent acids in less than carboy sizes.	36.9%	36.9%
164	Mallinkrodt, GS Gen Line Reagent Solvents	General line reagent solvents in less than 20 liters.	36.9%	36.9%
165	Mallinkrodt, SD Small Bulk Drys	Small bulk (12kg), drys solvents (20L).	21.0%	21.0%
166	Mallinkrodt, LS Large Bulk Solvents	Carboy acids, large bulk solvents (200L), large bulk drys (100lb).	0.0%	0.0%
167	Mallinkrodt, DO Drop Ship Organics	Drop ship organics.	8.4%	8.4%
168	Mallinkrodt, SO Stock Organics	Stock organics.	14.2%	14.2%
169	Mallinkrodt, ST StandARd Solutions	Standard solutions.	25.1%	25.1%
170	Mallinkrodt, BT Life Sciences	Life Sciences, precious metal, other refer to price items, spill control and safety products; Lablink II.	27.2%	27.2%
171	Safety Instruments	Monitors, radiation, combustible gas, oxygen, detector tubs, badges.	10.7%	10.7%
172	Safety Cabinets / Capital Equipment	Flammables, acid, poison, wooden, mini bench, piggyback, undercounter vacuums.	28.8%	28.8%
173	Safety, PPE-Speciality Products	Hard hats and caps, suspensions, winterliners, spectacles, goggles, gortex nomex coveralls, level A & B suits, hazmat coveralls, fall protection.	27.6%	27.6%
174	Safety, PPE-Core Products	Coveralls tyretek, astrospets, goggles, faceshields.	27.0%	27.0%
175	Safety, PPE-Commodity Products	Safety caps, earplugs.	37.2%	37.2%
176	Safety, Gloves Specialty Products	Viton, Butyl, Silver Shield, Lineman's Gloves and leather protectors, low voltage drybox, spectra, stainless steel, cut resistant, anti-vibration, cryo, zetex, kerlar.	29.1%	29.1%
177	Safety, Gloves Core Products	Supported & unsupported latex, neoprene, nitrile, vinyl gloves, finger cots, leather, pigskin, polar bear.	40.0%	40.0%
178	Safety, Gloves Commodity Products	Cotton, jersey, inspectors, exam gloves, latex & vinyl, poly.	37.0%	37.0%
179	Safety, Respirator Specialty	SCBAs, EEBAs, PD Airline, con	23.4%	23.4%
180	Safety, Respirator Core	Disposable respirators, reusable, 1/2 mask, full face mask, gas mask, cartridges, filters, spare parts, cleaning equipment, white cap, airhat, snap cap.	28.5%	28.5%
181	Safety, Footwear	Shoes, boots, socks, Bata rubber boots.	33.4%	33.4%
182	Safety, Contamination Control	Cleanroom wipes, pads, swabs, static shield bags, tacky mats, grounding cables.	32.9%	32.9%
183	Safety, Miscellaneous Specialty Products	Matting, industrial & lab mirrors, nomex shirt & pants, coveralls.	25.2%	25.2%
184	Safety, Miscellaneous Core Products	Safety cans, biohazard kits, coveralls-tyretek, shoe covers, isoclean.	26.0%	26.0%
185	Safety, Miscellaneous Commodity Products	Miscellaneous Safety items.	40.8%	40.8%

Note: When the calculated price for a catalog product falls below Fisher's cost plus 15%, the price charged will be cost plus 15%.

EXHIBIT C - TERMS AND CONDITIONS OF SALE

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. **GENERAL.** Fisher Scientific Company L.L.C. ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This Exhibit, in conjunction with the Preferred Scientific Supply Distributor Agreement and all other incorporated Exhibits, is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. **PRICE.** Pricing is governed by the provisions of the Preferred Scientific Supply Distributor Agreement.

3. **TAXES AND OTHER CHARGES.** Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

4. **TERMS OF PAYMENT.** Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

5. **DELIVERY; CANCELLATION OR CHANGES BY BUYER.** The Products will be shipped to the destination specified by Buyer, F.O.B. Seller's shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as to an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without the prior written consent of Seller.

6. **TITLE AND RISK OF LOSS.** Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

7. **WARRANTY.** Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). Seller agrees during the Warranty Period, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that Buyer shall (a)

include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. Consumables are expressly excluded from this warranty.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.

THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

INDEMNIFICATION.

promptly notify Seller in writing upon the discovery of any defect, which notice shall

8.1 By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are

not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

9. **SOFTWARE.** With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Accordingly, Seller and Buyer agree that such third parties retain ownership of and title to such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 7 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

11. **EXPORT RESTRICTIONS** Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations. ,.

12. **MISCELLANEOUS.** (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Kansas. (c) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (d) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (e) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of

documentation accompanying the Product, the Product is intended for research only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, *in vitro* diagnostic uses, *ex vivo* or *in vivo* therapeutic uses, or any type of consumption by or application to humans or animals. (g) Fisher shall cooperate with Customer to monitor invoicing accuracy and will conduct appropriate internal reviews upon request. Reviews shall be limited to once per year and shall cover the prior twelve month period. Reasonable credit shall be given to undercharges and overcharges. If Customer engages external consultants to review invoice accuracy, Fisher reserves the right to charge a reasonable fee for support provided to such party. (h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller, to the extent permitted by law. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party unless required to do so under the law or pursuant to a valid court order, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (i) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other.

such provision. (f) Unless otherwise expressly stated on the Product or in the

KU & KUMC ("KU")
Memorandum of Terms (MOT)
Fisher - Preferred Scientific Supply Distributor

Instructions

Please indicate a "Yes" or "No" for agreement to each specified term or condition. Counter offers, exceptions to agreement, or reasons for not agreeing may be provided in the Fisher Comments box.

I. General Terms				Fisher Agrees	KU Agrees	Fisher Comments	KU Comments
A. Agreement Length: 8 years				X			
B. Effective Date (tentative): June 1, 2012				X			
C. Definitions: Preferred Scientific Supplies Distributor providing supplies, equipment and services as defined in the KU RFP 23316097. Fisher will be given the opportunity to provide Scientific Supply Chemicals if cost competitive.				X			
D. Termination for Cause: The Director of Purchasing and Strategic Sourcing may terminate this contract, or any part of this contract, for cause under any one of the following circumstances: <ul style="list-style-type: none"> the Contractor fails to make delivery of goods or services as specified in this contract; or the Contractor provides substandard quality and/or workmanship; the Contractor fails to perform any of the provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms. The Director of Purchasing and Strategic Sourcing shall provide Contractor with written notice of the conditions endangering performance. If the Contractor fails to remedy the conditions within ten (10) days from the receipt of the notice (or such longer period as the University may authorize in writing), the Director of Purchasing and Strategic Sourcing shall advise the Contractor an order to stop work immediately. Receipt of the notice shall be presumed to have occurred within three (3) days of the date of the notice.				X			
E. Supplier Status: Upon finalizing a contract, KU will issue an official endorsement to the scientific user community designating Fisher as the Preferred Distributor for scientific related supplies and equipment.				X			
F. E-Procurement: Fisher will be designated as the Preferred Scientific Supply Distributor in the KU Procure to Pay System ("KUPPS"). Fisher will be the only distributor with a punch-out site enabled in KUPPS; all other general distributors shall only have hosted catalog for exclusive products.				X			
G. Payment Terms: Minimum Payment Terms for all purchases will be Net 30 Days.				X			
H. Other: All other aspects of general terms not specifically addressed herein shall be addressed and agreed upon in the final master agreement between Fisher and KU.				X			

II. Pricing & Incentives				Fisher Agrees	KU Agrees	Fisher Comments	KU Comments
A. Core List Item Pricing: All Core List items procured from Fisher for KU shall be provided at the net prices listed in sub A. Core List items of this workbook. Pricing for these core items shall remain valid through December 31, 2012, unless pricing changes are mutually agreed upon by KU and Fisher during any subsequent Core List review during 2012.				X			
B. CDC Discount Structure: All non-core item purchases shall be priced at the appropriate discount off list price based on the contract CDC discount structure listed in sub B. CDC Discounts of this workbook. The agreed upon CDC discount shall remain consistent throughout the 6-year agreement and shall only be changed by mutual agreement by KU and Fisher.				X			
C. Pricing Changes: Fisher shall hold not pricing for Core List items fixed through December 2012, unless pricing changes are mutually agreed upon by KU and Fisher. Any pricing changes after this initial period are allowed once per year at the beginning of the subsequent calendar year, and shall remain fixed for the entirety of that calendar year unless changes are mutually agreed upon by KU and Fisher. Annual pricing increases or decreases will be tied to the Producer Price Index (PPI). All pricing changes shall be confirmed and validated with KU prior to becoming effective.				X			
D. Modifications to Core List: Fisher shall work closely with KU to update and right-fit the Core List to ensure that it continues to reflect and users' purchasing patterns and needs. Formal modifications to the KU Core List will be discussed during at least two of the quarterly review meetings each year (i.e., twice annually). Fisher will also proactively make recommendations outside of quarterly meetings if they observe new spend trends. KU reserves the right for final designation of items included on the Core List, as well as the right to adjust the total number of items included on the list.				X			

E. Manufacturer Rebate Contracts: KU and Fisher shall jointly review the current manufacturer rebate pass-through contracts to ensure that Fisher, as the Preferred Scientific Supply Distributor, is designated as the sole distributor of these contract items and that purchases and pricing of these items flows through Fisher.	X			
F. Pricing Protection: In order to ensure maximum contract utilization and confidence in contract pricing, should a promotional or sales event take place for certain product categories or manufacturers, KU and KUMC and users shall receive either the contract specified KU price or the promotional / on sale price advertised on Fisher's commercial website, whichever is lower.	X			
G. Laboratory Startups: Fisher shall provide KU with additional discounts and cost saving opportunities on new lab startups related purchases. Specific discounts and pricing related to lab startups shall be evaluated and addressed on a case by case basis.	X			
H. Volume / Bulk Purchases for Stockroom Inventories: Fisher shall provide additional discounts on volume or bulk purchase for KU scientific supply stockrooms inventory ordering. Specific pricing and discounts for the bulk purchased stockroom supplies shall be determined on a case by case basis.	X			
I. Additional Costs: Any additional cost components beyond those outlined in this agreement will not be introduced during the term of this agreement without the mutual agreement and written consent of both Fisher and KU.	X			
J. Upfront Signing Bonus: Fisher shall pay KU an upfront lump sum signing bonus in the amount of \$800K due within 30 days after signing the Preferred Scientific Supply Distributor contract.	X			
K. Milestone Signing Bonus: Fisher shall pay KU an additional one-time \$100K once each of the following annual spend mile stones are reached: - \$5M in estimated annual spend - \$100K - \$10M in estimated annual spend - \$100K - \$12M in estimated annual spend - \$100K - \$14M in estimated annual spend - \$100K	X			Sales will begin to accrue toward the Milestone payments once the contract is signed.
L. Volume Rebate: Fisher shall provide KU and KUMC with a 3% volume rebate based on KU and KUMC's total annual spend, payable on a quarterly basis.	X			Sales will begin to accrue toward the Volume incentive payments once the contract is signed.

III. Service Requirements				
Fisher Accuracy	KU Accuracy	Fisher Comments	KU Comments	
X		A. Account Management Team: Fisher shall provide a dedicated account management team to assist in all activities associated with the services and maintenance of the KU account. This Fisher account management team will serve as KU's main point of contact and will work with KU to resolve any issues that may arise. The account team will be present at all business review meetings.		
X		B. Order Accuracy: Order accuracy should be maintained at a rate of 98% or greater. A report of Order Accuracy rates shall be provided by the supplier at each Business Review Meeting, or when requested by KU.		
X		C. Order Completeness: Order completeness should be maintained at a rate of 95% or greater. A report of Order Fill rates shall be provided by the supplier at each Business Review Meeting, or when requested by KU. Any known backorders shall be denoted during order entry.		
X		D. Delivery and Freight Cost: Fisher shall waive all freight related charges such as regular ground shipping, dry ice, hazardous materials, integrity packing, etc. The only freight related charges KU shall pay are rush charges and transportation on Third Party orders.		
X		E. Returns: Fisher shall provide "hassle free" returns and adjustments. Full credit is to be provided to the customer on all returns that take place within 30 days of receipt in the original packaging and in re-sellable condition.		
X		F. Punch-out and Contract Web Portal: Fisher shall provide KU with a punch-out site through KUPPS as well as a designated contract pricing web order portal for KUMC purchases. Pricing displayed on both sites shall be identical at all times.		
X		G. Pricing Audits: Fisher shall provide a compliance report, when requested by KU, which will track service level commitments to actual performance and contract pricing to settlement. In the event pricing or discount levels reflected on invoices or the provided reports do not match the pricing levels as stated in the agreement, KU and Fisher shall work together to calculate and issue an appropriate credit.	Fisher shall, at KU's request, provide a price compliance report (up to once per annum) for the previous 12 month period. Reports from Fisher Internal pricing audit team will be provided directly to KU at no charge. In cases where KU appoints an external consultant to conduct an audit, Fisher reserves the right to charge a reasonable hourly fee in respect of the support provided to such consultants by the Fisher Internal audit team.	

IV. Management & Reporting		Fisher Agrees	Fisher Comments	KU Comments
A. Quarterly Business Review Meetings: In order to maintain and enhance the long-term business relationship, the supplier account management team and KU shall meet once quarterly, at a minimum, to review reports, pricing, product updates, performance, service-related issues, etc. Fisher shall also provide cost reduction recommendations to further reduce costs related to KU's account as they become apparent.		X		
B. Reporting: Fisher shall make every effort to provide reporting, as requested by KU. If requested to provide usage reports, supplier shall deliver the report within five (5) business days of request at no additional charge to KU. At a minimum, the ability to report on the following criteria is required: <ul style="list-style-type: none"> • Total dollar value of purchases and total number of orders • Total value of purchases and total number of orders by each campus at KU • Total purchases by form number • Total value of purchases of Core Items • Total purchases paid by purchase order vs. purchasing card • # of orders made within the lead time requirement • Overall Order Accuracy Rate = # orders with order accuracy rate of less than 98% vs. # orders with order accuracy rate of more than 98% • Order Fill Rate = # orders with order fill rate of less than 95% • # of orders returned due to errors by KU • # of orders returned due to Vendor error • Total dollar value of surcharges, transaction fees, delivery charges, and other miscellaneous charges. 		X		
C. Marketing and End User Education: Fisher shall partner with KU to market and promote the new Preferred Scientific Supply Distributor agreement to facilitate a smooth and successful Preferred Scientific Supply Distributor implementation. Fisher shall continue to partner with KU to educate the market to campus users via product shows and other promotional formats to ensure continued high-utilization of the Preferred Distributor Agreement.		X		
D. Technology Implementation: Upon execution of contract, Fisher will immediately begin working with KU's eProcurement vendor to: <ul style="list-style-type: none"> • Update pricing in KUPPS for KU • Provide a specific contract web portal for KUMC • Ensure that Fisher pricing is consistent across all potential avenues where purchases can be made, with the exception of the Fisher Retail website • Model the Fisher KUMC web portal to look as similar to the KUPPS punch-out as possible • Ensure that the new Fisher punch-out catalog will include the ability to save individual user preferences (i.e., favorite items by user). 		X		



 Fisher Signature _____ Date 5-10-2012

 J.A. Centofante _____ Date 5/14/2012

 University of Kansas Signatory

CONTRACTUAL PROVISIONS ATTACHMENT – Exhibit D.

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1st day of July, 2012.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.