

**Apexus 340B Prime Vendor Program
Participant Participation Agreement Form**

THIS LETTER OF PARTICIPATION (“LOP”) is entered into between **San Antonio Metropolitan Health District** (“Participant”), and Cardinal Health 110, LLC and Cardinal Health 112, LLC (collectively, “Distributor”), and is made effective the first day on which both parties have executed this LOP (“Effective Date”).

WHEREAS, Apexus and Distributor entered into an agreement with an effective date of September 1, 2016, as may be amended from time to time (the “Base Agreement”), under which Distributor agreed to distribute Products (as defined in the Base Agreement) to participants in the 340B Prime Vendor Program, subject to the terms and conditions of the Base Agreement;

WHEREAS, Participant (a) is eligible to participate in the Base Agreement, and (b) owns, manages and/or operates one or more “Facilities” (as defined in Paragraph 1 below); and

WHEREAS, Participant desires to purchase Products from Distributor.

NOW THEREFORE, in consideration of the promises and mutual obligations and undertakings set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. BASE AGREEMENT; DEFINITION OF FACILITY:

- a. The terms and conditions of the Base Agreement shall apply to purchases consummated pursuant to this LOP, except as otherwise specifically set forth herein. In the event of a conflict between the terms and conditions of this LOP and the Base Agreement, the terms most favorable to the Participant shall control. This LOP may contain terms and conditions that are additional to the terms set forth in the Base Agreement. To the extent such terms do not conflict with the provisions of the Base Agreement, such additional terms and conditions set forth in this LOP shall govern solely with respect to the purchases of Products pursuant to this LOP. Capitalized terms in this LOP shall have the meanings given to them in the Base Agreement, unless otherwise defined herein.
- b. “Facility” means any pharmacy or hospital which Participant owns, manages and/or operates. A list of all Participant Facilities as of the Effective Date, including their respective “ship to” addresses and number of deliveries per week is attached to this LOP as Attachment 2 and is incorporated herein by reference. Additional Facilities may be added to Attachment 2 upon the mutual written agreement of Distributor and Participant and such agreement by Distributor shall not be unreasonably withheld. When Participant requests that Distributor set up any 340B contract pharmacy(ies) pursuant to the 340B Drug Purchase Program established by the Veteran’s Health Care Act of 1992, Section 340B of Public Law 102-585, Participant will pay Distributor a one-time set-up fee of \$150.00 per 340B contract pharmacy. Such entity shall hereinafter also be recognized as a “Facility”. Participant must provide monthly volume projections and delivery schedule (frequency and specific days) for each 340B contract pharmacy to be set up by Distributor. Deliveries to 340B contract pharmacies will be at a time of day determined solely by Distributor.

2. TERM: This LOP shall be effective beginning on the Effective Date and continue through August 31, 2020 (the “LOP Term”). The LOP Term will be automatically renewed for up to three (3) additional years if the Base Agreement Term is extended.

3. **LOP TERMINATION:** Either party may terminate this LOP at any time upon providing not less than ninety (90) days prior written notice thereof to the other party.
4. **PRIME VENDOR:** Throughout the LOP Term, in order to receive the Participant Markup offered to Participant under this LOP (set forth in Attachment 1 hereto), Participant must order not less than ninety percent (90%) of all dollars spent on each category of the following Products (i.e. branded, generic and Drop Shipments) by using Distributor as its prime vendor for the purchase of such products normally purchased through wholesale pharmaceutical distributors. To the extent that Distributor is unable to supply such Products, those purchases shall be excluded from the ninety percent (90%) calculation. If Distributor believes that a Participant is not utilizing Distributor as the Prime Vendor (as defined above), then (i) Distributor shall provide evidence supporting such belief to Participant and Apexus and (ii) Distributor and Participant shall promptly meet in good faith to discuss such concern. For purposes of clarification (i) the ninety percent purchase threshold set forth in this Section is a condition for receiving the applicable Participant Markup and (ii) Participant's failure to meet the ninety percent (90%) threshold as set forth herein shall not constitute a breach of any Participant obligation but shall instead only result in Participant not receiving the Participant Markup. Notwithstanding the foregoing, in the event Participant does not utilize Distributor as its primary distributor, but has a 340B contract pharmacy(ies) where the contract pharmacy(ies) utilize(s) Distributor as its primary distributor, Distributor shall service such Participant under the terms and conditions of this LOP, as if such Participant utilized Distributor as its primary distributor.
5. **MEDICARE/MEDICAID DISCLOSURE:** If and to the extent any discount, credit, rebate or other purchase incentive is paid or applied by Distributor with respect to the Products or Services purchased hereunder, such discount, credit, rebate or other purchase incentive may constitute a "discount or other reduction in price," as such terms are defined under the Medicare/Medicaid Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)(3)(A) and the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. § 1001.952(h)), on the Products purchased by Participant or any Facility hereunder, Participant and/or its Facility(ies) may have an obligation to accurately report, under any state or federal program which provides cost or charge based reimbursement for the Products or Services covered by this LOP, or as otherwise requested or required by any governmental agency, the net cost actually paid by Participant and/or its Facility(ies).
6. **LICENSES; OWN USE:** Participant represents, warrants and certifies that it and each of its Facilities has all required governmental licenses, permits and approvals required to purchase, use and/or store the Products purchased from Distributor and that all of Participant's or each Facility's purchases hereunder are for its "own use", if applicable, in the Facilities, as such term is defined in judicial or legislative interpretation, and not for resale to anyone other than the end user.
7. **CONFIDENTIALITY:** "Confidential Information" means the information in this LOP (including pricing and Markup). Participant may not disclose any Confidential Information (except as required by law) to any third party (excluding Apexus). Notwithstanding the foregoing, Distributor shall not prevent a Participant from disclosing its invoice data.
8. **ENTIRE AGREEMENT:** This LOP, together with the Base Agreement, constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements, understandings and representations or promises exchanged by the parties, whether verbal or written. This LOP may not be modified except through a writing that is signed by Participant and Distributor.
9. **LIMITATION OF LIABILITY:** EXCEPT FOR DISTRIBUTOR'S INDEMNIFICATION OBLIGATIONS AND ANY OTHER DAMAGES SPECIFICALLY SET FORTH IN THE BASE AGREEMENT OR HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL CLAIMS, LIABILITIES OR DAMAGES.

10. COMPLIANCE: Participant represents and warrants that it:

- a. will abide by all applicable laws, rules, regulations, ordinances and guidance of the federal Drug Enforcement Administration (“DEA”), the states into which it dispenses or sells controlled substances and/or listed chemicals, and the states in which it is licensed, including, without limitation, all of the foregoing concerning the purchase, sale, dispensation, and distribution of controlled substances; and
- b. will not dispense or sell controlled substances and/or listed chemicals if it suspects that a prescription or drug order is not issued for a legitimate medical purpose or the actions conducted on the part of the prescriber or Participant and its employees are not performed in the normal course of professional practice.

In addition, Participant warrants that it understands that Distributor is required by DEA regulations to report to the DEA suspicious orders of controlled substances and listed chemicals, and Participant agrees to act in good faith in assisting Distributor to fulfill its obligations. To that end, Participant agrees that it will be alert for red flags of suspicious orders and listed chemicals, including, but not limited to:

- a. Numerous controlled substance prescriptions written for the same drugs, in the same quantities for the same time period by the same or different prescribers or group of prescribers for the same patient;
- b. Numerous controlled substance prescriptions written for the same person or several persons by the same prescriber or group of prescribers; and
- c. Numerous prescriptions written for the same patient by prescribers located in different states than the patient.

Participant agrees that if any of the above-noted or other red flags exist, it is prudent to contact the prescriber to validate the legitimacy of the prescription and/or to discontinue filling prescriptions from the prescriber, group of prescribers, or customer in question. In addition, the pharmacist should contact the State Board of Pharmacy or local DEA Diversion Field Office (see Appendix N, DEA Pharmacist’s Manual, 2010 Edition).

If Participant wishes to provide Distributor with access to its prescription claims transaction and/or dispensing data for Distributor’s Suspicious Order Monitoring Program, Participant must sign a:

- a. HIPAA Business Associate Agreement with Distributor in a form acceptable to Distributor; and
- b. Data Transmission Request Form for each third party claims switch utilized by the pharmacy(ies) that authorizes the switch to transmit each pharmacy’s prescription claims data to Distributor, and/or a Data Transmission Request Form that authorizes Distributor to receive dispensing data from the pharmacy’s(ies’) dispensing system software vendor(s).

Participant acknowledges that Distributor may provide a copy of this document to the DEA or any other state or federal regulatory agency or licensing board.

Participant hereby acknowledges and agrees that, notwithstanding any other provision herein, or any provision in any other agreement between Distributor and the Participant, Distributor may, in its sole discretion, immediately suspend, terminate or limit the distribution of controlled substances, listed chemicals, and other products monitored by Distributor to the Participant at any time if Distributor believes that the continued distribution of such products to the Participant may pose an unreasonable risk of the diversion of such products

based on the totality of the circumstances and such other considerations as may be deemed relevant by Distributor.

11. FUEL SURCHARGE: Distributor reserves the right to assess Participant a fuel surcharge, on a per delivery stop basis, for each delivery made to Participant by Distributor (the “Fuel Surcharge”). Each Fuel Surcharge shall be set forth on the invoice from Distributor, calculated as set forth below:

Regular Unleaded Fuel Price is: at Least	But Less Than	Fuel Surcharge Amount
\$6.51	and greater	\$2.25 per stop
\$6.01	\$6.50	\$2.00 per stop
\$5.51	\$6.00	\$1.50 per stop
\$5.01	\$5.50	\$1.25 per stop
\$4.01	\$5.00	\$1.00 per stop
\$3.26	\$4.00	\$0.50 per stop
\$0.00	\$3.25	No Fuel Surcharge

The fuel prices in the table above represent the national average retail cost per gallon for regular grade gasoline as published by the U.S. Department of Energy (the “Average Price Per Gallon”), available at: http://www.eia.doe.gov/oil_gas/petroleum/data_publications/wrgp/mogas_home_page.html. By the 15th day of each calendar month, Distributor shall determine the Average Price Per Gallon for the immediately preceding month, and any required adjustments to the Fuel Surcharge will be applicable as of the first (1st) day of the immediately following calendar month (for example, by the 15th of November, Distributor shall determine the Average Price Per Gallon for October, and any required adjustments to the Fuel Surcharge will be applicable as of December 1st).

12. SMALL ORDER DELIVERY CHARGE: We reserve the right to assess a fee of Fifty Dollars (\$50) for any order of less than One Thousand Five Hundred Dollars (\$1,500). For each delivery, Distributor shall aggregate all account orders by a single Facility to determine gross order value. If this value is less than One Thousand Five Hundred Dollars (\$1,500), a small order fee of Fifty Dollars (\$50) will be added to the invoice as a separate line charge. If the gross order value is greater than One Thousand Five Hundred Dollars (\$1,500), no small order fee will apply. If Distributor otherwise services the particular Facility, then the fee in this section will not be applied to that Facility

13. PAYMENT TERMS: Any past due invoice will be assessed interest at a 1.5% monthly (18% annual) rate or the highest amount allowed by law, if lower. If amounts due are not paid by Participant to Distributor pursuant to the maximum payment term set forth on Markup Matrix, Distributor reserves the right to add two point five basis points (0.025%) per each weighted average payment day beyond such maximum payment term to the applicable Participant Markup (for example, if Participant pays in 70 days (10 days beyond the maximum payment term of 60 Day Pay (60 DSO)), Participant’s applicable Participant Markup going forward will be adjusted by +0.25%). Until Products are paid for in full, Participant grants Distributor and Distributor retains a security interest in the Products. Distributor will have a security interest in any deposit(s) to secure payment to Distributor (or its affiliates) of all of Participant’s obligations, existing and future. If Participant defaults on any payment, Distributor may exercise a right of setoff against any deposit Distributor holds or any amounts Distributor (or its affiliates) owe Participant. Participant shall provide to Distributor any credit information we request not less than thirty (30) days before Participant’s initial purchases hereunder and, after that, as Distributor may reasonably request from time to time. Distributor retains the right to adjust Participant’s payment terms, place Participant on C.O.D. status, and/or refuse orders based on Participant’s payment performance, changes in Participant’s financial condition or other credit considerations Distributor

deems relevant. All payments for Products and Services provided by Distributor must be made to the applicable servicing division specified in the invoice (or as Distributor otherwise specify) by electronic funds transfer or other method acceptable to Distributor so as to provide Distributor with good funds by the due date. Deductions for Product returns or shipping discrepancies (quantity and price) may not be taken until Distributor issues a valid credit memo to Participant. Participant may from time to time (but not more often than once per calendar quarter) request that its payment terms be changed as to future Product purchases (among those choices specified in the Markup Matrix), subject to Distributor's advance written consent. In such event, Participant acknowledges and agrees that its Participant Markup will be adjusted pursuant to the Markup Matrix.

IN WITNESS WHEREOF, Participant and Distributor, intending to be bound by the terms of this LOP and having the authority to bind their respective corporations, hereby execute this LOP by placing their signatures below:

San Antonio Metropolitan Health District

**CARDINAL HEALTH 110, LLC
CARDINAL HEALTH 112, LLC**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ATTACHMENT 1

LOP PARTICIPANT MARKUP

Participants with monthly net purchases of \$300,000 or greater (such Participants will be eligible to receive up to five (5) deliveries per week):

Monthly Net Purchases	-45 DSO	-15 DSO	0 DSO	1 DSO	8 DSO	9.5 DSO	15 DSO	30 DSO	45 DSO	60 DSO
\$300,000 - \$399,999.99	-2.15%	-1.75%	-1.55%	-1.45%	-1.35%	-1.26%	-1.07%	-0.69%	+0.11%	+0.98%
\$400,000 - \$499,999.99	-2.45%	-2.05%	-1.85%	-1.75%	-1.65%	-1.56%	-1.37%	-0.99%	-0.19%	+0.68%
\$500,000 - \$599,999.99	-2.55%	-2.15%	-1.95%	-1.85%	-1.75%	-1.66%	-1.47%	-1.09%	-0.29%	+0.58%
\$600,000 - \$749,999.99	-2.65%	-2.25%	-2.05%	-1.95%	-1.85%	-1.76%	-1.57%	-1.19%	-0.39%	+0.48%
\$750,000 - \$999,999.99	-2.95%	-2.55%	-2.35%	-2.25%	-2.15%	-2.06%	-1.87%	-1.49%	-0.61%	+0.18%
\$1,000,000 - \$1,249,999.99	-3.05%	-2.65%	-2.45%	-2.35%	-2.25%	-2.16%	-1.97%	-1.59%	-0.79%	+0.08%
\$1,250,000 - \$1,499,999.99	-3.10%	-2.70%	-2.50%	-2.40%	-2.30%	-2.21%	-2.02%	-1.63%	-0.84%	+0.03%
\$1,500,000 - \$1,749,999.99	-3.15%	-2.75%	-2.55%	-2.45%	-2.35%	-2.26%	-2.07%	-1.69%	-0.89%	-0.02%
\$1,750,000 - \$1,999,999.99	-3.20%	-2.80%	-2.60%	-2.50%	-2.40%	-2.31%	-2.12%	-1.74%	-0.94%	-0.07%
\$2,000,000 - \$2,999,999.99	-3.35%	-2.95%	-2.75%	-2.65%	-2.55%	-2.46%	-2.27%	-1.89%	-1.09%	-0.22%
\$3,000,000 - Above	Locally Negotiated									

Participants with monthly net purchases less than \$300,000:

One (1) Delivery Per Week:

Monthly Net Purchases	-45 DSO	-15 DSO	0 DSO	1 DSO	8 DSO	9.5 DSO	15 DSO	30 DSO	45 DSO	60 DSO
\$0 - \$299,999	-2.54%	-2.13%	-1.92%	-1.90%	-1.73%	-1.69%	-1.56%	-1.20%	-0.90%	-0.60%

Five (5) Deliveries Per Week:

Monthly Net Purchases	-45 DSO	-15 DSO	0 DSO	1 DSO	8 DSO	9.5 DSO	15 DSO	30 DSO	45 DSO	60 DSO
\$0 - \$24,999	Not Available									
\$25,000 - \$299,999	-1.51%	-1.10%	-0.90%	-0.88%	-0.71%	-0.69%	-0.56%	-0.20%	+0.16%	+0.52%

If Distributor otherwise already services a Facility on Attachment 2 at the rate of five (5) deliveries per week, then the Facility will be under the Five (5) Deliveries Per Week.

The following items will not be subject to the applicable Participant Markup: WAC Products that are: (i) Distributor private label products, (ii) medical/surgical supplies, (iii) home health care/durable medical equipment, (iv) contrast media, (v) gift Products, (vi) office supplies, (vii) cosmetics, (viii) OTC, and (ix) health and beauty aids. Except as otherwise described in this Agreement, Participant may, but will have no obligation under this Agreement to, purchase any specified volume or percentage of its requirements of these items.

Notwithstanding anything to the contrary that may be contained in this Agreement, the applicable Participant Markup for all IV Solutions (250 ml and greater) will equal 4.00%.

ATTACHMENT 2

PARTICIPANT FACILITIES

Insert Participant's Requested Initial Payment DSO Term*: ____ DSO as described on Attachment 2-A.

*Note – that final DSO will be determined and communicated by Distributor to Participant.

Bill to Address, City, State, ZIP Code	Ship to Facility Address, City, State, ZIP Code	340B ID	Number of Scheduled Deliveries per Week (1 or 5)*
SAN ANTONIO METROPOLITAN HEALTH DISTRICT City of San Antonio - Finance Department PO Box 839966 San Antonio, TX 78283	SAN ANTONIO METROPOLITAN HEALTH DISTRICT 512 East Highland Street SAN ANTONIO, TX 78210	STD782851	

***No Facility will be eligible to receive more than five (5) deliveries per week.**

ATTACHMENT 2-A

PARTICIPANT PAYMENT TERMS

-45 DSO. To access this option, Participant will be required, at least five (5) business days prior to the effective date of Participant's Participation Agreement, to make an advance payment to Distributor in an amount equal to sixty (60) days' purchases. The advance payment will be held by Distributor as a deposit (the "**Deposit**"), and Distributor will have a security interest in the Deposit to secure payment of all of Participant's obligations, now existing, and arising in the future, under this Agreement. Payment of all invoices will be due in accordance with the 15 DSO payment term. The Deposit will be evaluated and adjusted each calendar quarter based on the average preceding three (3) months' purchases and Participant's payment performance based on Weighted Average Payment Days ("**WAPD**"). If, based on such evaluation, the Deposit is under-funded, Distributor will send a statement to Participant requesting payment of the difference. Participant will be required, within ten (10) days of the date of such statement, pay the difference to Distributor and the difference will be added to the Deposit upon receipt by Distributor. If, based on such evaluation, the Deposit is over-funded, Distributor will send a statement to Participant with payment of the difference in the form of check or credit memo as mutually determined by the Distributor and Participant.

-15 DSO. To access this option, Participant will be required, at least five (5) business days prior to the effective date of Participant's Participation Agreement, to make an advance payment to Distributor in an amount equal to thirty (30) days' purchases. The advance payment will be held by Distributor as a deposit (the "**Deposit**"), and Distributor will have a security interest in the Deposit to secure payment of all of Participant's obligations, now existing, and arising in the future, under this Agreement. Payment of all invoices will be due in accordance with the 15 DSO payment term. The Deposit will be evaluated and adjusted each calendar quarter based on the average preceding three (3) months' purchases and Participant's payment performance based on Weighted Average Payment Days ("**WAPD**"). If, based on such evaluation, the Deposit is under-funded, Distributor will send a statement to Participant requesting payment of the difference. Participant will be required, within ten (10) days of the date of such statement, pay the difference to Distributor and the difference will be added to the Deposit upon receipt by Distributor. If, based on such evaluation, the Deposit is over-funded, Distributor will send a statement to Participant with payment of the difference in the form of check or credit memo as mutually determined by the Distributor and Participant.

0 DSO. To access this option, Participant will be required, at least five (5) business days prior to the effective date of Participant's Participation Agreement, to make an advance payment to Distributor in an amount equal to fifteen (15) days' purchases. The advance payment will be held by Distributor as a deposit (the "**Deposit**"), and Distributor will have a security interest in the Deposit to secure payment of all of Participant's obligations, now existing, and arising in the future, under this Agreement. Payment of all invoices will be due in accordance with the 15 DSO payment term. The Deposit will be evaluated and adjusted each calendar quarter based on the average preceding three (3) months' purchases and Participant's payment performance based on Weighted Average Payment Days ("**WAPD**"). If, based on such evaluation, the Deposit is under-funded, Distributor will send a statement to Participant requesting payment of the difference. Participant will be required, within ten (10) days of the date of such statement, pay the difference to Distributor and the difference will be added to the Deposit upon receipt by Distributor. If, based on such evaluation, the Deposit is over-funded, Distributor will send a statement to Participant with payment of the difference in the form of check or credit memo as mutually determined by the Distributor and Participant.

1.0 DSO. Payment of each invoice is due in full on the day immediately following the date of the invoice.

8.0 DSO. Payment of each invoice is due in full within eight (8) days of the invoice date.

9.5 DSO. Payment is due in full by the Friday of each week of the amount due for all Products delivered and services provided during the immediately preceding week (i.e., Monday through Friday).

15.0 DSO. Payment of each invoice is due in full within fifteen (15) days of the invoice date.

30.0 DSO. Payment of each invoice is due in full within thirty (30) days of the invoice date.

32.5 DSO. Payment is due in full by the 10th of each month of the amount due for all Products delivered and services provided from the 1st to the 15th of the immediately preceding calendar month, and by the 25th of each month of the amount due for all Products delivered and services provided from the 16th to the last day of the immediately preceding calendar month.

45.0 DSO. Payment of each invoice is due in full within forty-five (45) days of the invoice date.

60.0 DSO. Payment of each invoice is due in full within sixty (60) days of the invoice date.

At the end of each calendar quarter, Distributor will evaluate Participant's payment history based on actual weighted average payment days and Participant's average monthly net purchase volume during such calendar quarter. Prospective adjustments to the then-applicable Participant Markup will be made as appropriate. No retroactive adjustment will be applied to Participant's purchases, absent bad faith on Participant's part.