

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

THIS FOURTH AMENDMENT TO PREFERRED SCIENTIFIC SUPPLY DISTRIBUTOR AGREEMENT #23316997 (“4th Amendment”) dated and effective as of the 20 day of August, 2024 (“Amendment Effective Date”) 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 (“KU”) and the University of Kansas Medical Center (“KUMC”), (“University” or “Customer”) (together, the “Parties”).

WHEREAS, Fisher and Customer entered into a Preferred Scientific Supply Distributor Agreement effective as July 1, 2012, as amended (the “Agreement”),

WHEREAS, Fisher and Customer desire to amend various provisions 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, effective as of the Amendment Effective Date:

1. The term of the Agreement shall continue until June 30, 2026.
2. Section III. B and C of Incentives of the Agreement is deleted in full and replaced with the following language:
 - B. Growth Incentive. Beginning in the first year that KU 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 KU a 5% incremental growth incentive on such Net Purchases. Fisher will measure KU’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 KU’s Current Net Purchases meet or exceed the Previous Net Purchases, KU 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.

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

- C. Volume Rebate. Fisher has agreed to offer KU 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 KU 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 forty five (45) days of the end of each contract quarter.

D. Customer hereby agrees that Fisher's obligation to pay any earned incentives or rebates is expressly conditioned on Customer staying current and on time with respect to its accounts receivables with Fisher. If at any time, Customer is past due on its payments to Fisher, Fisher may withhold payment of any and all incentives or rebates earned by Customer without notice and without incurring penalty or paying interest until such time as Customer remits payment for such overdue invoices to bring its accounts receivable balance into compliance. Within sixty (60) calendar days of Fisher confirming Customer's account is compliant with such payment terms, Fisher will release any withheld earned incentive and or rebate credits(s) to Customer. In the event of any breach by Customer of any of its obligations herein, including, but not limited to Section IV and Section V, Fisher shall have the right, upon reasonable notice, to modify, withhold, or terminate these incentives in its sole discretion. If Customer remains delinquent in respect to its accounts receivables with Fisher for six (6) months, Fisher may cancel any withheld and future incentives

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

A. 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 commercially reasonable 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: 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 at a lower price is identified by the purchasing manager, the order for the item will be switched to Fisher's exact match item. If, upon review, KU or Fisher discovers that exact match products are listed on University's e-commerce platform which are available for purchase and KU fails to cross-reference items per the requirements listed in subsection a, above, Fisher may choose to withhold incentive payments from KU.

4. Section III. Incentives of the Agreement is amended to add the following section:

D. Savings Guarantee. Fisher shall use commercially reasonable efforts to provide Customer with opportunities to realize savings under this Agreement ("Savings"). The Savings shall be measured based on Customer's aggregate Net Purchases of Products in that contract year (the "Net Purchases") purchased from Fisher. Fisher's guarantee for Savings (the "Savings Guarantee") for each contract year shall be fifty thousand dollars (\$50,000) ("Savings Guarantee"). The following are examples of cost savings mechanisms that will be used to determine any guaranteed cost savings:

xii. Lower price charged to Customer vs. contract price.

- xiii. Substitution of products (private label, low-cost alternatives) which results in lower product price of a comparable product.
- xiv. Conversion of current spend to technically and / or functionally equivalent products that result in lower product price and/or freight savings.
- xv. Incentive and Rebate Payments.
- xvi. Additional discounts negotiated from suppliers that are passed on to Customer.
- xvii. If a reduction in previous year's cost, savings which result from absorption of freight charges or ancillary charges.
- xviii. Reduced maintenance costs (i.e. glassware washing).
- xix. Lower consumption of laboratory supplies achieved due to purchase of higher quality products that lead to efficiencies, which results in a total cost savings to Customer.
- xx. Documented productivity improvements including but not limited to vendor consolidation and aggregation savings which result in total cost savings to Customer.
- xxi. Service expansions which result in total cost savings to Customer.
- xxii. The difference between any price caps offered to Customer and the list price of the Products.

- 5. With the exception of the modification 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 4th Amendment will have the meaning assigned to them in the Agreement.

IN WITNESS WHEREOF, each of the parties hereto has duly executed and delivered this 4th Amendment to be effective as of the day and year first written above.

Contractual Provisions Attachment

The provisions found in the Contractual Provisions Attachment (Form KU-146a, Rev. 11-22), which is attached hereto, are hereby incorporated into this Agreement, and made a part hereof. 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 including those in the Fisher Scientific Company LLC Terms and Conditions relating to the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

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CONTRACTUAL PROVISIONS ATTACHMENT

1. **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. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the University of Kansas or any of its affiliates (collectively, "University") to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The terms, conditions, and limitations of liability of the State of Kansas, the University, and their employees are defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

3. **Termination Due To Lack Of Funding Appropriation:** If sufficient funds are not appropriated to continue the function performed in this contract and for the payment of the charges hereunder, the University may terminate this contract at the end of its current fiscal year. The University 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 under the contract for which it has not been paid. The University will pay 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 contract under this provision, title to any such equipment shall revert to contractor at the end of the University'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. **Kansas Law and Venue:** All matters arising out of or related to 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 arising out of or related to this contract shall reside only in courts located in the State of Kansas.

5. **Anti-Discrimination Clause:** 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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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 or federal or other state equivalent; (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 University; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it determined that the Contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the University. The provisions of this paragraph (except the 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 University cumulatively total \$5,000 or less during the fiscal year. In accordance with the Governor's Executive Order 18-04, the University has policies prohibiting sexual harassment, discrimination, and retaliation. The University's applicable policies on sexual harassment, discrimination, and retaliation are available at <http://policy.ku.edu/> and provide for confidentiality and anonymous reporting.

Contractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance individuals in employment without regard to race, color, religion, sex, national origin, protected veteran status or disability.

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, including, but not limited to the signature of an authorized representative of the University, as defined in University policy.

7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the University has agreed to binding arbitration, or the payment of damages or penalties. Further, the University does 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 or rights of action available to the University 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 University shall not be responsible for, nor indemnify a Contractor for, any federal, state or local taxes which may be imposed or levied upon the Contractor for conducting business which is the subject matter of this contract.

10. **Insurance:** The University 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 the University to establish a "self-insurance" fund to protect against any such loss or damage.

11. **Information/Confidentiality:** As a state agency, the University's contracts are generally public records. Accordingly, no provision of this contract shall restrict the University's ability to produce this contract in response to a lawful request or from otherwise complying with the Kansas Open Records Act (K.S.A. 45-215 et seq.). Moreover, 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 of the State of Kansas and need not be reserved, but the University here reiterates that nothing in or 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.

14. **Privacy of Student Records:** Contractor understands that the University is subject to FERPA (Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g) and agrees to handle any student education records it receives pursuant to this Agreement in a manner that enables the University to be compliant with FERPA and its regulations. Contractor agrees to protect the privacy of student data and educational records in a commercially reasonable manner and shall not transmit, share, or disclose any data about a student without the student's written consent, except to other University officials who seek the information within the context of his/her professionally assigned responsibilities and used within the context of official University business. Contractor shall promptly report to the University any disclosure of University's student educational records.

15. **Export Control:** Contractor agrees to comply with all U.S. laws relating to the transfer, export, or re-export of technology and technical data, as defined in the export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774. The release of information to any employee or other person, who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States may require advanced written authorization from the appropriate U.S. agency. Contractor shall notify the University in writing prior to disclosure of any technical data or other items subject to EAR or ITAR and identify the export controlled items at issue and the applicable categories and subcategories of the United States Munitions List and/or Export Control Classification Number(s). The University reserves the right to decline to accept any items or information controlled under ITAR or EAR.

16. **Facility Access:** To the extent Contractor is required to be on the University's premises in the performance of any contract, Contractor and its representatives will adhere to the University's reasonable safety and security policies and procedures, and will use commercially reasonable efforts not to interfere with the University's regular

operations. Contractor further agrees to, upon request, include the University as an additional insured on its general liability insurance policy on a primary and non-contributory basis and provide the University with a certificate of insurance.

17. **Certification:** Contractor hereby certifies that to the best of its knowledge neither it nor any of their principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Contractor shall provide immediate written notice to the University if at any time it learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

18. **No Endorsement:** Contractor agrees it will not use or display the name, logo, marks, or images of the University to advertise and/or endorse its enterprises or products, or for any other purpose without the prior written approval of the University.

FISHER SCIENTIFIC COMPANY L.L.C.

UNIVERSITY OF KANSAS

By: 
Sarah Frey (Aug 26, 2024 15:29 CDT)

By: 
Ephrom Marks (Aug 27, 2024 08:19 CDT)

Name: Sarah Frey

Name: Ephrom Marks

Title: Vice President Sales, Academics

Title: Associate Director Procurement

Aug 26, 2024

Aug 27, 2024

UNIVERSITY OF KANSAS MEDICAL CENTER

By: 

Name: Hayley Unke-Moore

Title: Associate Director of Purchasing

Aug 27, 2024