CUSTOM NUTRITIONAL SUPPLEMENT PROGRAM PROVIDER AND
INTERNET COMMERCE AND CONTENT AGREEMENT

This Custom Nutritional Supplement Program Provider and Internet Commerce and Content Agreement (this “Agreement”) is made and entered into as of July 18, 2003 (the “Effective Date”), by and between Polaris Health, LLC (“Polaris”), an Arizona limited liability company (formerly known as Polaris Ventures LLC and Great Bear Enterprises, LLC), and drugstore.com, inc. (“drugstore.com”) a Delaware corporation, and Dr. Andrew Weil (“Dr. Weil”).

RECITALS

A. drugstore.com is the leading online drugstore and information site offering health, beauty, wellness, personal care, and pharmacy products. drugstore.com also provides private label consumer customized nutritional supplement programs through its wholly owned subsidiary Custom Nutrition Services (“CNS”).


C. Pursuant to the Custom Nutritional Supplement Program Provider Agreement between CNS and Polaris dated August 6, 2001 (the “CNS Agreement”), Polaris and CNS have developed a Polaris-Branded Customized Nutritional Supplement Program (as defined herein) known as the Integrative Nutrition CustomPak program.

D. Polaris and drugstore.com desire to enter into a new agreement (which shall terminate and supersede the CNS Agreement) under which the parties shall continue to maintain and promote the Integrative Nutrition CustomPak Program. In addition, the parties desire to provide for the development and maintenance of an Integrative Medicine Store on the drugstore.com Site, exclusively featuring only Dr. Weil- and Polaris-approved content, products and services, and two Polaris-branded Internet marketplace sites accessible through the Polaris-owned Web Sites www.DrWeil.com and www.MyOptimumHealthPlan.com, also featuring only Dr. Andrew Weil- and Polaris-approved content, products and services, all on the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:
ARTICLE I
DEFINITIONS

As used in this Agreement:

(a) "above the fold" means situated within the portion of a Web Site page that is designed to be visible on a standard desktop computer screen in a standard test environment of 800x600 pixels with a fully opened window, without requiring the user to scroll horizontally or vertically through the page.

(b) "Affiliate" means, with respect to a party, any individual or entity that directly or indirectly controls, is controlled by or is under common control with such party, or in which such party beneficially owns at least fifty percent (50%) of the equity interests.

(c) "CNS Site" means that Web Site, the primary Home Page of which is identified by the URL www.mycustompak.com (and any successor or replacement Web Site). The term "CNS Site" does not include the drugstore.com Site or any other Web Sites (other than the CNS Sites) maintained by or for drugstore.com or its Affiliates.

(d) "Confidential Information" means any and all non-public and/or proprietary information of a party or its Affiliate, regardless of the form in which it is communicated, maintained or aggregated with other information, relating to the current, future and proposed business, products and services of a party or its Affiliate, including, but not limited to, ideas, inventions, expression of ideas, trade secrets, know-how, techniques, processes, research, experimentation, product development, product design details, formulas and specifications, financial information, procurement requirements, purchasing information, manufacturing information, customer lists, business forecasts, sales and merchandising information, marketing information, and other like business information. Confidential Information also includes proprietary information of a third party that discloses Confidential Information for the benefit of a party or its Affiliate in the due course of business under this Agreement. The terms and conditions of this Agreement shall be considered Confidential Information. Confidential Information does not include information that is:

(i) rightly in the public domain other than by a breach of a duty to the disclosing party;

(ii) rightfully received from a third party without any obligation of confidentiality;

(iii) rightfully known to the receiving party or its Affiliate without any limitation on use or disclosure prior to receipt from the disclosing party;

(iv) independently developed by employees of the receiving party or its Affiliate without access or reference to Confidential Information; or

(v) generally made available to third parties by the disclosing party without restriction on disclosure.
(e) "Customer Data" shall mean user- and customer-related data, including, but not limited to, a user or customer’s name, email address, billing and mailing addresses, telephone number, credit card or other electronic payment information (with respect to customers of the MOHP and the INCP, and any other subscription-based program that Polaris may offer from time to time), user name and password, products viewed or ordered, order processing data (including order history), and conversion measurement data (and (i) other new data elements that are reasonably relevant to an Internet e-Commerce business, generally, and to Polaris’ business, specifically, and (ii) other personally identifiable information upon which the parties may mutually agree from time to time (such agreement not to be unreasonably withheld or delayed), all of which to be in compliance with applicable Law).

(f) "drugstore.com-Originated Purchase" means a purchase (other than a drugstore.com-Originated INCP Purchase) made through the Marketplace Site, the Integrative Medicine Store or the MOHP My Shopping Site by a customer who, at any time during the Term, (i) visits the Integrative Medicine Store by inputting its corresponding url into the address box of any Web browser application or (ii) visits any such Site by clicking through to such Site using any hypertext link located on the Web Site of, or contained in any email, banner ad, other Internet advertisement or other advertising or marketing medium funded by, drugstore.com, any Affiliate of drugstore.com, any person or entity partnered with drugstore.com or any Affiliate of drugstore.com (other than Polaris and Dr. Weil) or any participant in drugstore.com’s associate program, and (iii) during that visit, makes a purchase through such Site, (iv) accepts delivery at the shipping destination, and (v) remits full payment for such purchase to drugstore.com. The term "drugstore.com-Originated Purchase" does not include drugstore.com-Originated INCP Purchases.

(g) "drugstore.com-Originated INCP Purchase" means a purchase of INCP Vitamins made by a customer who, at any time prior to or during the Term, (i) takes the MOHP Assessment, Visit with the Doctor questionnaire, or Vitamin Advisor questionnaire during a visit to the Integrative Medicine Store originated by inputting the Integrative Medicine Store’s corresponding url into the address box of any Web browser application or by clicking through to such Site using any hypertext link located on the Web Site of, or contained in any email, banner ad, other Internet advertisement or other advertising or marketing medium funded by, drugstore.com, any Affiliate of drugstore.com, any person or entity partnered with drugstore.com or any Affiliate of drugstore.com (other than Polaris and Dr. Weil) or any participant in drugstore.com’s associate program, or (ii) on the visit described in clause (i) or any later visit, makes a purchase of INCP Vitamins through the INCP using the Vitamin Advisor recommendation, the My Optimum Health Plan recommendation, or the Visit with the Doctor recommendation given to such customer during the visit described in clause (i), (iii) accepts delivery at the shipping destination, and (iv) remits full payment for such purchase to drugstore.com or CNS, as applicable.

(h) "drugstore.com Site" means that Web Site, the primary Home Page of which is identified by the URL www.drugstore.com (and any successor or replacement Web Site; provided, however, that drugstore.com must obtain Polaris’ written approval (which approval shall not be unreasonably withheld or delayed) prior to designating a successor or replacement
Web Site). Except as otherwise provided in this Agreement, the term “drugstore.com Site” does not include any other Web Site maintained by or for drugstore.com or its Affiliates.

(i) “drugstore.com Mailings” means information and promotional mailings from drugstore.com and its Affiliates.

(j) “drugstore.com Store” means any discrete group of products and services available at any time during the Term on the drugstore.com Site that is accessible by a tab or other top-level product category identifier on the drugstore.com Site Home Page (such as “Pharmacy,” “Medicine Cabinet,” “Beauty & Spa,” “Nutrition & Wellness,” etc.), but excluding (i) the drugstore.com Site Home Page itself, (ii) the Integrative Medicine Store, and (iii) any mechanisms, areas or services on or through which independent third parties may sell products or services through the drugstore.com Site.

(k) “Dr. Weil Brand Name” means any brand name using or incorporating Dr. Weil’s name, image, likeness or other identifier or created under the direction or ownership of Dr. Weil, for any purpose on any media and in any form or format.

(l) “Dr. Weil Site” means, collectively, (i) that Web Site, the primary Home Page of which is identified by the URL www.drweil.com (and any successor or replacement Web Site) and (ii) any other Web Sites operated by or for Dr. Weil or his Affiliates from time to time. The term “Dr. Weil Site” does not include any other Web Site maintained by or for Polaris or its Affiliates.

(m) “Dr. Weil Subscriptions” means the Daily Tip, the Weekly Bulletin, and other offers or information from the Dr. Weil Site.

(n) “Dr. Weil Vitamins” means Dr. Weil’s Select Formula vitamins and all other vitamins, herbs, minerals and supplements labeled with or marketed using the Dr. Weil Brand. The term “Dr. Weil Vitamins” does not include the INCP Vitamins or Polaris-Branded Products.

(o) The “Foundation” means the Polaris Foundation.

(p) “Functionality” means functionality available to users of a Site, including (i) tab, search and browse functionality generally available to users of such Site for navigating through such Site; (ii) payment and transaction functionality generally available to users of such Site for purchasing products (including, without limitation, “shopping cart” functionality), (iii) any other functionality generally available to users of such Site that may be made generally available from time to time, and (iv) any future equivalents, improvements, enhancements, and/or upgrades of any of the foregoing that may be made generally available to users of such Site from time to time.

(q) “Home Page” means, with respect to a Web Site, the Web page designated by the operator of the Web Site as the initial and primary end user interface for the Web Site.

(r) “IMS Launch Date” means the date on which the Integrative Medicine Store is made generally available to all users of the drugstore.com Site, which date shall be mutually agreed
upon by the parties but shall occur no later than thirty (30) days after the completion of the Initial Product Selection and no earlier than forty-five (45) days after the Effective Date.

(s) "INCP" means the Integrative Nutrition CustomPak Program, which is a Polaris-Branded Consumer Customized Nutritional Supplement Program developed jointly by CNS and Polaris, using the INCP Brand Name and certain of Polaris’ Trademarks, and provided by CNS, drugstore.com or its Affiliates for Polaris through a secure e-commerce Web Site maintained by CNS, drugstore.com or its Affiliates.

(t) "INCP Brand Name" means the brand name of the INCP, which is “Polaris CustomPak.”

(u) "INCP Protocols" means the proprietary protocols developed and provided by Polaris to CNS and/or drugstore.com to be used in conjunction with the INCP. The term “INCP Protocols” does not include protocols that (i) use language that is not substantially similar to the proprietary protocols developed and provided by Polaris to CNS and/or drugstore.com to be used in connection with the INCP, (ii) are now or later become generally available to the public other than as a result of a breach of this Agreement by drugstore.com, (iii) are or become available to drugstore.com from a source other than Polaris, provided that such source is not bound by a confidentiality agreement with Polaris, or (iv) are independently developed by CNS, drugstore.com or its Affiliates without any reference to or use of the proprietary materials of Polaris.

(v) "INCP Vitamins” means the customized nutritional supplements packaged and sold under the INCP and any other vitamins, herbs, minerals and supplements sold under the INCP. Any Dr. Weil Vitamins or Polaris-Branded Products sold under the INCP shall be deemed to be INCP Vitamins.

(w) "Intellectual Property” means any and all (by whatever name or term known or designated) tangible and intangible (i) works of authorship throughout the universe and all rights associated therewith, including, without limitation, all exploitation rights, copyrights, neighboring rights, moral rights, and mask-works, (ii) trademarks, trade dress, and trade names, (iii) trade secrets, (iv) patents, designs, algorithms, and other industrial property, (v) all other intellectual and industrial property and proprietary rights (of every kind and nature throughout the universe and however designated), and (f) all registrations, applications, renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force throughout the universe.

(x) “Intellectual Property Rights” means any and all rights, title, and interests associated with the Intellectual Property of a person or entity, by whatever name or term known or designated and whether now known or hereafter existing and whether arising by operation of law, contract, license, or otherwise.

(y) “Integrative Medicine Store” or “IMS” means the drugstore.com Store to be created pursuant to Article IV of this Agreement, to be labeled “Natural Health” or such other title as mutually agreed upon by the parties.
(z) "Law" means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law, whether now existing or hereafter adopted or acquired, including, but not limited to, the U.S. federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), applicable state warranties and deceptive trade practices laws or statutes.

(aa) "Marketplace Launch Date" means the date on which the Marketplace Site is made generally available to all users of the Dr. Weil Site, which date shall be mutually agreed by the parties but shall occur no later than sixty (60) days after the IMS Launch Date.

(bb) "Marketplace Site" means the Web Site to be created pursuant to Article V of this Agreement, the Home Page of which shall be accessible from the Home Page and other pages of the Dr. Weil Site.

(cc) "MOHP Members" means registered members of My Optimum Health Plan.

(dd) "MOHP Site" means that Web Site, the primary Home Page of which is identified by the URL www.myoptimumhealthplan.com (and any successor or replacement Web Site). The term "MOHP Site" does not include any other Web Site maintained by or for Polaris or its Affiliates.

(ee) "MOHP My Shopping Site" means the Web Site to be created pursuant to Article V of this Agreement, the Home Page of which shall be accessible to MOHP Members from certain pages of the MOHP Site.

(ff) "MOHP My Shopping Site Launch Date" means the date on which the MOHP My Shopping Site is made generally available to MOHP Members, which date shall be mutually agreed by the parties but shall occur no later than sixty (60) days after the IMS Launch Date.

(gg) "My Optimum Health Plan" or "MOHP" means the online subscription program called "My Optimum Health Plan" available for purchase through the MOHP Site and to be made available for purchase through the Integrative Medicine Store (through a link or checkout), the Marketplace Site and the MOHP My Shopping Site (including customer service therefor), and other Sites as may be agreed upon by the parties.

(hh) "Polaris-Branded Consumer Customized Nutritional Supplement Program" means a nutritional supplement program in which customized nutritional supplements are packaged for consumers in daily-dosage packages, known as Polaris CustomPaks, and developed through the use of the Vitamin Advisor. The term "Polaris-Branded Consumer Customized Nutritional Supplement Program" shall not include the production or sale of Dr. Weil Vitamins, Polaris-Branded Products, or programs based on any other vitamin assessments (including, without limitation, the Visit With the Doctor) that Polaris may develop, market, use, offer, or implement from time to time.

(ii) "Polaris-Branded Products" means any products (including, but not limited to, vitamins, herbs, minerals and other supplements) that are or may be developed by Polaris, given
a Polaris brand (by drugstore.com, CNS or a third party) and sold to consumers. The term “Polaris-Branded Products” does not include Dr. Weil Vitamins or INCP Vitamins.

(jj) “Polaris Brand Name” means any brand name using or incorporating the Polaris name or logo, the Vitamin Advisor name or logo, the My Optimum Health Plan name or logo, or other name or logo created, developed, or used by Polaris from time to time (excluding drugstore.com Intellectual Property).

(kk) “Polaris Content” means the content contained on the Polaris Sites and all content provided by, on behalf of, or at the direction of Polaris or Dr. Weil.

(ll) “Polaris-Originated Purchase” means a purchase (other than a Polaris-Originated INCP Purchase) made through the Marketplace Site, the Integrative Medicine Store or the MOHP My Shopping Site by a customer who, at any time during the Term, (i) visits the MOHP My Shopping Site or the Marketplace Site by inputting its corresponding url into the address box of any Web browser application, or (ii) visits any such Site using a hypertext link located on any Polaris Site (including the MOHP Site) or contained in any email, banner ad, other Internet advertisement or other advertising or marketing medium funded by Polaris, any Affiliate of Polaris, or any person or entity partnered with Polaris or any Affiliate of Polaris (other than drugstore.com and its Affiliates), (iii) on that visit, makes a purchase through such Site, (iv) accepts delivery at the shipping destination, and (v) remits full payment for such purchase to drugstore.com. The term “Polaris-Originated Purchase” does not include Polaris-Originated INCP Purchases.

(mm) “Polaris-Originated INCP Purchase” means a purchase of INCP Vitamins made through the INCP by a customer who, at any time prior to or during the Term, (i) takes the Vitamin Advisor questionnaire, the Visit With the Doctor questionnaire, or the MOHP Assessment during a visit to a Polaris Site originated by inputting its corresponding url into the address box of any Web browser application or by clicking through to any such Site using a hypertext link located on any Polaris Site or contained in any email, banner ad, other Internet advertisement or other advertising or marketing medium funded by Polaris, any Affiliate of Polaris, or any person or entity partnered with Polaris or any Affiliate of Polaris (other than drugstore.com and its Affiliates), (ii) on the visit described in clause (i) or any later visit, makes a purchase of INCP Vitamins through the INCP using the Vitamin Advisor recommendation, Visit With the Doctor recommendation, or My Optimum Health Plan recommendation given to such customer during the visit described in clause (i), (iii) accepts delivery at the shipping destination, and (iv) remits full payment for such purchase to drugstore.com or CNS, as applicable.

(nn) “Polaris Products” means Polaris-Branded Products and any products (including, but not limited to, vitamins, herbs, minerals and other supplements) marketed under or branded with the Polaris Brand Name or the Dr. Weil Brand Name, using any form of packaging, including Dr. Weil Vitamins. The term “Polaris Products” does not include INCP Vitamins.

(oo) “Polaris Services” means non-product services such as the My Optimum Health Plan, content syndication, editorial services, online education services and other service initiatives developed by Polaris from time to time in its sole and absolute discretion.
(pp) “Polaris Sites” means, collectively, (1) the Dr. Weil Site; (2) the MOHP Site; (3) that Web Site, the primary Home Page of which is identified by the URL www.askdrweil.com (and any successor or replacement Web Site); and (4) any other Web Sites operated by or for Polaris or its Affiliates from time to time.

(qq) “Revenue” means the dollar amount received for sales of the applicable products, less authorized credits, refunds, returns, sales taxes, duties, credit card transaction fees, direct out-of-pocket shipping costs.

(rr) “Site” means the CNS Site, the drugstore.com Site, a Polaris Site, the Integrative Medicine Store, the Marketplace Site or the MOHP My Shopping Site, as required by the context.

(ss) “Specialty Vitamins” means, collectively, INCP Vitamins and Dr. Weil Vitamins.

(tt) “Web Site” means any point of presence maintained on the Internet or on any successor public data network. With respect to any Web Site maintained on the Internet or any successor public data network, such Web Site includes all HTML pages (or similar unit of information presented in any relevant data protocol) that either (i) are identified by the same second-level domain (such as http://www.drweil.com) or by the same equivalent level identifier in any relevant address scheme, or (ii) contain branding, graphics, navigation or other characteristics such that a user reasonably would conclude that the pages are part of an integrated information or service offering.

(uu) “Technology” means any design, specification, content (which includes product files, catalogs and images), data, URL, software, code, user interface, technique, algorithm, method, process, device, procedure, Functionality or other technology item.

(vv) “Term” means the term of this Agreement as defined in Article X, including any renewal term(s).

(ww) “Territory” means, for all products and services that are subject to this Agreement (including the INCP), sold over the Internet (i.e., the relevant transactions begin and end on the Internet) to residents of the United States (including its territories and possessions) and Canada (including its territories and possessions).

(xx) “Trademark” means all common law or registered trademarks, logos, service marks, trade names, Internet domain names and trade dress rights and similar or related rights arising under any Law.

(yy) “Unified Customer Experience” means a seamless and integrated commerce system between and among drugstore.com, CNS, Polaris, and Agora Media (the online publisher of MOHP), as well as any future Polaris product partners or services partners designated by Polaris, that provides (i) seamless transitions from one Site to the next (by way of example only, and without limitation, a single point of registration and authentication (e.g., if a customer logs into the IMS and, during the same browser session, visits the MOHP My Shopping Site, such customer will already be logged in to such Site, or, if a customer purchases as subscription to
the MOHP, such customer shall be able to enjoy a seamless shopping experience between and among all Sites), and an integrated and seamless shopping cart, check out, and/or assessment experience (e.g., if a customer adds items into the IMS shopping cart and, without checking out of the IMS and purchasing the items, visits the MOHP My Shopping Site during the same session and adds items to the MOHP My Shopping Site shopping cart, the IMS items will already be in such shopping cart – or, if a customer completes an assessment on the MOHP, then during a visit to the IMS such customer's assessment responses shall be the same as from the MOHP), (ii) a unified customer experience through telephone and offline customer service communication channels (by way of example only, and without limitation, a customer should be able to obtain support for IMS, the MOHP My Shopping Site, and MOHP subscription purchase or change issues during the same customer service phone call and from the same customer support representative), and (c) identical proprietary interactive content across all sites.

(zz) "Visit with the Doctor" is a feature planned for the Polaris Sites that will provide a recommendation for vitamins, herbs, minerals and/or supplements, together with advice from Dr. Weil, for visitors to the Polaris Sites. Polaris shall have the right to provide such a questionnaire on the Polaris Sites both during and after the Term; provided, however, that Polaris shall include as part of each Visit with the Doctor recommendation (generated during the Term) a prominent button that makes it possible for the customer receiving the recommendation to purchase the recommended products; and provided further, that drugstore.com or its Affiliates shall sell and fulfill any orders in the Territory during the Term for products generated by the Visit with the Doctor feature.

(aaa) "Vitamin Advisor" means a questionnaire utilizing the Dr. Weil voice of authority and equipment originally developed by and known as Baxter Healthcare ATC Technology (or technologically equivalent equipment), which questionnaire is used in the INCP to provide users of the Vitamin Advisor with a unique vitamin and supplement recommendation. Polaris exclusively owns all rights, title, interests, and Intellectual Property Rights in and to the specific term "Vitamin Advisor".

(bbb) "Master Customer Database" means the database described and set forth in Section 8.9 (c) of this Agreement.

(ccc) "Unique User Identifier" means a unique identifier assigned to visitors through any transaction where an email address is registered through the INCP, Integrative Medicine Store, Marketplace Site, MOHP My Shopping Site, opt-in mechanisms or otherwise, or an email address is registered in any of the above sites when a transaction occurs whereby, at minimum, the email address is accessed from existing databases of drugstore.com or Polaris and verified with the Master Customer Database.

(ddd) "MOHP Assessment" is a feature of the My Optimum Health Plan that provides a recommendation for unique and condition specific advice from Dr. Weil for visitors completing such MOHP Assessment. It is anticipated that vitamins, herbs, minerals and/or supplements, together with advice from Dr. Weil, will be sold in connection with the MOHP Assessment. Polaris shall have the right to provide such a questionnaire on the Polaris Sites both during and after the Term; provided, however, that Polaris shall include as part of each MOHP Assessment
recommendation (generated during the Term) a prominent button that makes it possible for the
customer receiving the recommendation to purchase the recommended products; and provided
further, that drugstore.com or its Affiliates shall sell and fulfill any orders in the Territory during
the Term for products generated by the MOHP Assessment.

Other terms not specifically defined or set forth in this Article I are defined elsewhere in
the Agreement.

ARTICLE II
EXCLUSIVITY

Subject to the terms, conditions and restrictions contained in this Agreement:

2.1 INCP.

Exclusivity. Polaris hereby grants drugstore.com, together with its Affiliates, the right to act as
the exclusive provider of Polaris-Branded Consumer Customized Nutritional Supplement
Programs (including, but not limited to, the INCP) in the Territory. Neither Polaris nor
Dr. Andrew Weil shall, directly or indirectly through the appointment of another program
provider, offer a competing Polaris-Branded Consumer Customized Nutritional Supplement
Program in the Territory during the Term.

2.2 Polaris Products.

Exclusivity. Polaris hereby grants drugstore.com, together with its Affiliates, the exclusive right
to sell Polaris Products in the Territory; provided, however, that Polaris shall be entitled to sell
and offer for sale Polaris Products and Polaris Services through the Marketplace Site, the MOHP
My Shopping Site, such other successor Sites that Polaris may designate from time to time, and,
subject to the terms and conditions of Article III of this Agreement, the Vitamin Advisor.
Neither Polaris nor Dr. Andrew Weil shall, directly or indirectly through any Affiliate, sell in the
Territory, offer for sale in the Territory, or take customer orders in the Territory for any Polaris
Products (except through the Marketplace Site, the MOHP My Shopping Site, such other Sites
that Polaris may designate from time to time, and the Vitamin Advisor) during the Term.

2.3 Other Polaris Activities.

Nothing shall restrict Polaris from

(a) providing customer assessments in any medium (including by way of example only
and not limitation, Visit with the Doctor), provided, however, that Polaris shall include as part of
any online customer assessment relating to the purchase of Dr. Weil Vitamins in the Territory, a
prominent button that makes it possible for the customer receiving the assessment to purchase
from the Marketplace such products recommended in connection with such assessment;

(b) selling and offering for sale Polaris Products (other than Polaris CustomPaks),
including, without limitation, Polaris-Branded Products, Dr. Weil Vitamins, INCP Vitamins,
Specialty Vitamins, and any related or derivative products in any product packaging and with
any branding as determined by Polaris in its sole and absolute discretion, to any customer outside the Territory; and

(c) advertising on the Internet any Polaris Products or Services in any sales channel outside of the Territory; provided, however, that Polaris shall include as part of such advertisement a reference to DrWeil.com that is featured as prominently as other purchase destinations set forth in such advertisement; provided, that only in the event that such advertisement under this subsection is in the form of an email, such email shall contain a link to the Marketplace.

2.4 Other drugstore.com Activities.

(a) Consumer Customized Nutritional Supplement Program. Except as provided in this Agreement, nothing shall restrict drugstore.com and its Affiliates from (a) promoting and selling a consumer customized nutritional supplement program in which customized nutritional supplements are packaged for consumers in daily-dosage packages and developed through the use of a questionnaire (a “Consumer Customized Nutritional Supplement Program”) directly with and to healthcare professionals and their patients or individual consumers; provided that such Consumer Customized Nutritional Supplement Program shall use content, material and products available in the public domain (as that term is defined by United States copyright Laws) or such content, material and products the use of which by drugstore.com is not prohibited by applicable Law or contract, or (b) providing for healthcare providers, vendors, suppliers, employers, insurers and others a private label Consumer Customized Nutritional Supplement Program using content, material and products available in the public domain (as that term is defined by United States copyright Laws) or the use of which by drugstore.com is not prohibited by applicable Law or contract; provided, however, that (i) drugstore.com’s promotion or provision of and sales under any such Consumer Customized Nutritional Supplement Program shall not interfere with or limit drugstore.com’s ability to perform its obligations under this Agreement in a timely and professional manner and in accordance with the terms, conditions, and restrictions contained in this Agreement; (ii) drugstore.com may not use or utilize any Intellectual Property of Polaris or its Affiliates to promote, provide or sell products under any such Consumer Customized Nutritional Supplement Program without first obtaining prior written approval from Polaris; provided that such approval shall be granted or withheld in Polaris’ sole and absolute discretion; and provided further that Polaris shall have the right to require royalty payments for any such use of the Intellectual Property of Polaris or its Affiliates; (iii) all expenses and costs of drugstore.com’s promotion, provision or sale of products under any such Consumer Customized Nutritional Supplement Program shall be borne by drugstore.com, and drugstore.com shall not cause or require Polaris to incur any fees, costs, or expenses relating to any such Consumer Customized Nutritional Supplement Program; (iv) drugstore.com shall not use (A) the INCP Protocols or (B) the same, or confusingly similar, INCP Brand Name, Polaris Brand Names, Dr. Weil Brand Name or other Trademarks or Intellectual Property of Polaris or its Affiliates in connection with any such Consumer Customized Nutritional Supplement Program; and (v) in connection with such Consumer Customized Nutritional Supplement Program, drugstore.com shall not state or claim, without Polaris’ prior written consent (which consent shall not be unreasonably withheld or delayed), that it manufactures for, partners with, or has taken a license from Polaris or Dr. Weil.
(b) **Polaris Products.** drugstore.com and its Affiliates may sell and offer for sale Polaris Products and Polaris Services outside of the Territory, only with the prior written approval from Polaris in each instance (which approval may be withheld in Polaris’ sole and absolute discretion); provided, however, that drugstore.com and its Affiliates shall be entitled, without the prior approval of Polaris, to provide the INCP to any resident of any country that orders through the INCP using a United States or Canada based Web Site (the “International Sales Right”); and provided further, that if Polaris intends to enter into any arrangement with a third party with respect to provision of the INCP in any such country, Polaris shall have the right to cancel the International Sales Right immediately upon notice to drugstore.com, without any further action by Polaris. Notwithstanding anything else to the contrary contained elsewhere in this Agreement, any and all activities of drugstore.com must be in compliance with applicable Law (including, without limitation, United States export-related Laws).

**ARTICLE III**

**INTEGRATIVE NUTRITION CUSTOMPAK PROGRAM**

3.1 **Exclusivity.**

Subject to the terms, conditions and restrictions contained in this Agreement, and as more fully described in Section 2.1 of this Agreement, drugstore.com, together with its Affiliates, shall be the exclusive provider of the INCP in the Territory.

3.2 **Obligations of drugstore.com.**

With respect to the INCP and all orders for INCP Vitamins in the Territory only:

(a) **Product Acquisition.** drugstore.com shall purchase and maintain in inventory all nutritional supplements and supplies that are necessary and sufficient to fulfill all INCP orders in a timely and professional manner.

(b) **Packaging.** drugstore.com shall purchase all packaging and invoice materials required for the INCP, which materials shall be branded with the INCP Brand Name, the Dr. Weil Brand Name, and the Polaris Brand Name.

(c) **Order Processing.** drugstore.com shall accept, book, fulfill, invoice, and collect on all orders for INCP Vitamins in the Territory. All INCP transactions hereunder shall occur on the CNS Site or the drugstore.com Site. drugstore.com shall be responsible for processing and collecting all customer billing information with respect to the INCP. drugstore.com shall use commercially reasonable best efforts to provide INCP Vitamins to INCP customers in a timely fashion, as follows:

(i) **Re-Orders.** drugstore.com shall use commercially reasonable efforts to ship all re-orders as required to meet the due date listed upon the customers’ re-order schedules such that no more than two percent (2%) of any re-orders within a given month are received by customers later than their due dates.
(ii) **New Orders.** drugstore.com shall ship all new orders within five (5) business days after receipt of approval of the customer’s credit card or other electronic payment method accepted by drugstore.com.

(iii) **Method of Delivery.** drugstore.com shall ship all orders by Federal Express Ground Delivery or other delivery carrier of equal quality of delivery.

(iv) **Shipping Expenses.** Shipping prices shall not exceed the publicly stated non-promotional prices for similar items and similar shipping methods sold in other drugstore.com Stores.

(v) **Method of Payment.** drugstore.com shall accept all forms of payment that it accepts for other drugstore.com Stores.

(d) **Continuity Support Program.** drugstore.com shall include at least one and, absent a mutual agreement between the parties, no more than two brochures, pamphlets, product outlines or product summaries regarding the INCP ("**Continuity Pieces**") in each shipment of INCP Vitamins; provided, however, that Polaris shall be responsible for editorial costs and fifty percent (50%) of the printing costs of production of Continuity Pieces (including, without limitation, the **Monthly Update**). In the event that all or any portion of the printing costs for Continuity Pieces payable by Polaris pursuant to the foregoing sentence are paid in advance by drugstore.com or its Affiliates, drugstore.com shall deduct all such Polaris costs paid by drugstore.com or its Affiliates in a calendar month from the Monthly Sales Commissions payable to Polaris under Section 7.2 of this Agreement for such calendar month. Content for Continuity Pieces shall be provided by Polaris no later than thirty (30) days before the anticipated distribution date of such Continuity Pieces. From time to time additional continuity support programs will be proposed and agreed upon between the parties.

(e) **Promotion of My Optimum Health Plan and the Vitamin Advisor and Other Programs from Polaris.** In the confirming email after a person finishes the Vitamin Advisor, regardless of such customer’s origination point, site, or link, drugstore.com will provide a hyperlink and graphic, above the fold, inviting visitors to join the My Optimum Health Plan. In addition, in the confirming email after a person finishes the MOHP Assessment, regardless of such customer’s origination point, site, or link, drugstore.com will provide a hyperlink and graphic, above the fold, inviting visitors to take the Vitamin Advisor. At any time following the six (6) month period following the launch date of the promotion described herein in this subsection, either party may decide in its sole discretion to terminate the promotion in this subsection (e). This same option will be in place for other Programs mutually determined and provided by Polaris and drugstore.com from time to time.

(f) **Free Shipping for MOHP Members.** In addition to the promotions for MOHP Members described in Section 6.1 of this Agreement, drugstore.com shall, at all times during the Term, provide a visible graphic hypertext link within the MOHP My Shopping Site, above the fold, that offers “Free Shipping” for purchases of INCP Vitamins by My Optimum Health Plan Members.
(g) **Expenses of INCP Promotion.** All expenses related to drugstore.com's promotion of the INCP (including, without limitation, all non-editorial expenses and fifty percent (50%) of the printing expenses associated with the production of Continuity Pieces (including the *Monthly Update*)) shall be paid by drugstore.com.

(h) Reserved.

(i) **Opt-In.**

(i) All visitors completing the Vitamin Advisor and all customers making a purchase through the INCP, whether such purchase is a Polaris-Originated INCP Purchase or a drugstore.com-Originated INCP Purchase, shall be automatically opted-in to receive Dr. Weil Subscriptions, which automatic opt-in shall be indicated by a pre-checked box. Each customer shall have the ability to uncheck the opt-in box at that time, thereby opting out from receiving Dr. Weil Subscriptions. Within twenty four (24) hours after its receipt of such customer's email address (or such customer's incorporation into the Master Customer Database), Polaris shall deliver a follow-up email to such customer, substantially in the form set forth in Exhibit A-1, attached hereto and incorporated herein by this reference. The Polaris follow-up email (and each Dr. Weil Subscription) shall feature a link that, when clicked by the customer, will direct the customer's browser to a Polaris Web Site that will provide the customer with instructions and an opportunity to manage such customer's opt in choices (i.e., such customer shall have the ability while on such Polaris Web Site to opt out from receiving any or all of the Dr. Weil Subscriptions from that point forward). The form of such follow-up email may be modified by Polaris at any time and from time to time in its sole discretion, at which time such modified follow-up email shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement. In addition to, and not in lieu of the customer opt out functionality described herein, each INCP customer shall have the right to opt-out of any or all Dr. Weil Subscriptions at any time, and, upon any request by any such customer, in any form, Polaris shall immediately opt-out such customer from receiving those Dr. Weil Subscriptions specifically requested by such customer. In the event that such an opt-out request with respect to Dr. Weil Subscriptions is received by drugstore.com, in any form, drugstore.com shall promptly forward and/or directly communicate such opt-out request to Polaris, and Polaris shall immediately opt-out such customer from receiving those Dr. Weil Subscriptions specifically requested by such customer. Polaris shall provide to drugstore.com a monthly report, in a form reasonably acceptable to drugstore.com, with respect to such opt-outs; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, Polaris shall no longer be required to provide such monthly reports.

(ii) Solely with respect to drugstore.com-Originated INCP Purchases, such customers making drugstore.com-Originated INCP Purchases shall be automatically opted-in to receive drugstore.com Mailings, which automatic opt-in shall be indicated by a pre-checked box. Each customer shall have the ability to uncheck the opt-in box at that time, thereby opting out from receiving drugstore.com Mailings. Within twenty four (24) hours after such customer opt in, drugstore.com shall deliver a follow-up / confirmation email to such customer, substantially in the form set forth in Exhibit A-2, attached hereto and incorporated herein by this reference. Such follow-up / confirmation email shall provide the customer with the opportunity to manage
such customer’s drugstore.com account (including the opportunity to review the types of drugstore.com Mailings such customer has been opted-in to receive and to opt out from receiving any or all of such drugstore.com Mailings from that point forward) by way of a link to the drugstore.com Site as discussed below; provided, however, that drugstore.com may make non-material changes to such follow up / confirmation email at any time and from time to time; and provided further, that the following material changes may only be made with the prior written consent and approval of Polaris (which consent and approval shall not unreasonably be withheld or delayed): the substance of items within the list of opted in subscriptions / mailings, at which time such modified follow-up / confirmation email shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement. In each follow-up / confirmation email and drugstore.com Mailing delivered to customers, drugstore.com shall feature a link that, when clicked by the customer, will direct the customer’s browser to a function on the drugstore.com Site that will provide the customer with instructions and an opportunity to manage such customer’s opt in choices (i.e., such customer shall have the ability while on the drugstore.com Site to opt-out from receiving any or all of the drugstore.com Mailings from that point forward). In addition to, and not in lieu of the customer opt out functionality described herein, each INCP customer shall have the right to opt-out of any or all drugstore.com Mailings at any time, and, upon any request by any such customer, in any form, drugstore.com shall immediately opt-out such customer from receiving those drugstore.com Mailings specifically requested by such customer. In the event that such an opt-out request with respect to drugstore.com Mailings is received by Polaris, in any form, Polaris shall promptly forward and/or directly communicate such opt-out request to drugstore.com, and drugstore.com shall immediately opt-out such customer from receiving those drugstore.com Mailings specifically requested by such customer. drugstore.com shall provide to Polaris a monthly report, in a form reasonably acceptable to Polaris, with respect to such opt-outs; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, drugstore.com shall no longer be required to provide such monthly reports.

(iii) For purposes of clarity, notwithstanding anything else to the contrary contained in this Agreement, and subject to the clause following the semicolon in this subsection, drugstore.com shall, in each instance, submit to Polaris for its prior written approval (which approval shall not be unreasonably withheld or delayed) any and all proposed uses (by way of example, and without limitation, in confirmation emails, follow-up emails, and drugstore.com Mailings) of any Polaris Intellectual Property or Dr. Weil Intellectual Property (including, without limitation, any Polaris Brand Name and/or logo, the Vitamin Advisor name and/or logo, the My Optimum Health Plan name and/or logo, and any other related Trademarks); provided, however, that Polaris shall have the right in its sole and absolute discretion to approve or reject any proposed use of Dr. Weil’s name, image, likeness, or any Dr. Weil Brand Name. Polaris shall use commercially reasonable best efforts to respond to all requests for approval hereunder as soon as practicable.

(iv) Each of Polaris and drugstore.com agrees to provide the other with commercially reasonable access to its relevant records related to opt-ins, opt-outs, complaints, and resolutions related to the marketing communications described in this subsection (i).
(j) **Reserved.**

(k) **Testing.**

(i) Polaris shall have the right, without obligation, at its sole cost and expense, to perform independent testing of all INCP Vitamins to verify adherence to the INCP Protocols, quality, potency, and other label claims and to confirm compliance with applicable Laws relating to dietary supplement products. Polaris, in its sole discretion, may inform drugstore.com of any test results; provided, however, that if such test results indicate any material noncompliance or health risk with the INCP Protocols, label claims, quality standards or other applicable Laws, Polaris shall immediately notify drugstore.com in writing of such noncompliance. In such event, drugstore.com shall (i) stop shipment of the noncompliant INCP Vitamins within one (1) business day of receipt of such written notification from Polaris and (ii) within ten (10) business days thereafter, notify Polaris of the corrective steps that will be taken to bring such INCP Vitamins into compliance. drugstore.com shall bear the sole cost of bringing such INCP Vitamins into compliance. If, after seventy (70) days after drugstore.com's receipt of written notification of noncompliance, a remedy acceptable to Polaris has not been fully recognized and completed by drugstore.com or a commercially and scientifically reasonable substitute has not been mutually agreed upon by drugstore.com and Polaris in good faith, the material noncompliance shall be deemed a material breach of this Agreement by drugstore.com and Polaris shall have the right to terminate this Agreement immediately upon written notice to drugstore.com. For purposes of clarity, the termination right set forth in this subsection shall be in addition to, and not in lieu of, any other termination rights expressly set forth in this Agreement.

(ii) On each anniversary of the Effective Date, drugstore.com shall provide to Polaris a written certification, executed by an officer of drugstore.com, that drugstore.com has taken all actions reasonably required to verify and ensure that its third party manufacturers, in manufacturing and producing the INCP Vitamins, are in material compliance with (i) the INCP Protocols, (ii) the quality, potency and other label claims of the INCP Vitamins, and (iii) applicable Law (including, without limitation, Laws relating to dietary supplements).

### 3.3 Obligations of Polaris.

(a) **Change in INCP Protocols.** In the event that Polaris desires to make any changes to the INCP Protocols:

(i) Polaris shall provide the changes to drugstore.com in writing. drugstore.com shall recalibrate the canisters used in the INCP as required to make each protocol change as soon as possible; provided, however, that Polaris acknowledges that, due to lead times for product delivery and recalibration, each protocol change is expected to take three (3) to six (6) weeks; and provided further, that drugstore.com shall not be required to make any change for which Polaris does not approve reimbursement of direct out-of-pocket and shipping costs to be incurred by drugstore.com or its Affiliates in connection with recalibrating canisters for such protocol change pursuant to subsection (iii) of this Section 3.3(a).
(ii) Polaris shall provide drugstore.com with a letter of explanation of the protocol change to be delivered to participants in the INCP with the reformulated supplements.

(iii) Except with respect to the first requested INCP Protocol change in any twelve (12) month period during the Term, commencing on the Effective Date, for which drugstore.com shall pay all costs incurred associated with recalibrating the canisters for a protocol change, including, without limitation, all fees and expenses charged by Automated Technology (or other entity responsible for performing any reformulation) – unless the parties mutually agree in good faith that the cost of such first requested change is unreasonably high, in which case the foregoing shall apply to the next requested change (such process shall reiterate until the parties agree that the cost of a requested INCP Protocol change is not unreasonably high) – Polaris shall pay all direct out-of-pocket costs incurred by drugstore.com or its Affiliates associated with recalibrating the canisters for a protocol change, including, without limitation, all fees and expenses charged by Automated Technology (or other entity responsible for performing any reformulation); provided, however, that all such direct out-of-pocket costs to be incurred by drugstore.com or its Affiliates must be estimated in writing by drugstore.com and presented to Polaris in advance for its written approval (which approval shall not unreasonably be withheld or delayed). drugstore.com shall be entitled to deduct all such direct out-of-pocket costs from any amounts payable by drugstore.com to Polaris pursuant to Article VII of this Agreement; provided, however, that drugstore.com shall not be entitled to deduct the portion of such direct out of pocket, if any, exceeding one thousand dollars ($1,000) per protocol change, except with the written approval of Polaris (which approval shall not unreasonably be withheld or delayed).

(iv) If a protocol change requested by Polaris results in the inability of drugstore.com to sell existing inventory, Polaris shall pay the direct, out-of-pocket costs, manufacturing costs, and the purchase price for pre-manufactured goods, none of which shall be marked up; provided, however, that such costs shall not exceed (A) with respect to stock products, the cost of three (3) months' inventory on hand and (B) with respect to products that are contract-manufactured to fulfill orders under the INCP, the cost of six (6) months' inventory on hand; and provided, further, that Polaris shall then have right to take possession of and dispose of such inventory in its sole and absolute discretion.

(b) **Nutritional Assessment Questionnaire.** If Polaris requires changes to the existing Nutritional Assessment Questionnaire of CNS and drugstore.com, due solely to protocol changes requested by Polaris, Polaris shall, at its sole expense, develop the scientific basis for such changes and the nutritional questions that drive the protocols used in the Nutritional Assessment Questionnaire. To support this process, if Polaris desires to make such changes, drugstore.com shall provide Polaris with the development materials used to assemble CNS’s MyCustomPak Program.

(c) **Promotion of the INCP and Other Programs from drugstore.com.** Polaris shall provide a visible graphic link within the My Optimum Health Plan, above the fold, that, when clicked, enables the user to access the Vitamin Advisor, together with the promotion of “Free Shipping” for INCP Products for My Optimum Health Plan members. In addition, in the confirming email after a person finishes the MOHP Assessment, regardless of such customer’s origination point, site, or link, Polaris shall provide a hyperlink and graphic, above the fold,
inviting visitors to take the Vitamin Advisor until such time as drugstore.com and Polaris 
Jvmbe the MOHP Assessment, which shall occur 30 days after the completion of the MOHP 
My Shopping Site, to include an automatic link to a vitamin recommendation so My Optimum 
Health Plan members can immediately receive their vitamin recommendation together with a 
link to purchase Polaris CustomPak Supplements. This same option will be in place for other 
Programs mutually determined and provided by drugstore and Polaris from time to time in the 
future. At any time during the six (6) month period following the launch date of the promotion 
described herein in this subsection, either party may decide in its sole discretion to terminate 
such promotion.

3.4 Customer Data.

(a) Ownership of Customer Data. Polaris shall own all Customer Data provided by 
customers of the INCP (the "INCP Customer Data"). For purposes of clarity, certain INCP 
Customer Data may be co-owned by the parties in accordance with Sections 4.4(b) and 5.4(b), or 
if a customer of the INCP makes a purchase in another drugstore.com Store.

(b) License to Customer Data. Subject to the terms, conditions, and restrictions 
contained in this Agreement, Polaris grants to drugstore.com and its Affiliates a license to use 
the INCP Customer Data solely for the following purposes:

(i) to fulfill its obligations under this Agreement, for the duration of the Term;

(ii) to transact, transition, and communicate with customers for the sole purpose of 
exercising its rights, if any, under Section 10.6(a) of this Agreement, for the period specified in 
Section 10.6(a).

(iii) to deliver drugstore.com Mailings (that do not disparage and/or compete with, 
directly or indirectly in any material respect, Polaris or any Polaris Products or Services) to those 
INCP customers who have not opted out from receiving such drugstore.com Mailings; provided, 
however, that nothing in the foregoing shall prohibit drugstore.com from marketing, soliciting or 
otherwise communicating with persons for whom information exists in its databases other than 
by virtue of this Agreement; provided, further, that drugstore.com may not contact such 
customers using contact information that it obtained solely by virtue of this Agreement.

(iv) for internally evaluating the success of the relationship with Polaris established 
under this Agreement;

(v) to personalize the browsing and transaction completion experience of INCP 
customers in other drugstore.com Stores; provided, however, that such license does not grant 
drugstore.com any rights to contact such customers and drugstore.com agrees that it shall not 
contact such customers;

(vi) to comply with applicable Law.
3.5 Additional INCP Licenses.

Subject to the terms, conditions and restrictions contained in this Agreement:

(a) Sales License. Polaris hereby grants drugstore.com and its Affiliates (i) an exclusive, nontransferable, revocable, limited right and license within the Territory to sell the INCP Vitamins, and (ii) a nonexclusive, nontransferable, revocable, limited right and license within the Territory to promote and offer for sale the INCP Vitamins.

(b) Display License. Polaris hereby grants drugstore.com and its Affiliates a non-exclusive, nontransferable, revocable, limited right and license, with respect to transactions within the Territory, to display the INCP Vitamins and the Polaris Content used for the INCP during the Term in connection with drugstore.com’s obligations under this Agreement. drugstore.com shall not make any changes (including formatting changes that would materially alter such Polaris Content) to the Polaris Content without the prior written consent and approval of Polaris (which consent or approval may be withheld in Polaris’ sole discretion); provided, however, that drugstore.com may make basic formatting changes without consent or approval.

(c) Promotional Materials License. Polaris hereby grants drugstore.com and its Affiliates a non-exclusive, nontransferable, revocable, limited right and license, with respect to transactions within the Territory, to reproduce and distribute any content of Continuity Pieces, including, but not limited to, brochures, pamphlets, product outlines, product summaries and Web Site content, that may be developed by Polaris (the “Polaris INCP Materials”) for the INCP and provided by Polaris to drugstore.com during the Term; provided, however, that all Polaris INCP Materials and any copies thereof shall in all cases remain the sole property of Polaris and shall include Polaris’ legal notices without alteration or modification of any kind; and provided further that, except as otherwise provided or permitted in this Agreement or by the express written consent of Polaris (which consent shall not unreasonably be withheld or delayed), drugstore.com shall not make or permit its agents, employees, or Affiliates to reproduce any Polaris INCP Materials or any other Polaris proprietary material and provided further, that drugstore.com shall not make any changes (including formatting changes that would materially alter such Polaris INCP Materials) to the Polaris INCP Materials without the prior written consent and approval of Polaris (which consent and approval may be withheld in Polaris’ sole discretion); provided, however, that drugstore.com may make basic formatting changes without consent or approval.

(d) Trademark License. Polaris hereby grants drugstore.com and its Affiliates a non-exclusive, nontransferable, revocable, limited right and license, in the Territory, to use the INCP Brand Name, the Dr. Weil Brand Name, the Polaris Brand Name and Polaris’ other Trademarks in connection with the INCP and the sale of INCP Vitamins during the Term. The use of Polaris’ trade names and trademarks by drugstore.com and its Affiliates in connection with the INCP during the Term shall, in each instance, be subject to the specification and prior written approval of Polaris in its sole discretion.
(e) **Termination of Licenses.**

(i) Except as provided in clause (ii) of this subsection (e), all licenses granted under this Section 3.5 shall terminate upon any termination of this Agreement or expiration of the term of this Agreement.

(ii) Upon any termination of this Agreement (including as a result of expiration of the Term) and during the Transition Period, if any, drugstore.com shall have the limited right to use the licenses set forth in this Section 3.5(a) solely to complete its fulfillment of orders for the period of time specified in Section 10.6(a), 10.6(b) or 10.6(c), as applicable; provided, however, that drugstore.com shall abide by the same order fulfillment obligations set forth elsewhere in this agreement (including, without limitation, in Exhibit B) in fulfilling such orders.

3.6 **Orders, Pricing and Terms.**

(a) **Customer Orders.** All customer orders of any products hereunder are subject to acceptance or rejection by drugstore.com in its sole discretion; provided, however, that drugstore.com shall accept all orders from customers whose credit cards or other form of electronic payment accepted by drugstore.com are approved (by way of example only, and without limitation, by the card-issuing bank). drugstore.com shall ship products for orders that drugstore.com has accepted to the point of destination identified in the order in accordance with drugstore.com’s standard shipping terms and conditions then in effect; provided, however, that such standard shipping terms shall be commercially reasonable.

(b) **INCP Terms.** All INCP terms and conditions of the sale of INCP Vitamins and any associated Polaris INCP Materials shall be mutually agreed upon in writing by drugstore.com and Polaris, and may be adjusted from time to time by mutual written agreement of the parties. In adjusting INCP prices, drugstore.com shall have the right to preserve the approximate profit margins achieved by drugstore.com under the pricing structure for the INCP currently available to Polaris Originated Customers; provided, however, that drugstore.com shall, no less frequently than once per calendar year, deliver to Polaris written reports itemized by product and setting forth in reasonable detail drugstore.com’s actual costs for such products during such calendar year; provided, further, that drugstore.com shall deliver to Polaris any additional information reasonably requested by Polaris and that is related to such costs.

(c) **Payments.** drugstore.com may, if a customer’s credit card payment or other form of electronic payment accepted by drugstore.com is unsuccessful or invalid, require prepayment for any order of INCP product prior to delivery. No orders shall be billed to or paid for, directly or indirectly, by Medicare or any other government program.

(d) **Taxes.** drugstore.com shall pay any federal, state, county, local or other governmental taxes, fees or duties now or hereafter imposed on the sale, import, export, use or possession of the customized nutritional supplement products.
3.7 Warranty and Conformance with Quality Standards.

drugstore.com hereby represents and warrants to Polaris with respect to the INCP Vitamins that (i) such INCP Vitamins shall conform to the terms and conditions of this Agreement, and (ii) the INCP Vitamins shall be manufactured (to the best of drugstore.com’s knowledge), labeled, packaged, boxed, held, stored, shipped and otherwise supplied by drugstore.com in accordance with applicable Law and the specifications set forth by the guidelines directed in the INCP Protocols and amendments thereto from time to time by Dr. Weil and/or the Polaris medical and science advisory board.

3.8 Vendor Confidentiality.

drugstore.com shall require all vendors supplying or manufacturing products under the INCP to execute a confidentiality agreement substantially in the form attached as Exhibit G, and incorporated herein by reference; provided, however, that such form of INCP vendor confidentiality agreement may be amended by drugstore.com with the prior written consent and approval of Polaris (which consent and approval shall not unreasonably be withheld or delayed), at which time such amended form of agreement shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement.

3.9 INCP Conversion Funnel.

(a) Development of New Conversion Funnel. Within twenty (20) days after the Effective Date, Polaris and drugstore.com shall jointly agree on a new design of a more effective (with respect to conversion of customers) method for customers to take the Vitamin Advisor diagnostic and complete purchase transactions for the INCP (the "New Conversion Funnel"), which New Conversion Funnel shall be used for such transactions under the INCP as shall be mutually agreed upon in writing by drugstore.com and Polaris. drugstore.com shall use commercially reasonable best efforts to implement the New Conversion Funnel as soon as practicable, but not later than sixty (60) days after the delivery of the design for the New Conversion Funnel, using the design criteria provided by Polaris and incorporating, to the extent commercially reasonable, the reasonable comments of Polaris.

(b) Subsequent Redesigns of the Conversion Funnel.

(i) In the event that, after the implementation of the New Conversion Funnel, drugstore.com desires to redesign the current conversion funnel or the New Conversion Funnel, or both, drugstore.com shall obtain the written approval of Polaris (which approval shall not unreasonably be withheld or delayed) and drugstore.com shall implement each such approved design change, at drugstore.com’s expense, as soon as reasonably practicable; provided, however, that drugstore.com shall, on an ongoing basis, use commercially reasonable efforts to evaluate the respective conversion funnels and propose changes to keep the underlying technology current with prevailing Internet and e-commerce industry standards; provided, further, that in no case shall the respective conversion funnels be any less advanced than similar technology developed and maintained by drugstore.com for its premier drugstore.com Stores / partners (including, without limitation, Zone Profiler or other similar advances in assessments on Beauty.com or Sexual Well-Being). In connection with such redesign efforts, Polaris shall
provide drugstore.com with such Polaris information that may be reasonably requested by drugstore.com.

(ii) In the event that Polaris desires to redesign the current conversion funnel or the New Conversion Funnel, or both, drugstore.com shall implement each such design change requested by Polaris and approved by drugstore.com (which approval shall not unreasonably be withheld or delayed) as soon as reasonably practicable; provided, however, and subject to Section 3.9(b)(iii) below, that for each such redesign requested by Polaris, Polaris shall reimburse drugstore.com for fifty percent (50%) of all actual direct out-of-pocket costs, and the cost of personnel time associated with the software programming (in accordance with a budget for such personnel time to be previously agreed-upon by the parties), excluding any mark-up or profit, incurred by drugstore.com or its Affiliates in connection with such redesign. drugstore.com shall promptly provide Polaris with all information reasonably requested by Polaris to aid in its redesign analysis and efforts.

(iii) Once in each twelve-month period, commencing on the Effective Date, drugstore.com shall implement a Polaris-requested (in accordance with Section 3.9(b)(i) above) redesign of the current conversion funnel or the New Conversion Funnel at drugstore.com’s sole cost and expense; provided, however, that if the parties mutually agree in good faith that the cost of such requested redesign is unreasonably high, the parties shall split the cost of the redesign in accordance with Section 3.9(b)(ii) above; and, provided further, that such process shall reiterate until drugstore.com implement a Polaris-requested redesign at its sole cost and expense.

(iv) In the event that drugstore.com implements any changes to the commerce platform used on the drugstore.com Site (or the CNS Site, the Web Site of any drugstore.com Affiliate, or the Web Site of any partner of drugstore.com whose Web Site is hosted by drugstore.com), drugstore.com shall, upon written request by Polaris, implement such change to the commerce platform used in connection with the INCP as soon as reasonably practicable, and at drugstore.com’s sole cost and expense; provided, however, that if the parties mutually agree in good faith that the cost of such requested change is unreasonably high, the parties shall split the cost of the change in accordance with Section 3.9(b)(ii) above.

ARTICLE IV
INTEGRATIVE MEDICINE STORE

4.1 Integrative Medicine Store.

(a) Creation. drugstore.com shall create and, following the IMS Launch Date, host and maintain the Integrative Medicine Store on the drugstore.com Site during the Term.

(b) Hosting.

(i) drugstore.com shall, using servers maintained by drugstore.com, perform the nonexclusive presentation, copying, transmission, performance, and display of the graphical image files, text, animation, software, hypertext links, product or service names, and trade or service marks or names for the Integrative Medicine Store. drugstore.com shall ensure the security and integrity of the Integrative Medicine Store, the confidentiality of Customer Data
obtained from the Integrative Medicine Store and the availability of the Integrative Medicine Store to customers and end users in the same manner as drugstore.com does for its premier drugstore.com Stores/partners generally (including, without limitation, Beauty.com and Sexual Well-Being).

(ii) Reserved.

(iii) During the Term, drugstore.com shall maintain Integrative Medicine Store availability at least at the service level set forth Exhibit C, attached hereto and incorporated herein by this reference.

(c) Product Management: Content.

(i) Products. The Integrative Medicine Store shall sell and offer for sale only such products as shall be mutually agreed upon by drugstore.com and Polaris. The Integrative Medicine Store shall sell and offer for sale at least one hundred twenty five (125) unique SKUs, excluding unique SKUs for Dr. Weil Vitamins and other vitamins and supplements selected by Dr. Weil. In addition, the Integrative Medicine Store shall offer access to the Vitamin Advisor (and, through the Vitamin Advisor, the INCP), the My Optimum Health Plan, and such other products and services as may be agreed upon by drugstore.com and Polaris from time to time using the Master Customer Database and Unique User Identifier's for each customer in order to create as unique a condition specific, personalized content, and product selection experience as possible.

(ii) Product Selection. Within thirty (30) days after the Effective Date, drugstore.com and Polaris shall make the initial determination of the products that shall be sold and offered for sale through the Integrative Medicine Store on the IMS Launch Date, which initial determination shall be set forth in writing (the "Initial Product Selection"). At any time after the Initial Product Selection, any party may propose in writing that one or more additional products be offered for sale through the Integrative Medicine Store, and each other party shall, within ten (10) business days from the receipt of such proposal, accept or reject such proposal; provided, however, that approval of such proposal shall not unreasonably be withheld or delayed. If each party agrees with the proposed sale of such product(s) through the Integrative Medicine Store, such product(s) shall be offered for sale in the Integrative Medicine Store as soon as it is commercially reasonable to do so.

(iii) Content. drugstore.com and Polaris shall mutually determine the specific editorial and creative content, personalization, placement, promotions, messaging and category names of the Integrative Medicine Store. Polaris shall make available to drugstore.com for use in the Integrative Medicine Store all Polaris Content, excluding content that is exclusively available to subscribers of My Optimum Health Plan; provided, however, that drugstore.com shall not make any changes (including formatting changes that would materially alter such Polaris Content) to such Polaris Content without the prior written consent of Polaris or Dr. Weil (which consent may be withheld in either’s sole discretion); provided, however, that drugstore.com may make basic formatting changes without consent or approval. The parties agree to pursue in good faith ways to cross-promote products from other drugstore.com Stores.
(d) **Treatment.** The Integrative Medicine Store shall at all times during the Term be accessible by means of a tab or other top-level product category identifier (each a "Locator") on the drugstore.com Site; provided, however, that during the first quarter of 2004, the Integrative Medicine Store shall be accessible by a visible Locator on the drugstore.com Site Home Page. On an ongoing basis throughout the Term, drugstore.com may use best efforts to optimize placement of the Integrative Medicine Store Locator in such a way that will maximize impressions, customer conversion, and revenues. Polaris acknowledges and agrees that, to achieve such optimal placement, drugstore.com may determine, in its reasonable discretion based upon its ongoing analysis of drugstore.com Store Locators within the drugstore.com Site, to rotate the Integrative Medicine Store Locator to other locations within the drugstore.com Site (including a location that may be off of the drugstore.com Site Home Page, but in no event shall such location be more than one click off the drugstore.com Site Home Page); provided, however, that under no circumstances shall drugstore.com provide the Integrative Medicine Store Locator with positioning or rotation that is less favorable than the positioning or rotation used for drugstore.com’s premier drugstore.com Stores / partners (including, without limitation, Beauty.com and Sexual Well-Being). drugstore.com shall, no less often than once per calendar year quarter, provide Polaris with reasonably detailed reports upon which drugstore.com’s placement and/or rotation of the Integrative Medicine Store Locator hereunder are based. In addition, during the Term drugstore.com shall not promote any current or future drugstore.com partner or Store that directly competes in any material respect with the Integrative Medicine Store; provided, however, that the GNC Livewell Store on the drugstore.com Site shall be deemed not to compete directly with the Integrative Medicine Store.

(e) **Format and Functionality.** The format of the Integrative Medicine Store shall be generally consistent with other drugstore.com Stores in coloring, graphics, fonts, logos and similar “look and feel” aspects of drugstore.com Stores, and the shopping experience within the Integrative Medicine Store will be consistent with the Functionality available to users of other drugstore.com Stores generally; provided, however, that such Functionality shall be of at least the same character, quality, and technological advancement as the Functionality associated with drugstore.com’s premier drugstore.com Stores / partners, including, by way of example, and without limitation, Beauty.com and Sexual Well-Being. The Web pages of the Integrative Medicine Store related to the payment for, status of and shipping of an order shall be branded exclusively with the drugstore.com brand.

(f) **Design of drugstore.com Site.** Subject to the foregoing with respect to the Integrative Medicine Store, drugstore.com shall determine the content, appearance, Functionality and all other aspects of the drugstore.com Site (including the drugstore.com Site Home Page) in its sole discretion. Without limiting the generality of the foregoing, nothing in this Agreement shall limit the ability of drugstore.com to re-design or modify the appearance and Functionality of the drugstore.com Site, including the drugstore.com Site Home Page, from time to time and at any time, in its sole discretion; provided, however, that in the event of such a redesign or revision, the Integrative Medicine Store shall continue to be accessible by means of a tab or other top-level product category identifier on the drugstore.com Site.

(g) **Opt-In.**
(i) All customers making a purchase through the Integrative Medicine Store, whether such purchase is a Polaris-Originated Purchase or a drugstore.com-Originated Purchase, shall create an account with drugstore.com and shall be automatically opted-in to receive drugstore.com Mailings, which automatic opt-in shall be indicated by a pre-checked box. Each customer shall have the ability to uncheck the opt-in box at that time, thereby opting out from receiving drugstore.com Mailings. Within twenty four (24) hours after such customer opt in hereunder, drugstore.com shall deliver to each such customer a follow-up / confirmation email from drugstore.com, substantially in the form set forth in Exhibit A-2, which follow-up / confirmation email shall provide the customer with the opportunity to manage such customer’s drugstore.com account (including the opportunity to review the types of drugstore.com Mailings such customer has been opted-in to receive and to opt out from receiving any or all of such drugstore.com Mailings from that point forward) by way of a link to the drugstore.com Site as discussed below; provided, however, that drugstore.com may make non-material changes to such follow up / confirmation email at any time and from time to time; provided, however, that the following material changes may only be made with the prior written consent and approval of Polaris (which consent and approval shall not unreasonably be withheld or delayed): the substance of items within the list of opted in subscriptions / mailings, at which time such modified follow-up / confirmation email shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement. In each follow-up / confirmation email and drugstore.com Mailing delivered to customers, drugstore.com shall feature a link that, when clicked by the customer, will direct the customer’s browser to a function on the drugstore.com Site that will provide the customer with instructions and an opportunity to manage such customer’s opt in choices (i.e., such customer shall have the ability while on the drugstore.com Site to opt-out from receiving any or all of the drugstore.com Mailings from that point forward. In addition to, and not in lieu of the customer opt out functionality described herein, each such customer shall have the right to opt-out of any or all drugstore.com Mailings at any time, and, upon request by any such customer, in any form, drugstore.com shall immediately opt-out such customer from receiving those drugstore.com Mailings specifically requested by such customer. In the event that an opt-out request with respect to drugstore.com Mailings is received by Polaris, in any form, Polaris shall promptly forward and/or directly communicate such opt-out request to drugstore.com, and drugstore.com shall immediately opt-out such customer from receiving those drugstore.com Mailings specifically requested by such customer. drugstore.com shall provide to Polaris a monthly report, in a form reasonably acceptable to Polaris, with respect to such opt-outs; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, drugstore.com shall no longer be required to provide such monthly reports.

(ii) In addition, all customers making a purchase through the Integrative Medicine Store, whether such purchase is a Polaris-Originated Purchase or a drugstore.com-Originated Purchase, shall be automatically opted-in to receive Dr. Weil Subscriptions, which automatic opt in shall be indicated by a pre-checked box. Each customer shall have the ability to uncheck the opt in box at that time, thereby opting out from receiving Dr. Weil Subscriptions. Promptly after the customer opt in, drugstore.com shall forward to Polaris (to the extent that such address has not been captured by a Polaris-hosted opt in process), by way of secure electronic transmission, such customer’s email address; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section
8.9 herein, drugstore.com shall no longer be required to forward such email address. Within twenty four (24) hours after its receipt of such email address (or such customer's incorporation into the Master Customer Database) Polaris shall deliver to each such customer follow-up email, substantially in the form set forth in Exhibit A-1, attached hereto and incorporated herein by this reference. The Polaris follow-up email (and each Dr. Weil Subscription) shall feature a link that, when clicked by the customer, will direct the customer's browser to a Polaris Web Site that will provide the customer with instructions and an opportunity to manage such customer's opt in choices (i.e., such customer shall have the ability while on such Polaris Web Site to opt out from receiving any or all of the Dr. Weil Subscriptions from that point forward). The form of such follow-up email may be modified by Polaris from time to time and at any time with the prior written consent and approval of drugstore.com (which consent and approval shall not unreasonably be withheld or delayed), at which time such modified follow-up email shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement. Each such customer shall have the right to opt-out of any or all Dr. Weil Subscriptions at any time, and, upon any request by any such customer, in any form, Polaris shall immediately opt-out such customer from receiving those Dr. Weil Subscriptions specifically requested by such customer. In the event that such an opt-out request with respect to Dr. Weil Subscriptions is received by drugstore.com, in any form, drugstore.com shall promptly forward and/or directly communicate such opt-out request to Polaris, and Polaris shall immediately opt-out such customer from receiving those Dr. Weil Subscriptions specifically requested by such customer. Polaris shall provide to drugstore.com a monthly report, in a form reasonably acceptable to drugstore.com, with respect to such opt-outs; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, Polaris shall no longer be required to provide such monthly reports.

(iii) For purposes of clarity, notwithstanding anything else to the contrary contained in this Agreement, and subject to the clause following the semicolon in this subsection, drugstore.com shall, in each instance, submit to Polaris for its prior written approval (which approval shall not be unreasonably withheld or delayed) any and all proposed uses (by way of example, and without limitation, in confirmation emails, follow-up emails, and drugstore.com Mailings) of any Polaris Intellectual Property or Dr. Weil Intellectual Property (including, without limitation, any Polaris Brand Name and/or logo, the Vitamin Advisor name and/or logo, the My Optimum Health Plan name and/or logo, and any other related trademarks, tradenames, and/or logos); provided, however, that Polaris shall have the right in its sole and absolute discretion to approve or reject any proposed use of Dr. Weil's name, image, likeness, or any Dr. Weil Brand Name. Polaris shall use commercially reasonable best efforts to respond to all requests for approval hereunder as soon as practicable.

(iv) Each of Polaris and drugstore.com agrees to provide the other with commercially reasonable access to its relevant records related to opt-ins, opt-outs, complaints, and resolutions related to the marketing communications described in this subsection (g).

4.2 Orders, Pricing and Terms.

(a) Order Fulfillment. drugstore.com shall be responsible for all fulfillment of orders for products purchased through the Integrative Medicine Store. All revenues from sales of products
in the Integrative Medicine Store shall be revenues of drugstore.com, and Polaris shall have no
right to any revenue share or other fees with respect to sales of products through the Integrative
Medicine Store, except as set forth in Article VII of this Agreement. drugstore.com shall fulfill
orders for products purchased through the Integrative Medicine Store consistent with
drugstore.com’s standard order fulfillment practices then in effect with respect to products
purchased through other drugstore.com Stores generally; provided, however, that drugstore.com
shall meet the order fulfillment specifications set forth in Exhibit B. drugstore.com shall pay all
costs for fulfillment of product orders, including the costs of delivery, invoicing, boxing,
shipping and any promotional materials that may be included in product shipments. The
drugstore.com brand shall be used in connection with the fulfillment of products purchased
through the Integrative Medicine Store and customer care communications with respect to
Integrative Medicine Store purchases in the same manner as such brand is used in connection
with products purchased through other drugstore.com Stores. Polaris shall have the right to
include pamphlets and marketing materials in all IMS order fulfillment packaging promoting
complimentary and non-competitive Polaris Products and Polaris Services; provided, however,
that the production and inclusion of such pamphlets and marketing materials ‘shall be at Polaris’
sole cost and expense (except that Polaris shall pay the lesser of fifty cents or drugstore.com’s
standard pricing per promotional item in this subsection to pick and pack the item that is
delivered to a customer); and provided further, that Polaris must submit such pamphlets and
marketing materials to drugstore.com for its prior approval (such approval not to be
unreasonably withheld or delayed).

(b) **Pricing and Terms.** All initial prices and all terms and conditions of the sale of
products sold and offered for sale in the Integrative Medicine Store shall be jointly agreed upon
in writing by drugstore.com and Polaris, and such terms and conditions of sale may be modified
at any time and from time to time by mutual written agreement of the parties; provided, however,
that in the event that any such product is available for sale through the drugstore.com Site before
being offered for sale on the Integrative Medicine Store, the price at which such product shall
initially be offered in the Integrative Medicine Store shall be the price for such product on the
drugstore.com Site immediately before its inclusion in the Integrative Medicine Store.
drugstore.com shall agree to offer free shipping as promotional incentives for MOHP Members;
provided, however, that the cost of such free shipping shall be split 50/50 between the parties
and Polaris’ portion of such costs shall be deducted from amounts payable under Section 7.2.
drugstore.com shall have the right to offer value promotions in connection with products sold in
the Integrative Medicine Store no more than three (3) times per quarter. drugstore.com must
obtain Polaris’ prior written consent and approval (not to be unreasonably withheld or delayed)
for any promotion that provides for price discounts to Polaris Products or Polaris Services or
additional free-gift, premium, or giveaway promotions (after the initial three such promotions).

4.3 Hyperlinks; Framing.

(a) **Hyperlinks to Polaris Sites.** The Integrative Medicine Store shall contain at least one
prominent and above the fold graphical hypertext links that, when clicked, permit users to move
to (i) the MOHP Site Home Page or (ii) the Vitamin Advisor; provided, however, that both links
shall be on the Home Page at all times, one of which shall be above the fold at all times (and
MOHP hypertext link shall be above the fold at least 25% of such time).
(b) **Return Hyperlinks.** During the Term, Polaris shall ensure that every page of each Polaris Site displayed to any user who links to the Polaris Site from the Integrative Medicine Store or other page on the drugstore.com Site displays prominent, above-the-fold, graphical hypertext links, to be designed by drugstore.com in consultation with Polaris, that, when clicked, open an additional web browser on the user's computer that returns the user to the drugstore.com Site.

(c) **No Framing.** Except as Polaris and drugstore.com may agree in writing, neither Polaris nor drugstore.com shall use or authorize or assist any third party to use in connection with any hypertext links on its Site any framing techniques, interstitial advertisements, pop-up windows, new consoles or other items or techniques that would alter the appearance or presentation of the other party's Site from that seen by users hand-entering the applicable URL into their browser.

4.4 **IMS Customer Data.**

(a) **Tracking of IMS Customer Data.** To identify and track Customer Data obtained through the Integrative Medicine Store ("**IMS Customer Data**"), drugstore.com shall support Vitabella’s Trackstar® click stream tracking software (e.g., by way of beacons on all Polaris and Dr. Weil related Images, links, etc.).

(b) **Ownership of IMS Customer Data.** Subject to the clause following the semicolon in this subsection, all IMS Customer Data shall be owned by drugstore.com; provided, however, that drugstore.com shall provide to Polaris (until the Master Customer Database has been implemented, in which case Polaris shall be able to access such information (and drugstore.com shall no longer be obligated to provide such information separately)), and Polaris shall co-own, the IMS Customer Data of those customers that have opted in to receive Dr. Weil Subscriptions pursuant to Section 4.1(g) of this Agreement, and/or who have made a purchase in the IMS. Upon the termination of this Agreement, Polaris shall have no rights to the drugstore.com-owned IMS Customer Data other than the IMS Customer Data of those customers who, at the time of such termination, have not opted out from receiving Dr. Weil Subscriptions pursuant to Section 4.1(g) of this Agreement, and/or who have made a purchase in the IMS.

(c) **Reports.** drugstore.com shall provide monthly reports to Polaris with respect to aggregated IMS Customer Data, in a form reasonably acceptable to Polaris and consistent with drugstore.com’s privacy policy; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented by Polaris in accordance with Section 8.9 herein, drugstore.com shall no longer be required to provide such monthly reports.

**ARTICLE V**

**MARKETPLACE SITE AND MOHP MY SHOPPING SITES**

5.1 **Creation of Polaris-Branded Commerce Sites.**

(a) **Creation.** drugstore.com shall create and, following the Marketplace Launch Date and the MOHP My Shopping Site Launch Date, respectively, host and maintain the Marketplace Site and the MOHP My Shopping Site during the Term. The Marketplace Site and the MOHP
My Shopping Site shall have the same format, functionality (such functionality to be of at least the same character, quality, and technological advancement as the functionality associated with drugstore.com’s premier drugstore.com stores / partners, including, by way of example, and without limitation, Beauty.com and Sexual Well-Being) and content as the Integrative Medicine Store, but shall have Polaris branding (i.e., a distinctive Polaris “look and feel”) and drugstore.com microbranding (as more fully detailed in subsection (c) of this Section 5.1).

(b) Hosting. drugstore.com shall, using servers maintained by drugstore.com, perform and provide to Polaris the services of nonexclusive presentation, copying, transmission, performance and display of the graphical image files, text, animation, software, hypertext links, product or service names, and trade or service marks or names for the Marketplace Site and the MOHP My Shopping Site, which shall be available to persons accessing the Marketplace Site or the MOHP My Shopping Site, as the case may be, by means of Web browser software or through a hypertext link placed on the Home Page or any other page of a Polaris Site that, when clicked, moves the user from the Polaris Site to the Marketplace Site or the MOHP My Shopping Site, as applicable (each, a "Marketplace Link").

(i) Polaris shall establish Marketplace Links (A) from the Home Page and all other pages of each of the Polaris Sites to the Marketplace Site and (B) from the Home Page and all other pages of the MOHP Site to the MOHP My Shopping Site. Polaris shall use commercially reasonable efforts to maintain the availability of the Marketplace Links and to display the Marketplace Links at all times during the Term. Polaris shall install and maintain a commercially acceptable system of collecting information relating to impressions and other data relating to the use of the Polaris Sites to access the Marketplace Site and the MOHP My Shopping Site through a Marketplace Link. Polaris shall provide drugstore.com with reasonable access to such data collection system and the results and proceeds of such data collection system.

(ii) Each of drugstore.com and Polaris reserves the right, in its sole discretion and except as may be otherwise provided in this Agreement, to determine all matters concerning hardware and software selection and configuration, telecommunications, system components, advertising categories, positioning of advertising, and other operational and administrative matters for the drugstore.com Site or the Polaris Sites, as the case may be, in its own discretion.

(iii) drugstore.com shall ensure the security and integrity of the Marketplace Site and the MOHP My Shopping Site, the confidentiality of Customer Data obtained from the Marketplace Site and the MOHP My Shopping Site and the availability of the Marketplace Site and the MOHP My Shopping Site to customers and end users in the same manner as drugstore.com does for the drugstore.com Site generally.

(iv) During the Term, drugstore.com shall maintain the availability of the Marketplace Site and the MOHP My Shopping Site at least at the service level set forth in Exhibit C.

(c) Site Content.
(i) Each of the Marketplace Site and the MOHP My Shopping Site shall have similar editorial and creative content, personalization, placement, promotions, messaging and category names as the Integrative Medicine Store. Polaris shall make available to drugstore.com for use in the Marketplace Site and the MOHP My Shopping Site all Polaris Content, excluding content that is exclusively available to subscribers of My Optimum Health Plan; provided, however, that drugstore.com shall not make any changes (including formatting changes that would materially alter such Polaris Content) to such Polaris Content without the prior written consent of Polaris or Dr. Weil (which consent may be withheld in Polaris’ sole and absolute discretion); provided, however, that drugstore.com may make basic formatting changes without consent or approval.

(ii) Polaris shall not knowingly publish on any Polaris Site, and drugstore.com shall not publish on the Marketplace Site or the MOHP My Shopping Site, any content, including hypertext links, that is contrary to applicable Law or false or misleading in any material respect. In the event that Polaris or drugstore.com has actual knowledge that any content on any Polaris Site, the Marketplace Site or the MOHP My Shopping Site, as the case may be, is contrary to applicable Law or materially false or misleading, such content shall be removed as soon as practicable.

(iii) There shall be prominently displayed above the fold on each page on the Marketplace Site and the MOHP My Shopping Site:

(A) the Polaris and/or Dr. Weil logo (in Polaris’ sole discretion in each instance);

(B) drugstore.com microbranding (including, by way of example and not limitation, the language “powered by drugstore.com” and the drugstore.com logo identified in Exhibit F hereto or such other drugstore.com logo as may be subsequently provided by drugstore.com in its sole discretion), which microbranding shall be approved by Polaris in writing (which approval shall not be unreasonably withheld or delayed); and

(C) hypertext links that, when clicked, permit users to move to the Dr. Weil Home Page, the MOHP Site Home Page or the Vitamin Advisor, as applicable.

(d) **Checkout Branding.** The Web pages related to final checkout (i.e., the payment for, status of and shipping of an order) on the Marketplace Site and the MOHP My Shopping Site shall be branded with the drugstore.com brand; provided, however, that Web pages related to final checkout shall feature a prominent notice describing the business and financial relationship between drugstore.com, Polaris and Dr. Weil in accordance with the notice procedures described in Section 8.9(b).

(e) **Opt-In.**

(i) All customers making a purchase through the Marketplace Site and/or the MOHP My Shopping Site, whether such purchase is a Polaris-Originated Purchase or a drugstore.com-Originated Purchase, shall create an account with drugstore.com and shall be automatically opted-in to receive drugstore.com Mailings, which automatic opt in shall be
indicated by a pre-checked box. Each customer shall have the ability to uncheck the opt in box at that time, thereby opting out from receiving drugstore.com Mailings. Within twenty four (24) hours after such customer opt in hereunder, drugstore.com shall deliver to each such customer a follow-up / confirmation email from drugstore.com, substantially in the form set forth in Exhibit A-2, which follow-up / confirmation email shall provide the customer with the opportunity to manage such customer's drugstore.com account (including the opportunity to review the types of drugstore.com Mailings such customer has been opted-in to receive and to opt out from receiving any or all of such drugstore.com Mailings from that point forward) by way of a link to the drugstore.com Site as discussed below; provided, however, that drugstore.com may make non-material changes to such follow up / confirmation email at any time and from time to time; provided, however, that the following material changes may only be made with the prior written consent and approval of Polaris (which consent and approval shall not unreasonably be withheld or delayed): the substance of items within the list of opted in subscriptions / mailings, at which time such modified follow-up / confirmation email shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement In each follow-up / confirmation email and drugstore.com Mailing delivered to customers, drugstore.com shall feature a link that, when clicked by the customer, will direct the customer's browser to a function on the drugstore.com Site that will provide the customer with instructions and an opportunity to manage such customer's opt in choices (i.e., such customer shall have the ability while on the drugstore.com Site to opt-out from receiving any or all of the drugstore.com Mailings from that point forward. In addition to, and not in lieu of the customer opt out functionality described herein, each such customer shall have the right to opt-out of any or all drugstore.com Mailings at any time, and, upon request by any such customer, in any form, drugstore.com shall immediately opt-out such customer from receiving those drugstore.com Mailings specifically requested by such customer. In the event that an opt-out request with respect to drugstore.com Mailings is received by Polaris, in any form, Polaris shall promptly forward and/or directly communicate such opt-out request to drugstore.com, and drugstore.com shall immediately opt-out such customer from receiving those drugstore.com Mailings specifically requested by such customer. drugstore.com shall provide to Polaris a monthly report, in a form reasonably acceptable to Polaris, with respect to such opt-outs; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, drugstore.com shall no longer be required to provide such monthly reports.

(ii) In addition, all customers making a purchase through the Marketplace Site and/or the MOHP My Shopping Site, whether such purchase is a Polaris-Originated Purchase or a drugstore.com-Originated Purchase, shall be automatically opted-in to receive Dr. Weil Subscriptions, which automatic opt in shall be indicated by a pre-checked box. Contemporaneously with the customer opt in, drugstore.com shall forward to Polaris, by way of secure electronic transmission, such customer’s email address; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, drugstore.com shall no longer be required to forward such email address. Within twenty four (24) hours after its receipt of such email address (or such customer’s incorporation into the Master Customer Database) Polaris shall deliver to each such customer follow-up email, substantially in the form set forth in Exhibit A-1, attached hereto and incorporated herein by this reference. The Polaris follow-up email (and each Dr. Weil Subscription) shall feature a link that, when clicked by the customer, will direct the customer's
browser to a Polaris Web Site that will provide the customer with instructions and an opportunity to manage such customer’s opt in choices (i.e., such customer shall have the ability while on such Polaris Web Site to opt out from receiving any or all of the Dr. Weil Subscriptions from that point forward). The form of such follow-up email may be modified by Polaris from time to time and at any time in its sole discretion (provided that Polaris provides drugstore.com with notice of such change and a copy of such changed follow-up email), at which time such modified follow-up email shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement. Each such customer shall have the right to opt-out of any or all Dr. Weil Subscriptions at any time, and, upon any request by any such customer, in any form, Polaris shall immediately opt-out such customer from receiving those Dr. Weil Subscriptions specifically requested by such customer. In the event that such an opt-out request with respect to Dr. Weil Subscriptions is received by drugstore.com, in any form, drugstore.com shall promptly forward and/or directly communicate such opt-out request to Polaris, and Polaris shall immediately opt-out such customer from receiving those Dr. Weil Subscriptions specifically requested by such customer. Polaris shall provide to drugstore.com a monthly report, in a form reasonably acceptable to drugstore.com, with respect to such opt-outs; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, Polaris shall no longer be required to provide such monthly reports.

(iii) For purposes of clarity, notwithstanding anything else to the contrary contained in this Agreement, and subject to the clause following the semicolon in this subsection, drugstore.com shall, in each instance, submit to Polaris for its prior written approval (which approval shall not be unreasonably withheld or delayed) any and all proposed uses (by way of example, and without limitation, in confirmation emails, follow-up emails, and drugstore.com Mailings) of any Polaris Intellectual Property or Dr. Weil Intellectual Property (including, without limitation, any Polaris Brand Name and/or logo, the Vitamin Advisor name and/or logo, the My Optimum Health Plan name and/or logo, and any other related Trademarks); provided, however, that Polaris shall have the right in its sole and absolute discretion to approve or reject any proposed use of Dr. Weil’s name, image, likeness, or any Dr. Weil Brand Name. Polaris shall use commercially reasonable best efforts to respond to all requests for approval hereunder as soon as practicable.

(iv) Each of Polaris and drugstore.com agrees to provide the other with commercially reasonable access to its relevant records related to opt-ins, opt-outs, complaints, and resolutions related to the marketing communications described in this subsection (e).

5.2 Product Management; Pricing and Terms.

(a) Product Management. The Marketplace Site and the MOHP My Shopping Site, respectively, shall sell and offer for sale the same products as are sold and offered for sale through the Integrative Medicine Store. In addition, the Marketplace Site and the MOHP My Shopping Site shall offer access to the My Optimum Health Plan, the Vitamin Advisor (and, through the Vitamin Advisor, the INCP) and such other products and services as may be agreed upon by drugstore.com and Polaris from time to time.

(b) Pricing and Terms. Pricing of the products available through the Marketplace Site and the MOHP My Shopping Site shall be the same as the pricing for the same products in the
Integrative Medicine Store, and any sales or other promotions provided by drugstore.com with respect to particular products offered for sale in the Integrative Medicine Store shall also be available with respect to the same products offered for sale through the Marketplace Site and the MOHP My Shopping Site. All other terms and conditions of the sale of products on the Marketplace Site and the MOHP My Shopping Site shall be jointly agreed upon in good faith by drugstore.com and Polaris, and may be modified from time to time by mutual written agreement of the parties. drugstore.com shall agree to offer discount pricing in the Marketplace Site, MOHP My Shopping Site and the IMS as promotional incentives for members of Polaris Services such as the My Optimum Health Plan. drugstore.com agrees to co-create the technology with Polaris whereby the Unique User Identifier shall determine the status and applicable discount(s) available to the user depending upon the user's personal profile as dictated by the Master Customer Database.

5.3 Order Fulfillment.

(a) drugstore.com shall be responsible for all fulfillment of orders for products purchased through the Marketplace Site and the MOHP My Shopping Site. drugstore.com shall fulfill orders for products purchased through the Marketplace Site and the MOHP My Shopping Site consistent with drugstore.com's standard order fulfillment practices then in effect with respect to products purchased through the drugstore.com Site; provided, however, that drugstore.com shall meet the order fulfillment specifications set forth in Exhibit B, attached hereto. drugstore.com shall pay all costs for fulfillment of product orders, including the costs of delivery, invoicing, boxing and shipping. The drugstore.com brand shall be used in connection with the fulfillment of products purchased through the Marketplace Site and the MOHP My Shopping Site and customer communications with respect to such product purchases in the same manner as such brand is used in connection with products purchased the drugstore.com Site generally.

(b) Commencing on the Marketplace Launch Date and the MOHP My Shopping Site Launch Date, respectively, drugstore.com shall provide to Polaris the following information once per week with respect to Marketplace Site and MOHP My Shopping Site transactions:

(i) a report of aggregated visitor data accumulated through the Marketplace Site, the MOHP My Shopping Site or the INCP, regardless of the hypertext link or URL from which visits originated (including, without limitation, all matters relating to Marketplace Site or MOHP My Shopping Site customer communications, data, conversion measurement, service, telephone contacts, and transactions), in a form mutually agreed upon by drugstore.com and Polaris;

(ii) all information associated with any sort of marketing campaign, email campaign, banner or affiliate through which the customer accessed the Vitamin Advisor, regardless of where the Vitamin Advisor has been accessed, using technology equivalent or better than Vitabella's Trackstar® click stream tracking software;

(iii) all information required for internally evaluating the success of the relationship established under this Agreement; and,

(iv) all information required to comply with applicable Law.
(c) **Referral Information.** drugstore.com shall not disclose to any third party (other than Affiliates of drugstore.com) any Customer Data obtained from the Marketplace Site or the MOHP My Shopping Site, or use or permit any third party (other than Affiliates of drugstore.com) to use such information to target communications specifically to users of the Marketplace Site or the MOHP My Shopping Site, without Polaris’ prior written consent, which consent may be granted or withheld by Polaris in its sole and absolute discretion.

5.4 **Marketplace Customer Data.**

(a) **Tracking of Marketplace Customer Data.** drugstore.com shall use and install appropriate technology and Web interfaces equivalent or better than Vitabella’s Trackstar® click stream tracking software to identify and track Customer Data obtained through the Marketplace Site and the MOHP My Shopping Site (e.g., by way of beacons on all Polaris and Dr. Weil related Images, links, etc.) (“Marketplace Customer Data”).

(b) **Ownership of Marketplace Customer Data.** Subject to the clause following the semicolon in this subsection, all Marketplace Customer Data shall be co-owned by drugstore.com and Polaris; provided, however, that drugstore.com shall provide to Polaris (until the Master Customer Database has been implemented, in which case Polaris shall be able to access such information (which drugstore.com shall no longer be obligated to provide separately)), and Polaris shall co-own, the Marketplace Customer Data of those customers that have opted in to receive Dr. Weil Subscriptions, pursuant to Section 5.1(c) of this Agreement, and/or have made a purchase in the Marketplace or the My Optimum Health Plan Shopping Site.

(c) **Reports.** drugstore.com shall provide monthly reports to Polaris with respect to aggregated Marketplace Customer Data, in a form reasonably acceptable to Polaris and consistent with drugstore.com’s privacy policy; provided, however, that at such time as the Master Customer Database has been developed, built out, and implemented in accordance with Section 8.9 herein, drugstore.com shall no longer be required to provide such monthly reports

5.5 **Licenses.**

Subject to the terms, conditions and restrictions contained in this Agreement:

(a) **Sales License.** Polaris hereby grants drugstore.com and its Affiliates (i) an exclusive (except as to Polaris with respect to the Polaris Services), nontransferable, revocable, limited right and license within the Territory to sell the INCP Vitamins, the Polaris Products and the Polaris Services in the Integrative Medicine Store, the Marketplace Site and the MOHP My Shopping Store, and (ii) a non-exclusive, nontransferable, revocable, limited right and license within the Territory to promote and offer for sale the INCP Vitamins, the Polaris Products and the Polaris Services in the Integrative Medicine Store, the Marketplace Site and the MOHP My Shopping Site.

(b) **Display License.** Polaris hereby grants drugstore.com and its Affiliates a non-exclusive, nontransferable, revocable, limited right and license to display the INCP Vitamins, the
Polaris Products, the Polaris Services, the Polaris Content used for the Integrative Medicine Store, the Marketplace Site and the MOHP My Shopping Site during the Term in connection with the sale of products and services through the Integrative Medicine Store, the Marketplace Site and the MOHP My Shopping Site and the performance of drugstore.com’s obligations under this Agreement. drugstore.com shall not make any changes (including formatting changes that would materially alter such Polaris Content) to the Polaris Content without the prior written consent and approval of Polaris (which consent or approval may be withheld in Polaris’ sole discretion); provided, however, that drugstore.com may make basic formatting changes without consent or approval.

(c) Trademark License. Polaris hereby grants drugstore.com and its Affiliates a non-exclusive, nontransferable, revocable, limited right and license to use the INCP Brand Name, the Dr. Weil Brand Name, the Polaris Brand Name and Polaris’ other Trademarks in the Territory during the Term in connection with the sale of product and services through the Integrative Medicine Store, the Marketplace Site and the MOHP My Shopping Store and the performance of drugstore.com’s obligations under this Agreement.

(d) Termination of Licenses. All licenses granted under this Section 5.5 shall terminate upon any termination of this Agreement or expiration of the Term of this Agreement.

ARTICLE VI
MARKETING

6.1 drugstore.com Obligations.

(a) IMS Minimum Marketing Budget.

(i) In each calendar year specified below, drugstore.com shall commit and spend at least the amount specified below for such calendar year (the “drugstore.com Minimum Marketing Amount”), on outside marketing and public relations specifically promoting the Integrative Medicine Store. The entire drugstore.com Minimum Marketing Amount shall be used by drugstore.com to cover actual payments to third parties (other than Affiliates of drugstore.com) for advertising placements (either actual expenditures by third parties for public relations, or the value of the public relations garnered on a “Rack Rate Basis” (defined as the equivalent column width cost for an advertisement at current prevailing rates in any publication in which a drugstore.com public relations article appears in such publication, including production costs)). For each calendar year, no less than eighty percent (80%) of the drugstore.com Minimum Marketing Amount shall be used for marketing media other than public relations, and no more than twenty percent (20%) of the drugstore.com Minimum Marketing Amount shall be used for public relations (either actual expenditures by third parties for public relations, or the value of the public relations garnered on a Rack Rate Basis).

Calendar year 2003 (beginning immediately after the implementation of the New Conversion Funnel); provided, however, that substantially all of such $250,000 shall be spent within the two months following
completion of the conversion funnel.

Calendar year 2004  $500,000
Calendar year 2005  $500,000
Each calendar year thereafter during the Term
(prorated for periods of less than twelve
months in such calendar year)  $500,000

(ii) drugstore.com shall determine the nature, timing and content of all such marketing and public relations promoting the Integrative Medicine Store, subject to the prior review and approval of Polaris (which approval shall not be unreasonably withheld); provided, however, that Polaris shall have the right in its sole and absolute discretion to approve or reject any proposed use of Dr. Weil’s name, image, likeness, or any Dr. Weil Brand Name.

(b) IMS Marketing Obligations. During the Term, drugstore.com shall use its commercially reasonable efforts to promote the Integrative Medicine Store to the drugstore.com customer base. Such efforts shall include, but shall not be limited to, the following:

(i) Home Page. At all times during the Term, the Integrative Medicine Store shall be accessible from the drugstore.com Home Page by means of a tab or other top-level category identifier.

(ii) Promotional Emails. drugstore.com shall distribute marketing emails promoting the Integrative Medicine Store to those registered users of the drugstore.com Site who have agreed to receive such communications, at least three (3) times per year.

(iii) IMS Marketing Costs. drugstore.com shall pay for all marketing costs and expenses for the Integrative Medicine Store.

(iv) MOHP. drugstore.com shall use its commercially reasonable efforts to promote the My Optimum Health Plan in the Integrative Medicine Store to drugstore.com customers both online and offline in telephone up-sell and cross-sell and in package inserts for Polaris Products and INCP Products sold through the IMS; provided, however, that Polaris shall be responsible to pay all direct out-of-pocket costs for inbound customer service telephone support, promotional materials, and training (in accordance with a budget to be previously agreed-upon by the parties).

(c) MOHP Member Promotions. drugstore.com shall make available to Polaris offers for products on the drugstore.com Site targeted at MOHP Members; provided, however, that Polaris shall be responsible for delivering such offers to the MOHP Members.

(d) Competitive Advertising. drugstore.com shall not post, or permit to be posted or served, on any page of the Marketplace Site, the MOHP My Shopping Site or the Integrative Medicine Store, any advertising or promotional placement or materials related to the Internet sales channel of any Internet retailer (other than Polaris, Dr. Weil, drugstore.com, CNS and their
respective Affiliates) of vitamins, herbs, minerals, or supplements ("VMHS") or consumer-customized packs containing VMHS; provided, however, that pages in the Integrative Medicine Store may include hypertext links that are presented as a tab or other top-level category identifier to other drugstore.com Stores in which VMHS products may be sold or offered for sale.

6.2 Polaris Obligations.

(a) Minimum Marketing Budget.

(i) In each calendar year specified below, Polaris shall commit and spend at least the amount specified below for such calendar year (the "Polaris Minimum Marketing Amount"), on outside marketing and public relations specifically promoting the Vitamin Advisor. The entire Polaris Minimum Marketing Amount shall be used by Polaris to cover actual payments to third parties (other than drugstore.com and its Affiliates) for advertising placements (either actual expenditures by third parties for public relations, or the value of the public relations garnered on a Rack Rate Basis. For each calendar year, no less than eighty percent (80%) of the Polaris Minimum Marketing Amount shall be used for marketing media other than public relations, and no more than twenty percent (20%) of the Polaris Minimum Marketing Amount shall be used for public relations (either actual expenditures by third parties for public relations, or the value of the public relations garnered on a Rack Rate Basis).

   Calendar year 2003 (beginning immediately after the implementation of the New Conversion Funnel); provided, however, that substantially all of such $250,000 shall be spent within the two months following completion of the conversion funnel.

   Calendar year 2004 $500,000

   Calendar year 2005 $300,000

   Each calendar year thereafter during the Term (prorated for periods of less than twelve months in such calendar year) $300,000

(ii) Polaris shall determine the timing of all such marketing and public relations promoting the Vitamin Advisor, subject to the prior review and approval of such timing of drugstore.com (which approval shall not be unreasonably withheld or delayed).

(b) Marketing Obligations. Polaris shall use commercially reasonable efforts to promote the Vitamin Advisor to the Polaris customer base. Such efforts shall include, but shall not be limited to, the following:

(i) Home Page. Polaris shall prominently market the Vitamin Advisor on the Home Page of each Polaris Site. The promotional text and hypertext links for the Vitamin
Advisor shall be prominently displayed, above the fold, on the Home Page of each Polaris Site at all times.

(ii) Promotional Emails. Polaris shall distribute marketing emails (including, but not limited to, the Daily Tip and the Weekly Bulletin) promoting the Vitamin Advisor to those registered users of the Polaris Sites who agree to receive such communications. Polaris shall distribute marketing emails other than Daily Tip and the Weekly Bulletin to such registered users at least three (3) times per year.

(iii) Daily Tip. The Vitamin Advisor shall be advertised in the 120 x 240 sponsor box in the Daily Tip at least four (4) times per month.

(iv) Weekly Bulletin. The Vitamin Advisor shall be advertised in the 120 x 240 sponsor box in the Weekly Bulletin at least two (2) times per month.

(v) Contextual Blurbs. Polaris shall use commercially reasonable efforts to ensure that the Vitamin Advisor is mentioned in at least one contextual blurb in the Daily Tip or the Weekly Bulletin at least one (1) time per week.

(c) Competitive Advertising. Polaris shall not post, or permit to be posted or served, on any page of a Polaris Site displayed to any user who links to a Polaris Site from the Integrative Medicine Store, the Marketplace Store or the MOHP My Shopping Site any advertising or promotional placement or materials related to the Internet sales channel of any Internet retailer (other than Polaris, Dr. Weil, drugstore.com, CNS and their respective Affiliates) with respect to transactions in the Territory of (i) VMHS or consumer-customized packs containing VMHS, or (ii) products of the type sold currently as of that time through the INCP or the Integrative Medicine Store.

6.3 Dr. Weil Obligations.

Dr. Weil shall use commercially reasonable efforts to promote the INCP, the Vitamin Advisor, the Marketplace Site, the MOHP My Shopping Site, and the Integrative Medicine Store. Dr. Weil shall make one (1) public appearance per year, at drugstore.com’s reasonable request, to promote the INCP, the Vitamin Advisor, the Marketplace Site, the MOHP My Shopping Site, and the Integrative Medicine Store; provided that such appearance shall take place within the United States or Canada and shall not exceed two (2) hours, excluding travel time.

ARTICLE VII
SALES COMMISSIONS, DONATIONS AND CUSTOMER ACQUISITION FEES

7.1 Costs and Expenses.

Except as otherwise expressly provided in this Agreement, each party will be responsible for all costs and expenses incurred by such party in performing its obligations under this Agreement.
7.2 **drugstore.com Sales Commissions.**

drugstore.com shall pay to Polaris, within thirty (30) days after the last day of each calendar month during the Term (including the calendar month in which the Effective Date occurs), an amount equal to (i) the aggregate amount of each of the sales commissions specified in subsections (a), (b) and (c) of this Section 7.2 (collectively, the "**Monthly Sales Commissions**") less (ii) all printing costs payable by Polaris pursuant to Section 3.1(d) of this Agreement that are paid by drugstore.com or its Affiliates in such calendar month with respect to Continuity Materials for the INCP. Each such payment of Monthly Sales Commissions shall be accompanied by a statement showing in reasonable detail the basis for the payment made. Such details shall specifically identify with reasonable backup any and all adjustments, deductions, offsets, or any other items that affect such calculations.

(a) **Specialty Vitamins.**

(i) For each calendar month during the Term, a sales commission of fourteen percent (14%) of the aggregate Revenue from all drugstore.com-Originated INCP Purchases of INCP Vitamins and all drugstore.com-Originated Purchases of Dr. Weil Vitamins made through the Integrative Medicine Store, the Marketplace Site, the MOHP My Shopping Site or the INCP during such calendar month.

(ii) For each calendar month during the period beginning on the Effective Date and ending on December 31, 2003, a sales commission of twenty-seven percent (27%) of the aggregate Revenue from all Polaris-Originated INCP Purchases of INCP Vitamins made through the Integrative Medicine Store, the Marketplace Site, the MOHP My Shopping Site or the INCP during such calendar month, and for each calendar month during the period beginning on January 1, 2004 and continuing through the remainder of the Term, a sales commission of twenty-five percent (25%) of the aggregate Revenue from all Polaris-Originated INCP Purchases of INCP Vitamins made through the Integrative Medicine Store, the Marketplace Site, the MOHP My Shopping Site or the INCP during such calendar month.

(iii) For each calendar month during the period beginning on the Effective Date and continuing through the remainder of the Term, a sales commission of twenty-five percent (25%) of the aggregate Revenue from all Polaris-Originated Purchases of Dr. Weil Vitamins made through the Integrative Medicine Store, the Marketplace Site or the MOHP My Shopping Site during such calendar month.

(b) **Other Products.**

(i) For each calendar month during the Term, a sales commission of eight percent (8%) of the aggregate Revenue from drugstore.com-Originated Purchases of all products other than Specialty Vitamins and Polaris-Branded Products made through the Integrative Medicine Store, the Marketplace Site or the MOHP My Shopping Site during such calendar month.

(ii) For each calendar month during the Term, a sales commission of twelve percent (12%) of the aggregate Revenue from Polaris-Originated Purchases of all products other
than Specialty Vitamins and Polaris-Branded Products made through the Integrative Medicine Store, the Marketplace Site or the MOHP My Shopping Site during such calendar month.

(c) Polaris Branded Products.

(i) For each calendar month during the Term, a sales commission of twenty-five percent (25%) of the aggregate Revenue from all drugstore.com-Originated Purchases of all Polaris-Branded Products made through the Integrative Medicine Store, the Marketplace Site or the MOHP My Shopping Site during such calendar month.

(ii) For each calendar month during the Term, a sales commission of thirty percent (30%) of the aggregate Revenue from all Polaris-Originated Purchases of Polaris-Branded Products made through the Integrative Medicine Store, the Marketplace Site, the MOHP My Shopping Site, or the INCP during such calendar month.

7.3 drugstore.com Donation.

drugstore.com shall make to the Foundation, within thirty (30) days after the last day of each calendar month during the Term (including the calendar month in which the Effective Date occurs), a donation (a “Donation”) in an amount consisting of one percent (1%) of the aggregate Revenue from all drugstore.com-Originated Purchases and Polaris-Originated Purchases of Specialty Vitamins and Polaris-Branded Products made through the Integrative Medicine Store, the Marketplace Site, the MOHP My Shopping Site, or the INCP during such calendar month. Concurrently with each such donation, drugstore.com shall deliver to Polaris a statement showing in reasonable detail the basis for the donation made.

7.4 drugstore.com Minimum Royalty Payments.

In the event that, with respect to a particular calendar quarter, the sum of (a) the aggregate Monthly Sales Commissions payable by drugstore.com to Polaris pursuant to Section 7.2 for such calendar quarter and (b) the Donation payable by drugstore.com to the Foundation pursuant to Section 7.3 for such calendar quarter is less than the Minimum Royalty Payment specified in the table below for such calendar quarter, drugstore.com shall pay to Polaris, within thirty (30) days after the last day of such calendar quarter, a “Quarterly True-Up” equal to (i) the Minimum Royalty Payment specified in the table below for such calendar quarter minus (ii) the aggregate amount of the Monthly Sales Commissions and Donations payable by drugstore.com to Polaris with respect to such calendar quarter pursuant to Sections 7.2 and 7.3, provided, however, that within thirty (30) days after the end of each calendar year, the parties shall determine whether the total of drugstore.com’s payment of actual Monthly Sales Commissions and Donations paid under this Agreement in such year meets, exceeds, or falls below the total Minimum Royalty Payments for such calendar year (as set forth in the chart below). If the total of drugstore.com’s payment of actual Monthly Sales Commissions and Donations paid under this Agreement in such year meets or exceeds the total Minimum Royalty Payments for such calendar year (as set forth in the chart below), drugstore.com shall have the right to deduct from Monthly Sales Commissions for the next month, and future months (if necessary, until such amount is deducted in full), the excess (namely Quarterly True-Ups) paid over the actual Monthly Sales Commissions and Donations so paid under this Agreement in such year. In the event that the
actual Monthly Sales Commissions and Donations paid under this Agreement in such year fall below the total Minimum Royalty Payments for such calendar year (as set forth in the chart below), drugstore.com shall have the right to deduct from Monthly Sales Commissions for the next month, and future months (if necessary, until such amount is deducted in full), an amount equal to the excess paid over the total Minimum Royalty Payments for such calendar year.

<table>
<thead>
<tr>
<th>Calendar Quarter</th>
<th>Minimum Royalty Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>3Q 2003</td>
<td>$225,000</td>
</tr>
<tr>
<td>4Q 2003</td>
<td>$275,000</td>
</tr>
<tr>
<td>1Q 2004</td>
<td>$423,000</td>
</tr>
<tr>
<td>2Q 2004</td>
<td>$441,000</td>
</tr>
<tr>
<td>3Q 2004</td>
<td>$459,000</td>
</tr>
<tr>
<td>4Q 2004</td>
<td>$477,000</td>
</tr>
<tr>
<td>1Q 2005</td>
<td>$517,000</td>
</tr>
<tr>
<td>2Q 2005</td>
<td>$539,000</td>
</tr>
<tr>
<td>3Q 2005</td>
<td>$561,000</td>
</tr>
<tr>
<td>4Q 2005</td>
<td>$583,000</td>
</tr>
<tr>
<td>1Q 2006</td>
<td>$634,500</td>
</tr>
<tr>
<td>2Q 2006</td>
<td>$661,500</td>
</tr>
<tr>
<td>3Q 2006</td>
<td>$688,500</td>
</tr>
<tr>
<td>4Q 2006</td>
<td>$715,500</td>
</tr>
<tr>
<td>1Q 2007</td>
<td>$763,750</td>
</tr>
<tr>
<td>2Q 2007</td>
<td>$796,250</td>
</tr>
<tr>
<td>3Q 2007</td>
<td>$828,750</td>
</tr>
<tr>
<td>4Q 2007</td>
<td>$861,250</td>
</tr>
<tr>
<td>1Q 2008</td>
<td>$877,500</td>
</tr>
<tr>
<td>2Q 2008</td>
<td>$1,072,500</td>
</tr>
</tbody>
</table>

All fees due hereunder are stated and shall be payable in U.S. dollars. All payments shall be wire transferred to an account designated by Polaris from time to time. Outstanding amounts not paid when due shall accrue interest at the lower of 1½% per month or the highest monthly rate allowed by applicable law (whichever is lower), from the date due until paid. The obligation to pay and the payment of any such interest shall not operate to extend any payment due date, and Polaris waives no rights by accepting late or partial payment with interest.
7.5 drugstore.com Honoraria.

(a) drugstore.com shall pay to Dr. Weil or his designee, within thirty (30) days after the last day of each calendar month during the Term (including the calendar month in which the Effective Date occurs), the Monthly Honorarium Amount specified in the table below for such calendar month:

<table>
<thead>
<tr>
<th>Calendar Year in which Calendar Month Occurs</th>
<th>Monthly Honorarium Amount</th>
<th>Annual Honorarium Amount for Calendar Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>$12,500</td>
<td>$75,000 (6 months)</td>
</tr>
<tr>
<td>2004</td>
<td>$20,000</td>
<td>$240,000</td>
</tr>
<tr>
<td>2005</td>
<td>$25,000</td>
<td>$300,000</td>
</tr>
<tr>
<td>2006</td>
<td>$30,000</td>
<td>$360,000</td>
</tr>
<tr>
<td>2007</td>
<td>$33,333</td>
<td>$400,000</td>
</tr>
<tr>
<td>2008</td>
<td>$38,889</td>
<td>$233,333 (6 months)</td>
</tr>
</tbody>
</table>

Concurrently with the payment of each such honorarium, drugstore.com shall deliver to Polaris a statement showing in reasonable detail the basis for the honorarium paid.

(b) In the event of Dr. Weil’s death during the Term, if applicable, drugstore.com shall be obligated to pay the Honoraria for a period of ninety (90) days following such death; provided, however, that, thereafter, drugstore.com may elect, in its sole and absolute discretion, to suspend its obligation to make any Honoraria payments otherwise due under this Section 7.5.

7.6 MOHP Customer Acquisition Fee.

Polaris shall pay to drugstore.com, within thirty (30) days after the last day of each calendar month during the Term (including the calendar month in which the Effective Date occurs), a customer acquisition fee (the “MOHP Fee”) of Twenty Dollars ($20.00) for each New MOHP Customer delivered during such calendar month. For purposes of the MOHP Fee calculation, a “New MOHP Customer” means a person who registers and purchases an initial subscription to My Optimum Health Plan during a visit to the Integrative Medicine Store, the Marketplace Site, the MOHP My Shopping Site or a Polaris Site (including, without limitation, the MOHP Site) during a visit originating from a hypertext link located on the drugstore.com Site (including the Integrative Medicine Store) or the CNS Site or contained in any email, banner ad, other Internet advertisement or promotion or other advertising or marketing means funded by drugstore.com, CNS or their respective Affiliates.

ARTICLE VIII
OTHER OBLIGATIONS

8.1 Customer Service Obligations.

(a) Selection of Third Party Evaluator. Within sixty (60) days after the Effective Date, the parties shall mutually agree upon an independent third party (the “Evaluator"), which shall
be knowledgeable about and has substantial experience with customer support and product fulfillment in the Internet e-Commerce industry, to evaluate and measure drugstore.com’s customer support and product fulfillment performance related to Polaris Products and Services against metrics ("Metrics") established in accordance with Section 8.1(b) herein. The parties shall cause such Evaluator to prepare and deliver reports in sufficient detail to enable the parties to verify drugstore.com’s compliance with the Metrics. Each party shall be responsible to pay 50% of the Evaluator’s fees and costs.

(b) Metrics. Within ninety (90) days after the Effective Date, the parties shall meet and cooperate with the Evaluator to agree in good faith upon the Metrics (including, without limitation, categories and measurements (both objective and subjective)), which shall be based upon metrics that are customary in the Internet e-Commerce industry. If after such sixty (60) day period the parties and Evaluator are unable to agree upon such Metrics, the Evaluator shall unilaterally set such Metrics in accordance with metrics that are customary in the Internet e-Commerce industry. At such time as the Metrics are set in accordance with this Section 8.1(b), the Metrics shall be attached to this Agreement as Exhibit B, which shall become a part of this Agreement and incorporated herein by this reference.

(c) drugstore.com Performance. From and after the Effective Date, and until the establishment of Metrics, drugstore.com shall provide customer support and product fulfillment at the same levels and quality as it provides for its premier drugstore.com Stores / partners (including, by way of example, and without limitation, Beauty.com an Sexual Well Being). From and after the date on which such Metrics are set in accordance with Section 8.1(b) herein, drugstore.com shall provide customer support and product fulfillment ("Customer Service") for the INCP, the Integrative Medicine Store, the MOHP My Shopping Area, the My Optimum Health Plan, and the Marketplace Site, and all such other sites properly designated by a party in accordance with this Agreement, and shall cause such Customer Service activities to meet the Metrics outlined in Exhibit B of this Agreement, attached hereto and incorporated herein by this reference. Polaris shall have the right to monitor and evaluate Customer Support against the above-referenced premier drugstore.com Store / partner support standards, using various means at its sole discretion and Polaris shall have the right to terminate this Agreement upon written notice should such customer service fall out of compliance and remain uncured, in Polaris’ reasonable discretion (to the extent such non-compliance is confirmed by the Evaluator) for a period of thirty (30) days; provided, however, that drugstore.com shall use commercially reasonable best efforts to cure any such non-compliance as soon as possible, but in no event later than thirty (30) days; and, provided further, that Polaris shall have the right to terminate this Agreement immediately upon written notice on the third instance of non-compliance in any rolling twelve (12) month period.

8.2 Use of Customer Data; Privacy Policy.

(a) Use of Customer Data. Each of drugstore.com and Polaris shall at all times use Customer Data only in strict compliance with (i) the terms, conditions, and restrictions contained in this Agreement, (ii) the privacy policy of such party attached to this Agreement as Exhibit D and Exhibit E, respectively, and incorporated herein by this reference, as such policy may be amended from time to time, and (iii) applicable Law.
(b) **Privacy Policy.** Either party may amend its privacy policy at any time and from time to time in its sole discretion; provided, however, that such party shall tender written notice of such change to the other party, at which time such amended Privacy Policy shall replace the corresponding Exhibit hereunder and shall become a part of this Agreement.

8.3 **Records; Audit.**

Each party shall maintain complete and accurate records containing data sufficiently to verify its compliance or noncompliance with its obligations under this Agreement. Each party (the "Auditing Party") shall have the right, upon at least fifteen (15) business days' prior written notice, to audit or cause to be audited the relevant records of the other party (the "Audited Party") to verify the Audited Party's compliance with the provisions of this Agreement. Any such audit shall be conducted during normal business hours and in a manner designed not to unreasonably interfere with the Audited Party's ordinary business obligations. Such audits may not be conducted by an Auditing Party more than once in any one (1) year period. Any such audit shall be conducted at the expense of the Auditing Party; provided, however, that if the results of the audit establish inaccuracies resulting in an underpayment of more than three percent (3%) of the amount actually due, the Audited Party shall reimburse the Auditing Party for all reasonable out-of-pocket fees and expenses incurred by the Auditing Party in connection with such audit; provided, further, that any underpayment of any amount shall be paid promptly to the party owed.

8.4 **Compliance With Laws.**

Each party shall perform its obligations under this Agreement at all times in compliance with applicable Law; including, without limitation, all applicable Laws relating to the collection, maintenance, and disclosure of patient information.

8.5 **Disclosure.**

Neither party shall issue any press release, make any disclosure regarding this Agreement or its terms or the relationship between the parties without the prior consent of the other party; provided, however, that a party may, without the other party's prior consent, distribute or issue public relations materials or press releases that contain a description of the relationship of the parties, provided that such description has been approved in advance by the parties; and provided further that disclosures required by applicable Law shall be governed solely by Section 8.6(d) of this Agreement.

8.6 **Confidentiality.**

(a) **Ownership of Confidential Information.** All Confidential Information and any derivative, summaries, or extracts thereof shall remain the sole property of the disclosing party.

(b) **Use of Confidential Information.** The receiving party and its Affiliates may use Confidential Information only for the limited purposes of this Agreement.
(c) **Prohibition on Disclosure of Confidential Information.** Confidential Information may only be disclosed by the receiving party to its Affiliates and their respective employees, contractors, agents and representatives having a need to know for the purposes of this Agreement. All employees, contractors, agents and representatives to whom Confidential Information is to be disclosed shall, prior to disclosure, be advised of the confidential nature of the information and shall agree to be bound by the terms and conditions of this Agreement related to the use and disclosure of Confidential Information.

(d) **Required Disclosure.** If a recipient of Confidential Information or any of its representatives is requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the other party, the recipient shall provide the other party with prompt prior written notice of such request or requirement (including the delivery of a copy thereof), and the recipient shall cooperate with the other party so that the other party may seek a protective order or other appropriate remedy or, if it so elects, waive compliance with the terms of this Agreement. If such protective order or other remedy is not obtained, or the other party waives compliance with the provisions hereof, the recipient or such representative, as the case may be, may disclose only that portion of the Confidential Information that the recipient is advised by written opinion of its outside counsel is legally required to be disclosed and shall exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

(e) **Return of Confidential Information.** All Confidential Information, regardless of the type of media, shall be returned to the owner and/or destroyed promptly at the owner’s request, together with any copies or derivatives thereof. The recipient will provide the party owner prompt written certification of the return and/or destruction of all Confidential Information and any derivatives.

(f) **Survival.** All obligations against unauthorized use and disclosure of Confidential Information shall survive the termination of this Agreement for a period of two (2) years, except that obligations against unauthorized use and disclosure of “trade secret” information shall remain in perpetuity until such trade secret information no longer falls within the definition of Confidential Information as set forth herein.

### 8.7 **Insurance.**

(a) **drugstore.com.** drugstore.com shall maintain adequate insurance coverage, including insurance coverage as to product liability and negligence, covering drugstore.com’s activities under this Agreement, as follows:

(i) drugstore.com shall, at its expense, obtain and keep in force during the Term (A) a products liability and an errors and omissions insurance policy, each with a combined single limit of not less than five million dollars ($5,000,000) per claim featuring industry standard coverages, with deductibles in an amount reasonably satisfactory to Polaris, (B) a commercial general liability insurance policy with a combined single limit of not less than five million dollars ($5,000,000) covering bodily injury or death to one or more persons, property damage and product liability, with deductibles in an amount reasonably satisfactory to
drugstore.com, (C) worker’s compensation insurance with minimum statutory limits, (D) employer’s liability insurance with an aggregate limit of not less than $1,000,000, (E) property insurance covering electronic computer equipment for the perils customarily insured, and (F) Business Interruption Insurance with appropriate limits (collectively, the “drugstore.com Insurance Policies”). The drugstore.com Insurance Policies shall at all times be primary and not contributing or excess and shall be issued by insurer(s) licensed and qualified to do business in the state of Arizona, with a current A.M. Best Company rating of at least A-.

The drugstore.com Insurance Policies shall cover drugstore.com’s activities under this Agreement and shall name Polaris as an additional insured. The drugstore.com Insurance Policies shall not be nonrenewable, cancelable or subject to material reduction of coverage or other material modification except after thirty (30) days’ prior written notice to Polaris. The parties shall meet to review the minimum coverage amounts no less frequently than once per calendar year to determine whether such amounts are commercially reasonable. The establishment of insurance requirements shall not limit the liability of drugstore.com under this Agreement.

(ii) Polaris and Dr. Weil shall be named as an additional insureds on all such policies; provided, however, that drugstore.com shall require its vendors and manufacturers hereunder to maintain commercially reasonable insurance policies featuring coverages and coverage levels that are customary for businesses in such vendors’ and manufacturers’ respective industries; and provided further, that drugstore.com shall use commercially reasonable efforts to cause such vendors to add Polaris and Dr. Weil as additional insureds on all such policies. drugstore.com shall deliver to Polaris certificates of insurance evidencing the existence, coverage amount and deductibles of the drugstore.com Insurance Policies. drugstore.com shall, at least thirty (30) days before the expiration of each drugstore.com Insurance Policy, furnish Polaris with a renewal or “binder” thereof. Any failure of drugstore.com to obtain, maintain, or provide copies or certificates of the drugstore.com Insurance Policies shall constitute a material and continuing breach of this Agreement.

(b) Polaris. Polaris shall maintain adequate insurance coverage, including insurance coverage as to product liability and negligence, covering Polaris’s activities under this Agreement, as follows:

(i) Polaris shall, at its expense, obtain and keep in force during the Term (A) a commercial general liability insurance policy with a combined single limit of not less than five million dollars ($5,000,000) covering bodily injury or death to one or more persons, property damage and product liability, with deductibles in an amount reasonably satisfactory to drugstore.com, (B) worker’s compensation insurance with minimum statutory limits, (C) employer’s liability insurance with an aggregate limit of not less than $1,000,000, (D) property insurance covering electronic computer equipment for the perils customarily insured, and (E) Business Interruption Insurance with appropriate limits (collectively, the “Polaris Insurance Policies”). The Polaris Insurance Policies shall at all times be primary and not contributing or excess and shall be issued by insurer(s) licensed and qualified to do business in the states of Washington and New Jersey, with a current A.M. Best Company rating of at least A-. The Polaris Insurance Policies shall cover Polaris’s activities under this Agreement and shall name drugstore.com as an additional insured. The Polaris Insurance Policies shall not be
nonrenewable, cancelable or subject to material reduction of coverage or other material modification except after thirty (30) days’ prior written notice to drugstore.com. The parties shall meet to review the minimum coverage amounts no less frequently than once per calendar year to determine whether such amounts are commercially reasonable. The establishment of insurance requirements shall not limit the liability of Polaris under this Agreement.

(ii) drugstore.com shall be named as an additional insured on all such policies. Polaris shall deliver to drugstore.com certificates of insurance evidencing the existence, coverage amount and deductibles of the Polaris Insurance Policies. Polaris shall, at least thirty (30) days before the expiration of each Polaris Insurance Policy, furnish drugstore.com with a renewal or “binder” thereof. Any failure of Polaris to obtain, maintain, or provide copies or certificates of the Polaris Insurance Policies shall constitute a material and continuing breach of this Agreement.

(c) Meeting. As soon as practicable after the Effective Date, the parties shall meet to review each other’s insurance policies to determine whether such policies (including, without limitation, coverages, coverage amounts, reserves, and deductibles) need to be modified or revised for purposes of this Agreement.

8.8 Polaris and drugstore.com Site Availability.

During the Term, (i) Polaris shall maintain the availability of each of the Polaris Sites set forth in Exhibit C at least at the service levels set forth Exhibit C; and (ii) drugstore.com shall maintain the availability of each of the Web Sites listed under drugstore.com set forth in Exhibit C at least at the service levels set forth Exhibit C.

8.9 Unified Customer Experience.

(a) Unified Customer Experience. The Parties agree that they will cooperate with each other in good faith and use commercially reasonable best efforts to create a specification and evaluate the commercial viability of the Unified Customer Experience and implement such Unified Customer Experience if commercially reasonable.

(b) Customer Notification of Data Sharing. The parties agree that in connection with drugstore.com’s obligations to share Customer Data with Polaris in accordance with Sections 4.4 and 5.4, drugstore.com shall notify such customers (in such a way that a reasonable customer would understand that such Customer Data was going to be shared with Polaris) that such Customer Data is being shared with Polaris. The parties agree and acknowledge that, as of the Effective Date, such notice shall appear on the product details page (i.e., the page displaying the products that have been added to such customer’s shopping cart) or other page that may be designated by drugstore.com from time to time; provided, however, that customers shall be automatically opted-in to allowing its Customer Data to be shared with Polaris, which automatic opt in shall be indicated by a pre-checked box (or other comparable opt in method). The customer shall be able to opt out from having its Customer Data shared with Polaris by unchecking the box when presented with it. From time to time if the parties agree in good faith that such notification method is inadequate for purposes of this Section 8.9(b), the parties shall discuss in good faith the development and implementation of alternative notification methods.
(c) **Master Customer Database.** Polaris and drugstore.com agree that, by no later than thirty (30) days after the Effective Date, drugstore.com shall deliver to Polaris such data, information, and other materials that may be reasonably requested by Polaris in connection with its development efforts under this subsection and Polaris shall develop and implement a master customer database, which shall be a single central repository for all Customer Data hereunder (including, without limitation, opt in and opt out information, personally-identifiable customer information, customer purchase information, assessment information (as applicable), customer preference information) for customers visiting the IMS, INCP, Marketplace Site, and MOHP My Shopping Site, regardless of the origination point or format (e.g., and without limitation, banner advertisement, email, link, or otherwise). The Master Customer Database shall be updated and maintained by both parties. The Master Customer Database shall be updated by drugstore.com by pushing such Customer Data, by secure digital download or other secure means as may be reasonably requested by Polaris, at least once in every consecutive twenty four (24) hour period during the Term and the Transition Period; provided, however, that Polaris shall create the Master Customer Database and drugstore.com shall provide such assistance in the development and implementation of the Master Customer Database as may be reasonably requested by Polaris from time to time. From and after such time as the Master Customer Database is created in accordance with this subsection, the parties shall use commercially reasonable best efforts to enhance such Master Customer Database in accordance with the following: The Master Customer Database shall assign a unique Master Customer Database identifier to each registered customer (which generally shall be keyed to such customer’s login (registration / authentication) information; for purposes of clarity, a customer may have multiple identifiers if such customer has multiple accounts) or to transactions with respect to which the respective customer has not created a unique account or has provided only an email address. The Master Customer Database shall restrict access of each party only to the information of such customers that have purchased products in the IMS, Marketplace, or MOHP My Shopping Site, or are opted in (i.e., have not opted out) to receive such party’s Mailings or Subscriptions, as applicable; provided, however, that the parties shall have access to certain limited, non-personally identifiable information (such information categories to be mutually agreed upon by the parties) of customers that have opted out of such party’s Mailings or Subscriptions, as applicable.

8.10 **Updates, Bug Fixes, Error Corrections.**

(a) **Updates.** The drugstore.com Site (and Web Sites hosted and maintained by drugstore.com) undergo frequent revisions, enhancements, and updates ("Updates"). drugstore.com shall apply to the MOHP My Shopping Site and the Marketplace Site, at drugstore.com’s sole cost and expense, all Updates as and when drugstore.com applies such Updates to the drugstore.com Site or makes such Updates generally available to Web Sites that it hosts, whichever is earlier. drugstore.com agrees that all Updates function properly when used or implemented in connection with the MOHP My Shopping Site and the Marketplace Site; provided, however, if such Updates do not function properly, drugstore.com shall follow the procedure for error correction set forth in subsection (c) below. If the parties mutually agree in good faith that the cost of any Update is unreasonably high, then drugstore.com shall not be obligated to apply such Update to the MOHP My Shopping Site or the Marketplace Site hereunder, until such time as it becomes commercially reasonable to do so.
(b) **Bug Fixes.** drugstore.com shall apply to the MOHP My Shopping Site and the Marketplace Site, at drugstore.com’s sole cost and expense, all Bug Fixes to as and when drugstore.com applies such Bug Fixes to the drugstore.com Site or makes such Bug Fixes generally available to Web Sites that it hosts, whichever is earlier. drugstore.com agrees that all Bug Fixes shall function properly when used or implemented in connection with MOHP My Shopping Site and the Marketplace Site; provided, however, if such Updates do not function properly, drugstore.com shall follow the procedure for error correction set forth in subsection (c) below. “Bug Fixes" means all maintenance releases, service patches, and error corrections for the drugstore.com Site (and Web Sites hosted and maintained by drugstore.com), and all related documentation.

(c) **Errors Reported by Polaris.** Polaris shall report in reasonably detailed writings all errors in the MOHP My Shopping Site and the Marketplace Site to drugstore.com as soon as is practicable after Polaris identifies such errors. With respect to errors that severely hamper Site Functionality, drugstore.com shall use best efforts to provide fixes or error corrections within twenty four (24) hours of receiving the written report from Polaris. With respect to such Errors that remain un-cured for 10 days, Polaris shall have the right to terminate this Agreement immediately upon written notice to drugstore.com. With respect to all other errors, drugstore.com shall provide a fix or error correction when implementing the next Bug Fix.

8.11 **Polaris Approval of drugstore.com Vendors.** drugstore.com shall not enter into any agreement, contract, or business relationship (whether written, oral, or otherwise) with any vendor or manufacturer, with respect to the matters described in this Agreement, without first obtaining Polaris’ prior written approval and consent in each instance (such approval not to be unreasonably withheld or delayed); provided, however, that, in connection with the INCP, Polaris shall have the right, on an ongoing basis throughout the Term, and in its sole discretion, to review such vendor and manufacturer relationships and direct drugstore.com (and drugstore.com agrees) to terminate any of such relationships upon notice to drugstore.com.

**ARTICLE IX**

**REPRESENTATIONS; INDEMNIFICATION; DISCLAIMER OF WARRANTY**

9.1 **Representations.**

(a) **Authority; No Conflict; Binding Agreement.** Each of the parties to this Agreement represents to the other parties that:

(i) all corporate action on the part of such party, its officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement and the performance of its obligations hereunder has been taken;

(ii) this Agreement, when executed and delivered by such party, will constitute a valid and legally binding obligation of such party, enforceable against such party in accordance with its terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other Laws of general application affecting
enforcement of creditors’ rights generally, as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies; and

(iii) such party’s execution and delivery of this agreement and the performance of its obligations hereunder do not require the consent of any third party, and do not and will not conflict with or result in the breach of or any default under any other agreement by which such party may be bound.

(b) **Status of Dr. Weil License.** Each of Polaris and Dr. Weil represents and warrants that:

(i) Polaris is the exclusive licensee of Dr. Weil as described and set forth in the Weil Agreement (defined hereinbelow), and

(ii) the Intellectual Property Rights License Agreement (the “Weil Agreement”) dated as of June 7, 2001 by and between Dr. Weil, Hygeia, Inc., Asklepios L.L.C. and Polaris, as amended by an Amendment to the Intellectual Property Rights License Agreement dated as of July 26, 2001 (copies of which have been furnished to, and the receipt of which is hereby acknowledged by, CNS) has not been further amended and is in full force and effect.

9.2 **Mitigation of Damages.** Upon either party’s breach, the other party shall use commercially reasonable efforts to mitigate such party’s damages.

9.3 **Indemnification**

(a) **Indemnification by Polaris.** Polaris agrees to defend, indemnify, and hold harmless drugstore.com and its Affiliates and each of their respective shareholders, directors, officers, employees, contactors, agents, representatives, successors, and assigns (collectively, the “**drugstore.com Indemnified Parties**”) from any and all loss, damages, cost, liability, and expense (including reasonable attorneys’ and experts’ fees) (collectively, “**Losses**”) reasonably incurred by a drugstore.com Indemnified Party arising from or relating to any third-party claim, action, proceeding or demand (a “**Claim**”) based on or related to (i) any actual or alleged breach by Polaris of any of its representations, covenants, or obligations under this Agreement, (ii) any actual or alleged infringement of any third party Intellectual Property or Intellectual Property Right by any Polaris Product, Polaris Service, Polaris Brand Name, Dr. Weil Brand Name or other Intellectual Property of Polaris or its Affiliates or Dr. Weil, (iii) the operation or performance of the Polaris Sites (other than any content or materials supplied by drugstore.com or its Affiliates), (iv) any INCP Protocol, (v) the sale, manufacturing or use of any Polaris Product or Polaris Service, (vi) the use of any Polaris Brand Name, Dr. Weil Brand Name or Polaris Trademark used in connection with the INCP or other designation of origin of the INCP Vitamins, (vii) any actual or alleged failure of Polaris or its Affiliates to comply with applicable Law, and (viii) any negligent or wrongful act or omission by Polaris or its Affiliates in the performance or nonperformance of Polaris’ obligations under this Agreement; **provided,**
however, that the indemnification obligation set forth in this Section 9.3(a) shall not apply to Losses arising out of or related to the gross negligence or willful misconduct of drugstore.com or its Affiliates or to the extent covered by drugstore.com's indemnity obligations in Section 9.3(b).

(b) Indemnification by drugstore.com. drugstore.com agrees to defend, indemnify, and hold harmless Polaris and its Affiliates and each of their respective shareholders, directors, officers, employees, contractors, agents, representatives, successors, and assigns (collectively, the "Polaris Indemnified Parties") from any and all Losses reasonably incurred by a Polaris Indemnified Party arising from or relating to any Claim based on or related to (i) any actual or alleged breach by drugstore.com of its representations, warranties, covenants, or obligations under this Agreement, (ii) any actual or alleged infringement of any third party Intellectual Property or Intellectual Property Right by any product, name, Trademark or Intellectual Property of drugstore.com or its Affiliates', (iii) the operation or performance of the drugstore.com Site (other than any Polaris Content or other content or materials supplied by Polaris or its Affiliates), (iv) any litigation involving drugstore.com not related to this Agreement, (v) any actual or alleged failure of drugstore.com or its Affiliates to comply with applicable Law, (vi) any penalties or interest due on any taxes that drugstore.com is obligated but fails, through drugstore.com's intentional or negligent action or failure to act, to collect from Polaris in a timely manner, (vii) any negligent or wrongful act or omission by drugstore.com or its Affiliates in the performance or nonperformance of drugstore.com's obligations under this Agreement, including the shipment of products to customers, (viii) representations, warranties, claims or statements made by drugstore.com or any third party acting on its behalf in connection with the promotion or distribution of any Polaris Product or Polaris Service, but only to the extent such representations, warranties, claims or statements differ from representations, warranties, claims or statements contained in (A) the Polaris-approved packaging for or directions for use provided with such Polaris Product or Polaris Service, (B) Polaris Content relating to such Polaris Product or Polaris Service or (C) any other content or material provided by Polaris, its Affiliates, any third party acting on its or its Affiliate's behalf, or Dr. Weil with respect to such Polaris Product or Polaris Service, (ix) any actual or alleged obscenity, libel, slander or defamation by drugstore.com or its Affiliates; provided, however, that the indemnification obligation set forth in this Section 9.3(b) shall not apply to Losses arising out of or related to the gross negligence or willful misconduct of Polaris or its Affiliates or to the extent covered by Polaris' indemnity obligations in Section 9.3(a), and (x) any failure of the INCP Vitamins to comply with (A) the INCP Protocols, (B) the quality, potency, and other label claims of the INCP Vitamins, or (C) applicable Law.

(c) Indemnification Procedure.

(i) If a Polaris Indemnified Party or drugstore.com Indemnified Party (any of these, an "Indemnified Party") proposes to demand indemnification from another party (the "Indemnifying Party") pursuant to subsection (a) or (b), as applicable, of this Section 9.3 with respect to any claim, demand or liability or expense incidental thereto asserted against such Indemnified Party (an "Indemnified Claim"), such Indemnified Party shall promptly notify the Indemnifying Party in writing; provided, however, that no failure of an Indemnified Party to so notify the Indemnifying Party shall relieve the Indemnifying Party from the obligation to
indemnify the Indemnified Party unless and to the extent that the Indemnifying Party is actually prejudiced by such failure.

(ii) Such Indemnified Party shall accord the Indemnifying Party the opportunity to assume entire control for the defense, compromise or settlement of such Indemnified Claim using the Indemnifying Party’s own counsel and at its own expense; provided, however, that the Indemnifying Party may not settle the claim without the Indemnifying Party’s prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed); and provided further, that such Indemnified Party may retain its own counsel if (A) the Indemnifying Party, within thirty (30) days after notice of any Indemnified Claim, fails to assume the defense of such Indemnified Claim or (B) the representation by a single counsel of both the Indemnified Party and the Indemnifying Party would, in the reasonable judgment of the parties, be inappropriate due to actual or potential conflicting interests between them; provided, however, that the Indemnifying Party shall be liable for the cost of only one such counsel for all of the Indemnified Parties with respect to such Indemnified Claim. Each Indemnified Party agrees to cooperate fully with the Indemnifying Party (at the Indemnifying Party’s expense) in connection with the defense and settlement of any Indemnified Claim.

(d) Survival. This Section 9.3 shall survive termination of this Agreement.

9.4 Disclaimer of Warranty.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO PARTY MAKES, AND EACH PARTY HEREBY WAIVES AND DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT OR IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING (A) THE AMOUNT OF REVENUES THAT MAY OCCUR DURING THE TERM, (B) WHETHER THE POLARIS PRODUCTS, POLARIS SERVICES, OR THE INCN PROTOCOLS (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT, AND (C) ANY ECONOMIC OR OTHER BENEFIT THAT ANY PARTY MIGHT OBTAIN THROUGH ITS PARTICIPATION IN THIS AGREEMENT (OTHER THAN THE SPECIFIC SUMS TO BE PAID PURSUANT TO THE TERMS OF THIS AGREEMENT).

ARTICLE X

TERM AND TERMINATION

10.1 Term.

The term of this Agreement will commence on the Effective Date and continue thereafter for five (5) years (the "Initial Term"), unless terminated earlier pursuant to the terms and conditions contained herein. Thereafter, this Agreement shall renew automatically for
successive one (1) year periods (each a "Renewal Term") until it is terminated by either party by giving written notice to the other party at least sixty (60) days prior to the end of the Initial Term or the then-current Renewal Term, as the case may be, in which case this Agreement shall terminate automatically upon the expiration of the Initial Term or such then-current Renewal Term, as the case may be.

10.2 Termination for Breach.

(a) **Termination by drugstore.com for Cause.** drugstore.com may immediately terminate this Agreement by giving written notice of termination to Polaris, for (i) any material breach or material failure of performance by Polaris that, if curable, remains uncured for thirty (30) days after the giving of written notice to Polaris of such breach or failure, (ii) any breach by Polaris of any of its confidentiality obligations under Section 8.6 of this Agreement or (iii) any breach by Polaris of any Intellectual Property Rights of drugstore.com or its Affiliates.

(b) **Termination by Polaris for Cause.** Polaris may immediately terminate this Agreement by giving written notice of termination to drugstore.com, for (i) any material breach or material failure of performance by drugstore.com that, if curable, remains uncured for thirty (30) days after the giving of written notice to drugstore.com of such breach or failure, (ii) any breach by drugstore.com of any of its confidentiality obligations under Section 8.6 of this Agreement or (iii) any breach by drugstore.com of any Intellectual Property Rights of Polaris or its Affiliates. In the event of the first breach by drugstore.com during the Term, arising out of drugstore.com’s or any of its Affiliates’ misuse or unauthorized use of Dr. Weil’s name, image, likeness, personality, or Dr. Weil Brand Name, Polaris may, but shall not be obligated to, provide drugstore.com with written instructions detailing such remedial measures that drugstore.com must undertake to immediately cure such breach, which measures shall be performed in accordance with such instructions as soon as possible, but no later than twenty four hours from the receipt of such written instructions. The procedure for curing such breach outlined in the immediately preceding grammatical sentence shall reiterate for the second such breach and further, within five business days of receipt of such written instructions drugstore.com shall pay to Polaris $10,000.00 U.S. by wire transfer to an account designated by Polaris. With respect to the third such breach drugstore.com shall have no opportunity to cure and Polaris shall have the right to terminate the Agreement immediately upon written notice to drugstore.com, and further, within five business days of receipt of such written notice drugstore.com shall pay to Polaris $50,000.00 U.S. by wire transfer to an account designated by Polaris. drugstore.com’s payments of such amounts under this subsection are extraordinary remedies and shall be in addition to, and not in lieu of, any other rights or remedies that Polaris may have at law, in equity, or under contract.

10.3 Termination for Insolvency.

Each of drugstore.com and Polaris may terminate this Agreement immediately at its option if the other party (a) ceases to do business in the normal course; (b) becomes or is declared insolvent or bankrupt; (c) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within ninety (90) calendar days; or (d) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that
either of drugstore.com and Polaris is excused or prohibited from performing in full all obligations under the Agreement (including, without limitation, (i) rejection of this Agreement pursuant to 11 U.S.C. § 365, and (ii) any determination by a court of competent authority that this Agreement as a whole is illegal, entered into for an illegal purpose, or otherwise unenforceable).

10.4 **Termination Rights Upon Death of Dr. Weil.** In the event that Dr. Weil dies during the Term, all terms and conditions of this Agreement shall continue in full force and effect without limitation or modification; provided, however, that following Dr. Weil’s death either party shall have the right to terminate the Agreement upon six (6) months written notice to the other party. Upon the expiration of such six (6) month period, this Agreement shall terminate automatically without need for further notice or action by the terminating party. During the six (6) month period following such notice the parties shall enjoy the same rights and fulfill the same obligations, *mutatis mutandis*, under the Transition Period described in Section 10.6.

10.5 **General Termination Matters.**

All liabilities (including, without limitation, late fees under Section 9.3) accruing up to any termination of this Agreement (including as a result of the expiration of the Term) shall survive such the termination of this Agreement.

10.6 **Continuation of INCP.**

(a) **Termination and Expiration.** Upon any termination of this Agreement (including, without limitation, as a result of expiration of the term of this Agreement), drugstore.com shall have the right to fulfill any orders placed by customers under the INCP prior to the date of termination or expiration, as applicable; provided, however, that drugstore.com shall fulfill such orders in accordance with the obligations set forth in Sections 3.2(c) and 3.6 of this Agreement with respect to order processing.

(b) **Termination by drugstore.com for Breach.** In the event that this Agreement is terminated by drugstore.com pursuant to Section 10.2(a), for a period of (i) one hundred eighty (180) days after the date of the notice of termination if such notice date is within one (1) year after the Effective Date, or (ii) ninety (90) days after the date of the notice of termination if such notice date is outside such one (1) year period (each such periods referred to as a “Transition Period”), the parties shall (A) work together in good faith to wind-down all activities under this Agreement (which winding down shall include fulfilling orders placed up through the date of termination) and (B) use commercially reasonable joint efforts to transition all existing customers hereunder (including, without limitation, (1) working together in good faith to fulfill orders placed after the date of termination, and (2) preparing a joint-statement to such customers describing the cessation of the relationship between the parties and instructing such customers on how to purchase relevant goods and services going forward). During the Transition Period, drugstore.com shall (i) continue to compensate Polaris and make donations to the Foundation with respect to orders fulfilled during such Transition Period, and (ii) continue to host and maintain the IMS, MOHP My Shopping Site, and the Marketplace Site. The exclusive licenses set forth in Sections 2.1 and 2.2 shall survive during the Transition Period. In any event, drugstore.com and its Affiliates shall cease any and all marketing activities to all INCP participants upon the termination of this Agreement.
(c) Termination by Polaris for Breach. In the event that this Agreement is terminated by Polaris pursuant to Section 10.2(b), drugstore.com shall discontinue the INCP immediately and shall cease any and all marketing activities to all participants in the INCP upon such termination; provided, however, that Polaris may elect to allow drugstore.com or its Affiliates to continue to accept and ship orders placed under the INCP for such period of time as Polaris may determine in its sole discretion. If Polaris so elects, drugstore.com shall (i) continue to host and maintain the IMS, MOHP My Shopping Site, and the Marketplace Site for the same period of time that Polaris elects to allow drugstore.com or its Affiliates to continue to accept and ship orders placed under the INCP and, (ii) continue to compensate Polaris and make donations to the Foundation with respect to orders fulfilled until such time as Polaris no longer elects to allow drugstore.com or its Affiliates to accept and fulfill such orders.

10.7 Obligations Upon Termination.

Except as expressly provided elsewhere in this Agreement, upon any termination of this Agreement or expiration of the term for any reason, (i) any license rights of drugstore.com and Polaris hereunder shall end, and each party shall immediately, at the other party’s sole option, either deliver to the other party or destroy any copies of any the Intellectual Property or Confidential Information of the other party, or other items subject to Intellectual Property Rights of the other party, or any portion or summaries or extracts thereof in drugstore.com’s possession, custody, or control, and (ii) drugstore.com shall, within sixty (60) days prior to expiration or, in the event of termination, sixty (60) days prior to the expiration of the Transition Period, as applicable, deliver all credit card and electronic payment information, and any other information reasonably necessary to sustain the customers’ subscription participation, relating to the customers of the INCP, the My Optimum Health Plan, and any other subscription products offered by Polaris from time to time; provided, however, that if drugstore.com fails to deliver such credit card and electronic payment information, in connection with this subsection, such failure shall be deemed a material breach that will cause Polaris to suffer substantial and extraordinary damages to, among other things, its business, operations and goodwill. Within twenty (20) days following the date of such termination or expiration, an officer of such party shall certify in writing to the other party that such party has complied with the terms of this Section 10.7.

10.8 Survival.

The following provisions shall survive the expiration of the Term or any termination of this Agreement: Section 3.5(e)(ii), Section 8.6, Article IX, Section 10.5, Section 10.6, Section 10.7, Section 10.8, Article XI, and Article XII.

ARTICLE XI
INTELLECTUAL PROPERTY

11.1 Intellectual Property Rights of Polaris.

(a) Specific Polaris Items. As between the parties and their Affiliates, Polaris is the sole and exclusive owner of all rights, title, interest, and Intellectual Property Rights in and to (i) the
INCP (subject only to drugstore.com’s reservation of rights set forth in Section 11.1(d) herein); (ii) all INCP Customer Data (including, without limitation, all lists of individuals who purchase INCP Vitamins); (iii) all Polaris INCP Materials; (iv) the INCP Protocols; (v) the INCP Brand Name and other Polaris Trademarks; (vi) the Polaris Sites; (vii) the name “Integrative Medicine Store”; (viii) the Dr. Weil Brand Names; (ix) the Dr. Weil Site; (x) Visit With The Doctor; (xi) the MOHP Assessment; and (xii) the Master Customer Database.

(b) Polaris-Furnished Items. As between the parties and their Affiliates, Polaris is the sole and exclusive owner of all rights, title, interest, and Intellectual Property Rights in and to the Polaris-Furnished Items (as defined below). No title to or ownership of any of the foregoing is transferred or, except as expressly set forth in Sections 3.4(b), 3.5, 5.5 and 11.3 of this Agreement, licensed to drugstore.com or any other person or entity. drugstore.com hereby assigns and agrees to assign to Polaris all of its right, title and interest, if any, to such items and all associated Intellectual Property Rights, and drugstore.com shall take, at Polaris’ expense, any and all actions (including, but not limited to, execution and delivery of affidavits and other documents) reasonably requested by Polaris to effect, perfect, or confirm Polaris’ or its designee’s right, title and interest therein. As used herein, “Polaris-Furnished Item” means any Technology, Trademark, Intellectual Property, Polaris Content or other content or materials (other than Technology, Trademarks or content licensed from drugstore.com or its Affiliates) that (i) is owned or controlled (by license or otherwise) by Polaris or its Affiliates, (ii) is or was furnished by Polaris, Dr. Weil or their respective Affiliates for use in connection with the activities contemplated by this Agreement or the CNS Agreement; (iii) constitutes a Polaris Brand Name, or Trademark; or (iv) constitutes Polaris “look and feel”. At the termination of the Agreement, drugstore.com shall return all Polaris-Furnished Items, including all copies, summaries, or extracts thereof, to Polaris and drugstore.com shall have no further rights thereto.

(c) Other Polaris Intellectual Property. drugstore.com acknowledges and agrees that all rights, title, interest, and Intellectual Property Rights in and to those elements of the MOHP My Shopping Site and the Marketplace Site, or any other Web Sites developed by drugstore.com hereunder, that comprise Polaris branding, Polaris “look and feel”, or other Polaris Intellectual Property, are owned by Polaris free and clear of all rights, title, interest, liens and encumbrances of any third party. drugstore.com hereby represents and warrants to Polaris that its employees and contractors working on any development or manufacturing in connection with this Agreement have all assigned their Intellectual Property Rights in the results and proceeds of such development and manufacturing to drugstore.com (as “work made for hire” or otherwise). In the event that drugstore.com uses or subcontracts with any third party in connection with the development or manufacturing in hereunder, then drugstore.com shall take all appropriate action with such third parties to ensure compliance with this Section 11.1(c). drugstore.com hereby assigns and agrees to assign to Polaris all of its right, title and interest, if any, to such items and all associated Intellectual Property Rights, and drugstore.com shall take, at Polaris’ expense, any and all actions (including, but not limited to, execution and delivery of affidavits and other documents) reasonably requested by Polaris to effect, perfect, or confirm Polaris’ or its designee’s right, title and interest therein.

(d) drugstore.com Reservation of Rights. Polaris hereby acknowledges and agrees that Polaris’ Intellectual Property does not include, and that drugstore.com shall exclusively retain all
rights, title, interest and Intellectual Property Rights in and to (i) all servers and server-based technology, user identification algorithms, shopping cart applications, and underlying back-end e-commerce systems and architecture used or developed by drugstore.com in connection with the INCP, IMS, MOHP My Shopping Site, and the Marketplace Site (collectively the "drugstore.com e-Commerce Engine").


(c) As between the parties and their Affiliates, drugstore.com is the sole and exclusive owner of all rights, title, interest, and Intellectual Property Rights in and to the drugstore.com-Furnished Items (as defined below), the drugstore.com-Owned Developments (as defined below), the drugstore.com Site (including the Integrative Medicine Store), the Marketplace Site and the MOHP My Shopping Site (subject to Polaris' rights under Section 11.1(b) and (c)). Except as expressly set forth in Section 11.1(b) and (c) of this Agreement, no title to or ownership of any of the foregoing is transferred or licensed to Polaris or any other person or entity. Polaris hereby assigns to drugstore.com all right, title and interest that it may have or acquire in and to such items and all associated Intellectual Property Rights, and Polaris shall take, at drugstore.com's expense, any and all actions (including, but not limited to, execution and delivery of affidavits and other documents) reasonably requested by drugstore.com to effect, perfect or confirm drugstore.com's or its designee's right, title and interest therein. As used herein, "drugstore.com-Furnished Item" means any Technology, Trademark, Intellectual Property, content or other materials (other than Technology, Trademarks, Polaris Content or other content licensed from Polaris or its Affiliates) that (i) is owned or controlled (by license or otherwise) by drugstore.com or its Affiliates (ii) is or was furnished by drugstore.com or its Affiliates for use in connection with the activities contemplated by this Agreement (iii) constitutes a drugstore.com brand name, or Trademark; or (iv) constitutes drugstore.com “look and feel”. The drugstore.com-Furnished Items include, but shall not be limited to, the Functionality, Technology and content of the drugstore.com Site (including the Integrative Medicine Store), the Marketplace Site and the MOHP My Shopping Site, except to the extent that any such content was provided by Polaris, Dr. Weil or their respective Affiliates or is subject to Section 11.1(b) and (c) hereof. As used herein, "drugstore.com-Owned Development" means any Technology (including, without limitation, any adaptation, modification, improvement or derivative work of any drugstore.com-Furnished Item) that is developed in accordance with this Agreement by any party or jointly by the parties specifically for use on the drugstore.com Site, the Integrative Medicine Store, the Marketplace Site or the MOHP My Shopping Site in connection with the activities contemplated by this Agreement; provided, however, that the drugstore.com-Owned Developments do not include, without limitation, any Polaris-Furnished Items. The drugstore.com-Owned Developments shall also include, without limitation, all adaptations, modifications, improvements or derivative works of the drugstore.com Site functionality, the Integrative Medicine Store functionality, the Marketplace Site functionality or the MOHP My Shopping Site functionality that are developed (in accordance with this Agreement) by any party or jointly by the parties unless such item is so developed specifically to link or communicate between the drugstore.com Site and the Polaris Site. At the termination of the Agreement, Polaris shall return all drugstore.com-Furnished Items, including all copies, summaries, or extracts thereof, to drugstore.com and Polaris shall have no further rights thereto.
11.3 Goodwill.

(a) Polaris. All goodwill arising out of any use of the Polaris-Furnished Items, the INCP Brand Name, the Dr. Weil Brand Name, the Polaris Brand Name or any other Intellectual Property or Trademarks of Polaris or its Affiliates by, through or under drugstore.com or its Affiliates shall inure solely to the benefit of Polaris and/or such Polaris Affiliate, as the case may be. Neither drugstore.com nor its Affiliates shall challenge Polaris' or any Polaris Affiliate's title to the INCP Brand Name, the Dr. Weil Brand Name, the Polaris Brand Name or any other Intellectual Property or Trademark of Polaris or such Polaris Affiliate.

(b) drugstore.com. All goodwill arising out of any use of any Trademarks of drugstore.com or its Affiliates by, through or under Polaris or its Affiliates will inure solely to the benefit of drugstore.com or such drugstore.com Affiliate, as the case may be. Neither Polaris nor its Affiliates shall challenge drugstore.com's or any drugstore.com Affiliate's title to any Trademark of drugstore.com or such Affiliate.

11.4 Mutual Agreements.

Each party agrees that it will not, at any time during or after the Term, (i) do anything that may adversely affect the validity or enforceability of any Intellectual Property Right belonging to or licensed to the other party (including any act, or assistance to any act, that may infringe or lead to the infringement of any Intellectual Property Right in any product or service of the other party), or (ii) exercise, or attempt to exercise, any Intellectual Property Right in any product or service of the other party, other than as expressly set forth herein and in any other written agreement that may be entered into between the parties. In addition, in the event that either party learns of any actual or threatened infringement of any of the other party's Intellectual Property or Intellectual Property Rights, such party shall promptly notify the other party.

ARTICLE XII
MISCELLANEOUS PROVISIONS

12.1 Independent Contractors.

Both parties are acting as independent contractors with respect to the activities hereunder. Nothing in this Agreement shall be deemed to create any type of agency, joint venture, or partnership relationship between the parties. Neither party shall have any right or authority to bind or obligate the other in any manner to any third party.

12.2 Termination of CNS Agreement.

This Agreement terminates and supersedes the CNS Agreement in its entirety as of the date hereof. Furthermore, without derogating from the generality of the foregoing, the parties agree that, as of the execution of this Agreement, (i) no claims, suits, causes of action may be asserted or brought against the other, directly or indirectly, under the CNS Agreement, and (ii) all rights and obligations of the parties or owing to such parties under the CNS Agreement are
hereby extinguished and shall be deemed void ab initio in their entirety and thus are of no force or effect whatsoever.

12.3 Binding Effect.

Except as expressly set forth in this Agreement to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors, legal representatives, and assigns.

12.4 Entire Agreement.

This Agreement, including its Exhibits, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

12.5 No Third Party Beneficiaries.

Notwithstanding anything to the contrary contained in this Agreement, there are no third party beneficiaries to this Agreement.

12.6 Notices and Addresses.

Except as expressly set forth herein to the contrary, any consents, requests, demands, communications, and other notices permitted or required to be given hereunder shall be in writing and be deemed validly given (a) upon delivery, if personally delivered with services fees prepaid, (b) upon delivery, if delivered, with fees prepaid, by reputable overnight courier that provides proof of delivery, (c) three (3) business days following deposit in the United States mail, first class, postage prepaid, certified or registered, and return receipt requested, (d) upon receipt, if transmitted by facsimile (with mechanical confirmation and deposit of original in U.S. Mail to such party). The foregoing shall be the only permitted mechanism for delivery of such communications, and the addresses set forth herein shall be the proper addresses for notices provided hereunder.

If to drugstore.com:

drugstore.com, Inc.
13920 SE Eastgate Way, Suite 300
Bellevue, WA 98005
Fax: (425) 372-3800
Attention: Mr. Jason Brown

With a copy to: General Counsel

If to Polaris:
Polaris Health, LLC  
5141 North 40th Street, Suite 300  
Phoenix, Arizona, 85018  
Fax: (602) 778-6833  
Attention: Laurence B. Tree II, President

With a copy to:  
Bryan Cave, LLP  
120 Broadway, Suite 300  
Santa Monica, California 90401-2386  
Fax: (310) 576-2200  
Attention: D. Thomas Triggs

If to Dr. Weil:

Andrew Weil, M.D.  
6700 X9 Ranch Road  
Vail, Arizona 85641  
Fax: (520) 647-7950

With a copy to:  
Gabroy, Rollman & Bosse, P.C.  
3507 North Campbell Avenue, Suite 111  
Tucson, Arizona 85719  
Fax: (520) 320-0717  
Attention: Steven L. Bosse, Esq.

Either party may change its address (to another U.S. address) for purposes of receiving notices hereunder by complying with the provisions of this Section. English shall be the official language of this Agreement and all communications and notices must be in the English language.

12.7 Counterparts; Execution and Delivery.

This Agreement and any other related documents may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument binding on the parties hereto. All such agreements will be considered signed and delivered when the signature of a party is delivered by facsimile transmission. Such facsimile signature shall be treated in all respects as having the same effect as an original signature; provided, however, that original signature pages shall be delivered by each party to the other party, in accordance with the provisions of Section 12.6 hereof.

12.8 Enforcement Matters.

The rights of the parties hereunder shall be governed by, and construed in accordance with, the laws of the state of New York without regard to conflicts of laws principles. In addition, this Agreement will not be governed or interpreted in any way by referring to any law
based on the Uniform Computer Information Transactions Act (UCITA), even if that law has
been adopted in New York, and the United Nations Convention on Contracts for the
International Sale of Goods is hereby excluded. Each party to this Agreement irrevocably (a)
submits to the exclusive jurisdiction of any state or federal court located in Denver, Colorado in
litigating any action or proceeding arising out of or relating to this Agreement or the transactions
contemplated hereby, and (b) agrees that any such action or proceeding may be litigated only in
such courts. Each party to this Agreement waives, to the fullest extent permitted by law, the
defenses of lack of personal jurisdiction, inconvenient forum, and improper venue to the
maintenance of any such action or proceeding. Each party hereby authorizes and accepts service
of process sufficient for personal jurisdiction in any action against it as is contemplated by this
section by certified or registered mail, return receipt requested, to its address for the giving of
notices as set forth in this Agreement. Any final judgment rendered against a party in any such
action or proceeding shall be conclusive as to the subject of such final judgment and may be
enforced in other jurisdictions in any manner provided by law. The prevailing party in any such
proceedings shall be entitled to recover from the other reasonable costs and reasonable attorneys’
and experts’ fees.

12.9 Export Controls.

Each party shall adhere to all applicable Laws, regulations and rules relating to trade and
exports and shall not export or re-export any products or items received from the other party to
any proscribed country listed in such applicable laws, regulations and rules unless properly
authorized.

12.10 Severability.

This Agreement shall be enforced to the fullest extent permitted by applicable Law. If
any provision of this Agreement shall be or become invalid, illegal, or unenforceable in any
respect, the validity, legality, and enforceability of the remaining provisions contained herein
shall not be affected thereby.

12.11 Force Majeure.

Neither party shall be liable hereunder by reason of any failure or delay in the
performance of its obligations hereunder on account of strikes, shortages, riots, insurrection,
fires, flood, storm, explosions, earthquakes, acts of God, war, governmental action, acts of civil
or military authority, labor disputes, transportation delays or stoppages, supplier problems, canal,
port, or airport closures, acts of terrorism, sabotage or any other force majeure event that is
beyond the reasonable control of such party. Each party shall use its reasonable best efforts to
notify the other party of the occurrence of such an event within three (3) business days of its
occurrence. With respect to a party’s delayed or non-performance that continues for a period of
forty-five (45) days, due to a force majeure event hereunder, the other party may terminate this
Agreement immediately upon written notice to the non-performing party.

12.12 Assignment.
The rights and obligations of any party under this Agreement cannot be transferred, assigned, or sublicensed to a third party by operation of law or otherwise, without the prior written consent of the other parties (which consent may not unreasonably be withheld or delayed).

12.13 Amendment; Waiver.

No amendment, modification, or waiver of any provision of this Agreement shall be effective unless set forth in writing and signed by an authorized representative of each of the parties. The delay or failure by any party hereto, at any time or from time to time, to exercise any right provided herein shall in no way affect the rights of such party thereafter to enforce the same or any other right, and the waiver by any party hereto of any breach of any provision hereof by any other party constitute a waiver of such provision, any subsequent breach of such provision, or any other provision.

12.14 Headings.

The headings and subheadings used in this Agreement and in the Exhibits attached hereto are for convenience only and shall not be considered in construing or interpreting this Agreement.

12.15 Subcontracting.

drugstore.com may perform its obligations under this Agreement through use of one or more of its Affiliates, including DS Distribution, Inc. and DS Non-Pharmaceutical Sales, Inc.; provided, however, that drugstore.com shall not be relieved of any of its obligations hereunder by the use of any Affiliates.

12.16 General Matters.

Submission of this Agreement for examination, negotiation, or signature does not constitute an offer, and this Agreement shall not be effective until it is duly executed and delivered, if at all, by drugstore.com, Polaris and Dr. Weil. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or was principally responsible for drafting this Agreement or any specific term or conditions hereof. This Agreement shall be deemed to have been drafted by each party, and no party shall urge otherwise. A party’s failure to review this Agreement or any related documents, or to obtain legal or other advice in connection with this transaction, constitutes a waiver of any objection or claim that may be based upon such failure.

(signature page follows)
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement for all purposes as of the Effective Date.

**drugstore.com, inc.**  
Sig:  
Name: Alesia L. Pinney, Esq.  
Title: Vice President and General Counsel

**Polaris Health, LLC**  
Sig:  
Name: Laurence B. Tree, II  
Title: President

Andrew Weil, M.D.

Sig:  

CNS hereby expressly acknowledges and agrees to the terms and conditions set forth in Section 12.2; for purposes of clarity, CNS is a party to this Agreement solely as to and for the purpose of Section 12.2.

**CNS**  
Sig:  
Name: Alesia L. Pinney, Esq.  
Title: Vice President and General Counsel
IN WITNESS WHEREOF, the parties have executed and delivered this Agreement for all purposes as of the Effective Date.

**Drugstore.com, Inc.**

Sig: ____________________________

Name: Alesia L. Pinney, Esq.

Title: Vice President and General Counsel

**Polaris Health, LLC**

Sig: ____________________________

Name: Laurence B. Tree, II

Title: President

Andrew Weil, M.D.

Sig: ____________________________

CNS hereby expressly acknowledges and agrees to the terms and conditions set forth in Section 12.2; for purposes of clarity, CNS is a party to this Agreement solely as to and for the purpose of Section 12.2.

CNS

Sig: ____________________________

Name: Alesia L. Pinney, Esq.

Title: Vice President and General Counsel
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**drugstore.com, Inc.**

Sig: __________________________

Name: Alesia L. Pinney, Esq.

Title: Vice President and General Counsel

Andrew Well, M.D.  

Sig: __________________________

**Polaris Health, LLC**

Sig: __________________________

Name: Laurence B. Tree, II

Title: President

CNS hereby expressly acknowledges and agrees to the terms and conditions set forth in Section 12.2; for purposes of clarity, CNS is a party to this Agreement solely as to and for the purpose of Section 12.2.

CNS:

Sig: __________________________

Name: Alesia L. Pinney, Esq.

Title: Vice President and General Counsel
Exhibit A-1
INCP
Follow-Up email From Polaris (Dr. Weil Subscriptions)

Dear David,

You have registered to receive:

- Dr. Weil’s Good Morning Tip of The Day
- Weekly E-Bulletin

You have also indicated an interest in receiving other healthful messages & announcements from DrWeil.com. These healthful messages and announcements may include information from the following partners:

- Rite Aid
- GNC
- Brand Manufacturers
- Integrative Medicine

Important: In order not to receive information from these partners you need to opt-out by accessing your profile and e-mail subscriptions by clicking here.

If your e-mail has been mistakenly registered, you may unsubscribe from all of our e-mail messages, by following this link.

Thank you,
DrWeil.com Web Team

MANAGE YOUR PERSONAL INFORMATION
To manage your e-mail address, topics of interest or other information, please click here.

TO UNSUBSCRIBE
If you have received this announcement because your e-mail was submitted to our the DrWeil.com web site or one of our partner Web sites, To unsubscribe from ALL of the associated websites, CLICK HERE.

Disclaimer: All materials provided in the Ask Dr. Weil program is provided for educational purposes only. Consult your own physician regarding the applicability of any opinions or recommendations with respect to your specific medical condition.

@Copyright 2003 Polaris Health LLC. All rights reserved. Reproduction in whole or in part without permission is prohibited. www.drweil.com
Please confirm your e-mail address:

1. Please confirm your e-mail address:
The following windows will allow you to change/update your profile.

   david@govm.com

2. First name:
   David

3. Newsletters
   To stop a newsletter simply uncheck the corresponding box.
   ☐ Dr. Weil's Good Morning Tip of The Day
   ☐ Weekly E-Bulletin
   ☐ Healthish Messages and Announcements

4. To customize the healthful messages and announcements we send you, please choose which partners you wish to receive information from.
   ☐ All
   ☐ GNC
   ☐ Brand Manufacturers
   ☐ Integrative Medicine

5. If you wish to stop ALL correspondence from Dr.Weil.com please check the appropriate button below:
   ☐ Please keep me listed
   ☐ I would like to STOP ALL mailings

65
Exhibit A-2

INCP

Follow-Up email From drugstore.com (drugstore.com Mailings)

drugstore.com Confirmation e-mails (Opt-in / Opt-Out Process)

<table>
<thead>
<tr>
<th>Key elements of the current drugstore.com process</th>
</tr>
</thead>
<tbody>
<tr>
<td>• When customers create an account, they are presented with a link to their subscriptions settings. (slide 2)</td>
</tr>
<tr>
<td>• The subscriptions settings section of the site lists the possible e-mails the customer could receive and a clear way to opt-in / opt-out. (slides 3-4)</td>
</tr>
<tr>
<td>• Confirmation e-mails (after setting up an account) are sent within 5 minutes, on average, and include a link to the account setting section of drugstore.com. (slide 5)</td>
</tr>
<tr>
<td>• All subsequent promotional e-mails include a direct link to the subscriptions section of drugstore.com. (slides 6-7)</td>
</tr>
<tr>
<td>• Opt-out requests are processed within 24 hours. Because some e-mail campaigns are pre-scheduled, it is possible that a customer receives an e-mail up to 2 weeks after requesting to opt-out. This is clearly messaged on the confirmation page regarding the opt-out request. (slide 8)</td>
</tr>
</tbody>
</table>
After creating an account, the customer is presented with a menu to manage account properties including their e-mail subscriptions.
Customers link through subscriptions to manage their e-mails. The current setting includes automatic opt in to Solutions, Your List, and Rx Renewals.
A confirmation e-mail is sent within 5 minutes of creating an account. Customers manage any changes through a link provided in the message.

Dear David,

Welcome to drugstore.com - the best place on the web to shop for all of your health and beauty needs.

Our goal is to simplify your life by providing products and services that are right for you, from the header to bottom. For products, we have what you need - and want.

The drugstore.com database has over 12,000 products, so you can always find what you are looking for at drugstore.com. Our quick shopping tools can help you find what you need in 1 minute or less.

- 24-hour ordering, seven days a week and home delivery
- Your entire order processed on your pharmacy prescription
- Your profile, a record of your purchases and favorite items on drugstore.com
- Free shipping
- Everyday savings and free gifts with purchase not found at your average drugstore
- Access to our award-winning customer service 24-hours a day, 7 days a week
- Complete privacy and confidentiality

We know value is important, so you’ll always find product specials on our home page at http://www.drugstore.com, and great low prices on the brand you trust throughout the site, every day.

Use the same e-mail/password combination each time you visit drugstore.com and you’ll be able to view your account information and save your personal shopping list, purchase history, friends and shopping and billing preferences. If you want to change your e-mail address or password for your current account, go to the "Your Account" section of our site at http://www.parents.com/myaccount

Please compile your order at drugstore.com. If you have any questions, contact us at 1-800-345-6789, or write to us at drugstore.com.

drugstore.com

http://www.drugstore.com
All promotional e-mails sent to customers will include a direct link to the subscriptions page.
The unsubscribe link from the promo e-mails take customers directly to their subscription page.
Updates to customers’ subscriptions are processed within 24 hours. Customers may receive e-mails up to 2 weeks after unsubscribing.
Exhibit B
Customer Service Metrics

To be prepared and added in accordance with Section 8.1.
Exhibit C
Service Levels

Each party commits that the Web Sites for which it is responsible under the Agreement (as set forth below) shall be available to end users (including, without limitation, each of the parties) no less than 99.5% of the time (the "Uptime Guarantee").

<table>
<thead>
<tr>
<th>Drugstore.com Site</th>
<th>Polaris</th>
</tr>
</thead>
<tbody>
<tr>
<td>Integrative Medicine Store</td>
<td>MOHP Site</td>
</tr>
<tr>
<td>MOHP My Shopping Site</td>
<td><a href="http://www.askdrweil.com">www.askdrweil.com</a></td>
</tr>
<tr>
<td>Marketplace Site</td>
<td></td>
</tr>
<tr>
<td>CNS Site</td>
<td></td>
</tr>
<tr>
<td>any successor or replacement site</td>
<td>any successor or replacement site</td>
</tr>
<tr>
<td>properly designated by the parties</td>
<td>properly designated by the parties</td>
</tr>
<tr>
<td>in accordance with the terms,</td>
<td>in accordance with the terms,</td>
</tr>
<tr>
<td>conditions, and provisions</td>
<td>conditions, and provisions</td>
</tr>
<tr>
<td>contained in this Agreement</td>
<td>contained in this Agreement</td>
</tr>
</tbody>
</table>

In the event drugstore.com’s "Uptime Percentage" for any Web Site listed under drugstore.com in the chart above in any given month falls below the top committed range shown in the table below, the Monthly Sales Commissions payable to Polaris for such month under Section 7.2 of the agreement shall be increased by an amount equal to the percentage indicated in the chart below; provided, however, that in the event Polaris' Uptime Percentage for any Web Site listed under drugstore.com in the chart above in any given month falls below the top committed range shown in the table below, the Monthly Sales Commissions payable to Polaris for such month under Section 7.2 of the agreement shall be decreased by an amount equal to the percentage indicated in the chart below. The remedies set forth in this paragraph may be cumulative and/or offsetting (e.g., and without limitation, if two drugstore.com Web Sites fall below the percentages in the chart below, the Monthly Sales Commissions shall be increased by the sum of the respective percentages indicated).

<table>
<thead>
<tr>
<th>Uptime Percentage</th>
<th>Die-As-Intention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below Committed Range</td>
<td></td>
</tr>
<tr>
<td>Infrastructure Availability Percentage</td>
<td>Percentage Change for Monthly Sales Commissions</td>
</tr>
<tr>
<td>99.20% to 99.49%</td>
<td>+/- 2%</td>
</tr>
<tr>
<td>99.50% to 99.79%</td>
<td>+/- 6%</td>
</tr>
<tr>
<td>99.80% to 99.99%</td>
<td>+/- 10%</td>
</tr>
<tr>
<td>Below 97.00%</td>
<td>+/- 10%</td>
</tr>
</tbody>
</table>

If drugstore.com fails to meet its Uptime Guarantee for any three consecutive months, or if the total amount of drugstore.com Downtime (as defined below) is more than ten (10) hours in any
given month, Polaris shall have the right to terminate the Agreement immediately upon written notice to drugstore.com.

DEFINITIONS

“Downtime”. These are the minutes of downtime which may be due to equipment failure, carrier outage, or operator error. Planned Downtime, which may be required by a party to incorporate new technology into its infrastructure, or to do previously scheduled maintenance (including, without limitation, database backups, operating and software upgrades, or software promotions), is not counted as Downtime. Liability and remedies for downtime are expressly limited to those amounts set forth above.

Downtime shall not include availability problems that initiate outside of the respective party’s network infrastructure.

Exclusions: The service level commitment provided hereunder does not include and specifically excludes:

- support for hardware not certified or approved by the hosting party
- data loss
- security breaches of any kind
- viruses, worms, time bombs or other similar defects or invasions
- system abuse or misuse by Client or its agents or a third party
- any loss or damage caused by accident, acts of God or nature, neglect, negligence, vandalism or other criminal acts, or failure or surges of electrical power, air conditioning or humidity control.

SUPPORT STAFF

Within twenty days after the Effective Date, (i) drugstore.com shall provide Polaris with contact information for a technical support call center; and (ii) Polaris shall provide drugstore.com with the names and contact information (work phone, mobile phone, and e-mail) of no fewer than two of Polaris’ employees who are knowledgeable about the Web Sites listed in this Exhibit (for which Polaris is responsible) and the terms of this Agreement and who will be able and available to help drugstore.com or customers or end users resolve questions regarding the such Web Sites. Each party shall provide the other with updated information on the first day of each month, and within 2 days after any information is no longer. All inquiries from a party regarding problems with the Web Sites or shall be responded to by a knowledgeable professional within twelve (12) hours.
Exhibit D

drugstore.com Privacy Policy

Privacy Policy

TRUSTe Licensee

drugstore.com, inc. and Beauty.com, Inc. are licensed by the TRUSTe Privacy Program. This statement discloses the privacy practices for both drugstore.com and Beauty.com. When you visit a Web site displaying the TRUSTe trustmark, you can expect to be notified of: What personally identifiable information of yours is collected; What organization is collecting the information; How the information is used; With whom the information may be shared; What choices are available to you regarding collection, use and distribution of the information; What kind of security procedures are in place to protect the loss, misuse or alteration of information under the company's control; and How you can correct any inaccuracies in the information.

Questions regarding this statement should be directed to privacy@drugstore.com. If the Web site has not responded to your inquiry or your inquiry has not been satisfactorily addressed, please contact TRUSTe (http://www.truste.org/users/watchdog.html).

Click here to Continue Shopping.

Information We Collect
We recognize your right to confidentiality and are committed to protecting your privacy. We use the information that we collect on our site to provide you with a superior shopping experience.

Your Account
When you place an order, we will ask you to set up "your account," which includes your name, e-mail address, mailing address, credit card number and expiration date, as well as certain other information when you order prescriptions. Using your account information, we will send you communications that we believe are relevant to you, including eMedAlert tm, prescription refill and renewal reminders, newsletters or emails. If you prefer not to receive optional email or other communication from us, you may adjust your account to prevent such communications. If we receive updated account information from our shippers or other third parties, we may revise your account for you so that we can efficiently process your orders, deliver your packages or otherwise communicate with you. If you would like to review or revise the information we have in your account, you may access such information by clicking on the "your account" tab on any screen.

Your Prescription Information
To fill your prescription drug order, we collect the following additional information: your date of birth, gender, drug allergies, medical conditions, illnesses, and current medications. If you plan to use insurance and you can't find the member or group number, we ask that you provide your Social Security Number. Your Social Security Number is only used for purposes of seeking reimbursement from insurance companies.

We protect all of your information against unauthorized access or release. We share your personal and prescription information with third parties if legally necessary to do so and as follows:
• *Amazon.com* - When you have an account with Amazon.com and have entered our site from the Amazon.com site, we send to Amazon.com the server log information about your visit to our store, including non-pharmacy pages viewed and non-pharmacy products purchased. Neither your account information nor your prescription information will be shared. Any information shared under this relationship will be treated in accordance with each company's privacy policy.

If you do not wish for your server log information to be shared with Amazon, please click here.

• *GNC* - Because we sell and accept GNC Gold Cards on behalf of GNC, when you purchase a GNC Gold Card from drugstore.com, we share your name, address, phone number, gender, and birth month and year with GNC. At your direction, we also share your e-mail address. When you use your GNC Gold Card to purchase GNC products at drugstore.com, we share with GNC a list of the products you purchased in the GNC Live Well store. We do not share with GNC information about products that you purchase outside of the GNC Live Well store.

• *Rite Aid* - drugstore.com serves as the on-line pharmacy for Rite Aid Corporation, a chain pharmacy with approximately 3,800 store locations throughout the United States. We entered into the relationship to serve as the online pharmacy for Rite Aid because we believe that the relationship allows us to provide better services to our customers. If you are filling an original prescription through drugstore.com for the first time, the prescription will be mailed to you. Because of our relationship with Rite Aid, when you place your Rite Aid or drugstore.com refill prescription order at drugstore.com, you may choose to have the prescription mailed to you or available for pickup at the Rite Aid store convenient to you. From time to time it may be more efficient for drugstore.com to fill a prescription ordered on its Web site through Rite Aid's central pharmacy (e.g., to meet short-term shortages of drug product availability, or to allow insurance coverage). If you have chosen to pick up your prescription at a Rite Aid store or your prescription is being filled through Rite Aid's central pharmacy, drugstore.com and Rite Aid will share patient information necessary to allow each to meet its obligations in dispensing medications and related information. This exchange is solely for purposes of professional pharmacy practice and administration. Rite Aid is bound by the same confidentiality standards as drugstore.com, and will not release patient information to others.

• *Brand Manufacturers* - We may develop programs with some of our brand manufacturers whereby you may be offered special discounts or coupons on products in exchange for providing your e-mail address or completing a survey about the manufacturer's products. When you are offered such discounts or coupons in exchange for your e-mail address or completing a survey, you will be notified that if you complete the survey, your name, e-mail address and responses will be shared with the brand manufacturer. No other information will be shared.

• *Agents* - We may enter into an agreement with other companies or individuals to perform functions on our behalf. These functions may include sending promotional e-mails on our behalf to such companies' customers; serving advertisements on our behalf; analyzing data; providing marketing assistance; processing credit card payments; and fulfilling and delivering orders. These companies and individuals will have access to information necessary to perform their functions. They will not be allowed to use the information for any other purpose and will be bound to the terms of our privacy policy. We may share non-personal, summary, or aggregate customer data with partners and other third parties.

• *Business Transfers* - We may buy or sell stores or assets. In such transactions, customer information is usually treated as one of the transferred business assets. Should drugstore.com, inc., or Beauty.com, inc., or substantially all of either of their assets be sold, customer information will be one of the transferred business assets.

• *As You Direct* - If the patient has directed, we will release prescription information to the patient's authorized representative, or the prescribing or other authorized practitioner caring for the patient. At the
direction of the patient and to the extent specifically authorized by law, we will release such information to other persons, including Rite Aid (see above for details) and insurance plans. For example, at your request drugstore.com will automatically forward your prescription information to your insurance plan so that drugstore.com can directly handle reimbursement of your prescription purchase on your behalf.

From time to time, we may partner with certain companies who, in conjunction with their membership programs or rewards programs, require that we disclose purchasing information about their members who visit the drugstore.com and beauty.com Web stores (for example, to earn points for purchases made on our site through links from the partner site). We will disclose only the information required to make these programs work for you and support your membership in them. In addition, we only disclose this information to such companies if you have consented first, including consent implied by your agreement to the membership or participation rules. If you do not want us to disclose that information to the strategic partner, then you must contact them directly.

Other than as set out above, you will receive notice when information about you might go to third parties, and you will have an opportunity to choose not to share the information.

Security
When you place an order online or use the pharmacy, your personal information and credit card information are encrypted using SSL encryption technology before being sent over the Internet; making it virtually impossible for your information to be stolen or intercepted while being transferred to drugstore.com or Beauty.com. Your credit card information is always stored in encrypted form in a database that is away from our Web site database so it isn't connected to the Internet, and is therefore safe from hackers.

Cookies
To personalize your experience at both drugstore.com and Beauty.com, we use a feature on your Internet browser called a cookie. Cookies are small files that your Web browser places on your computer's hard drive. We use cookies to let us know that you are a prior customer and to retrieve certain information previously provided by you to us, so that you do not need to re-enter this information every time you shop at the site. Cookies also let us know how you found us (e.g., through a particular web site or advertisement). Cookies are not used to access information entered on the secure server. This information can only be accessed when you enter your name and password. If you choose to configure your browser to remove or reject drugstore.com or Beauty.com cookies, you will not be able to make purchases from the drugstore.com or Beauty.com sites.

Web Beacons
In addition, from time to time we contract with third party companies to help us better provide relevant products and services to you. Some of these companies use Web beacons (also known as action tags or single pixel gifs). A Web beacon is a transparent image that has been placed on a Web page and sends a signal when a user has visited that page. A Web beacon does not contain any personal information. Currently, we have a relationship with Traffic Marketplace, a third party who utilizes such Web beacons on the drugstore.com and Beauty.com Sites. When you place an order on our Site after coming to our Site through an advertisement served by Traffic Marketplace, a Web beacon notifies Traffic Marketplace that a purchase has been made. No information that is personally identifiable to you is transmitted to Traffic Marketplace. Traffic Marketplace is required to protect the privacy of the information they receive. In addition, we currently have a relationship with MSN and Avenue A that helps MSN to measure the effectiveness of advertisements it serves on our behalf. When you've placed an order on our Site after coming to our Site through an advertisement served by MSN, a Web beacon notifies Avenue A. No information that is personally identifiable to you is transmitted to MSN or Avenue A. Avenue A may place a cookie on your browser in order to more effectively measure advertising effectiveness. MSN and Avenue A will not be allowed to use the information they receive via the Web beacons or cookies for any purpose other than measuring the effectiveness of the advertisements served by MSN and are required to protect the privacy of the information they receive.
Unsolicited E-mail (SPAM)

Your privacy is very important to us. Be assured that, in accordance with our Privacy Policy, drugstore.com, Inc. does not sell or distribute our customer list to third parties. You should be aware, however, that unscrupulous marketers can sometimes 'harvest' your email address directly from your computer or another person's address book or even obtain your email address through programs that automatically search web pages and email traffic for email addresses.

Please note that all email that originates from drugstore.com will either display the drugstore.com logo (HTML emails) or contain the drugstore.com copyright notice (text emails).

If you receive an unsolicited email that you believe is connected with drugstore.com in any way, please forward the e-mail (as an enclosure) to abuse@drugstore.com and we will investigate.

Your Consent

By using our Web site, you consent to the collection, use, and disclosure of information by drugstore.com and Beauty.com and to the terms of this privacy policy. If we ever change our privacy policy, we will post any changes on this page so that you are always aware of the information that we collect, how we use it, and under what circumstances we disclose it. If we were to make a material change to our privacy policy, we will either post a notice on our Web site or send you an e-mail.

Your Comments

We welcome your feedback. If you have questions or comments about our privacy policies, feel free to drop us an e-mail at privacy@drugstore.com.

Last updated: 4/25/03
Exhibit E

Polaris Privacy Policy

PRIVACY POLICY for DrWeil.com (posted on Site as of 17 January 2003)

Polaris Health, L.L.C., an Arizona limited liability company which owns and operates the www.DrWeil.com web site, cares about the privacy of each user of our web site. This confirms that Polaris Health, L.L.C. is a licensee of the TRUSTe Privacy Program. This privacy statement discloses the privacy practices for www.DrWeil.com web site.

If you have any questions or concerns regarding this statement, you should first contact webmaster@DrWeil.com. If you do not receive acknowledgement of your inquiry or your inquiry has not been satisfactorily addressed, you should then contact TRUSTe at http://www.truste.org/watchdog.html. TRUSTe will then serve as a liaison with the Web site to resolve your concerns.

Notification by our Web Site

By applying for the TRUSTe trustmark, the www.DrWeil.com web site has agreed to notify each user of the following:

1. What personal information of yours or a third party is collected from you by the www.DrWeil.com web site.

2. The name of the organization collecting such information.

3. How the information is or may be used.

4. With whom the information may be shared.

5. What choices are available to you regarding the collection, use and distribution of such information.

6. The security procedures that are in place to protect the loss, misuse or alteration of the information which is under the control of www.DrWeil.com.

7. How you can correct any inaccuracies in the information.

Information Collection and Use

The www.DrWeil.com web site collects information from our users at several different points on our web site. When you use the web site, some basic, general information is collected. This general information is used internally in connection with our business to improve the web site, including our marketing and advertising efforts, and to make your use of the web site as enjoyable and efficient as possible.

When you set up an account on our web site or purchase an item from our web site, we collect personal information provided by you that may include your: (i) first and last name; (ii) billing address; (iii) shipping address; (iv) other shipping addresses; (v) email address; (vi) phone number; (vii) credit card account number; (viii) items purchased from us; and (ix) browsing, buying and selling patterns. We use this personal information in order to provide you with the goods and services that you purchase on our web site. We use your email address to provide you with information about your order and its status and we may occasionally send out emails, including newsletters, to people who have placed an order on-line, with information about other goods and services available on our web site. Your phone number is used by us only in the event that our customer service representatives need to contact you about an order you have placed.

Polaris Health, L.L.C. ("Polaris," "we" or "us") owns and operates the www.DrWeil.com web site and we are the sole owner of this information collected on the web site. We will not sell, share, or rent this information to a third party in any way other than as disclosed in this privacy policy. We fully cooperate with law enforcement agencies in identifying those who use our services for illegal activities and may, in our sole discretion, disclose personal information or other information to satisfy any law, regulation, subpoena, or government request. We reserve the right to release personal information or other information about users who we believe are engaged in illegal activities or are otherwise in violation of our Terms of Service, even without a subpoena, warrant or court order, if we believe, in our sole discretion, that such disclosure is
necessary or appropriate to operate our web site or to protect the rights or property of www.DrWell.com, our affiliates, or our officers, directors, employees, agents, third-party content providers, suppliers, sponsors, or licensors. We also reserve the right to report to law enforcement agencies any activities we reasonably believe in our sole discretion to be unlawful. If we are legally compelled to disclose information about you to a third party, we will attempt to notify you by sending an email to the email address in our records unless doing so would violate the law or unless you have not provided your email address to us.

Registration

To use some features on the www.DrWell.com web site, a user must first complete a registration form on the web site. During registration, a user is required to give contact information, such as name and email address. This information is used to contact users about the services on our web site for which they have indicated interest. It is optional for users to provide additional, demographic information, such as age and gender, but we encourage our users to provide such information so that we can provide a more personalized experience for our users on our web site.

Orders

We request additional personal information from our users when placing an order on our web site. In completing our order form, a user must provide contact information, such as name and shipping address, and financial information, such as credit card account number and expiration date. This information is used for billing purposes and to fulfill our customer orders. If we experience difficulties processing an order, we will contact a user through this information.

Cookies

A cookie is a text file stored on the user's hard drive containing information about the user. Web sites create cookies to record information about a user's preferences, such as the items you add to your shopping cart, and for security purposes (see Security below). Cookies are also used to help us determine the various services you use and the support you may need, and to help us detect and solve any problems you may have while using our web site. In addition, the use of a cookie on our web site will enable users to log on without having to reenter their password on each visit and to fully participate in our Community discussions. Most cookies expire after a certain time period. If you wish, you may set your browser to reject all cookies and still view our web site. Because our online ordering system requires cookies, you will not be able to order online, but you can still place an order by phone, fax or mail.

Log Files

Like most standard web sites, we use log files on our servers. These log files store information regarding IP (internet protocol) addresses, browser type, ISP (internet service provider), referring/exit pages, platform type, date/time stamp, and number of clicks. These log files are used to analyze trends, administer the web site, track user's movements in the aggregate, and gather broad demographic information for our use. IP addresses, etc. are not linked to personal information.

Sharing of General or Demographic Information

We will share aggregated, general or demographic information we collect about our users and their use of our web site with our partners (except where noted for specific co-branded relationships below) and advertisers in a manner which does not identify any individual user. We use an outside shipping company to ship orders placed on our web site, and a credit card processing company to bill users for goods and services purchased on our web site. These companies will not retain, share, store or use any of our user's personal information for any secondary purposes. We partner with other parties to provide specific services which are available on our web site. When a user signs up for these services, we will share the user's name or other contact information that is necessary for the third party to provide these services to the user. These parties are not allowed to use such personal information except for the purpose of providing these services.

Co-Branded Relationships

Polaris partners with Custom Nutrition Services for the Dr. Well Vitamin Advisor customized nutrition assessment offered to our users for free and for the Polaris CustomPak vitamins and supplements recommended and available for purchase from Custom Nutrition. No personal information of users from www.DrWell.com is shared with Custom Nutrition Services. Custom Nutrition Services does share with Polaris a user's email address and whether or not the users have taken the
Vitamin Advisor and purchased. Custom Nutrition Services also shares aggregate purchase information with Polaris for the purpose of determining revenue share. They do not share the details of a user’s personal nutrition assessment except in aggregate so that products and services can be improved over time.

Polaris partners with Agora Media, Inc. for the "My Optimum Health Plan" offered to our users as a premium membership product and available for purchase from Agora Media, Inc. Agora Media and Polaris do share personally identifiable information to provide this premium service only to those members who have purchased the product. However, Agora Media does not use this personal information for their own purposes. They only use it as needed to provide this service to our members.

Polaris partners with Barnes & Noble.com to sell books, CD’s and tapes. Polaris does not pass any personal information to Barnes & Noble and no personal information is shared by Barnes & Noble back to Polaris. Barnes & Noble shares aggregate purchase information with Polaris for the purpose of determining revenue share.

**Links**

The web site contains links to other web sites. We want you to be aware that when you click on such links, including banner advertising, which take you to a third-party web site, you will be subject to such third-party’s privacy policies. Please be aware that we are not responsible for the privacy practices of such other web sites and we expressly disclaim any and all liability for the actions of third-parties, including, without limitation, actions relating to the use and/or disclosure of personal information by such third-parties. We encourage our users to be aware of when they leave our web site and enter a third-party web site and to read the privacy statements of each and every web site that collects their personal information. This privacy policy applies solely to information collected by our web site.

**Newsletters**

If a user wishes to subscribe to one of our newsletters, either Dr. Well’s Daily Tip or Weekly Wellness Bulletin, we will ask for contact information, such as name and email address.

**Send to a Friend**

If a user elects to use our referral service to inform a friend about a part of our web site, a form asks for the friend’s name and email address. The form will automatically send the information to the friend via email. We do not store this information and the form is only used to send this one-time referral email.

**Public Forums: Message Boards, Chats and "Ask Dr. Well"**

In order to post a message on our DrWell.com message boards, during a Chat or to the "Ask Dr. Well" feature you will be asked to sign in with your member login Information. We do not use this information in any way other than to recognize you for postings nor do we disclose this information to any third parties.

With regard to the message boards, your email address is not visible on the boards however other users are able to send you email via your nickname without your email address being displayed. When you sign in to post on the message boards a message board and chat account is created for you on Prospero message board software. Prospero does not collect this information and does not use it in any way other to automatically create the account nor do we at dwell.com share this information with any third parties unless required by authorized law enforcement agencies when required.

With regard to the "Ask Dr. Well" feature, your name will be used if your question has been selected for use in the "Q & A" section of the website. If you do not wish your name used, our Editors can, at their discretion, omit this information from the posted Q&A if you elect to remain anonymous and so request in the body of your submitted question.

Do remember that whatever you post on the message boards, chat or to the "Ask Dr. Well" feature, it is considered public knowledge and you should always use caution when posting. Avoid posting your home address or phone number on a public board or chat. Although one must be a registered user to post messages the message boards are public and may be read by non-registered users.

Polaris reserves the right to re-publish your postings from message boards or chat rooms in any format.

**Surveys & Contests**
From time to time, our web site requests information from our users via surveys or contests. Participation in these surveys or contests is completely voluntary and the user has a choice whether or not to provide us with such information. Information requested may include contact information, such as name and shipping address, and demographic information, such as zip code, age level. Contact information will be used to notify the winners and award prizes. Survey information will be used to monitor or improve the use and efficiency of this web site.

**Security**

This web site takes precautions we believe are reasonable to protect our users' information. When you submit personal information via our web site, your information is protected by us both on-line and off-line.

When our registration or order form asks users to enter personal information, such as credit card account number or social security number, such information will be encrypted by our encryption software, which is provided by Secure Socket Layer (SSL), before such information is transmitted over the internet. SSL prevents unauthorized people from intercepting your personal data. It is important to use a browser that supports SSL, such as Netscape Navigator or Microsoft Internet Explorer. These browsers show a symbol in the status bar, such as a key or a lock, when you are viewing a web site that uses SSL. To learn more about SSL, you may visit their web site at: http://www.ssl.com.

While we use SSL encryption to protect users' personal information on-line, we also protect our users' information off-line. All of our users' information, including both general and personal information, is carefully stored in our offices and the facilities of our web hosting provider. Only employees who use such information to perform a specific job (for example, our billing clerk or a customer service representative) are granted access to personal information. In addition, we periodically, as well as any time new policies are implemented, remind our employees about the importance of our users' privacy and what they should do to ensure our customers' information is protected. Finally, the servers that we store personal information on are kept in a secure environment, behind a locked cage.

We make efforts we believe are reasonable to prevent the alteration, theft, loss or misuse of our users' information by others. However, please keep in mind that there is always some risk in transmitting information over the Internet.

If you have any questions about the security of our web site, you can send an email to webmaster@DrWell.com

**Communications from our Web Site**

We send all new members a welcoming email to verify their password and username. Established members will occasionally receive information on products, services, special deals, and a newsletter. Each user has the option to not receive these types of communications (see Choice/Opt-Out below).

Occasionally, it is necessary to send out service-related announcements. For instance, if our service is temporarily suspended for maintenance, we might send you an email informing you of such service interruption. Generally, users may not opt-out of receiving these service-related communications. In addition, we communicate with our users on a regular basis to provide requested services and regarding issues relating to their account via email.

**Correction/Updating Personal Information**

If a user's personal information changes or if a user no longer desires our service, we will enable our users to correct, update or remove from our web site the personal data they provided to us. Such changes can be made either through the member information page on our web site or by emailing our Webmaster at Webmaster@DrWell.com.

**Choice/Opt-out**

Our users are given the opportunity when registering with our web site to opt-out of having their information used for purposes not directly related to the provision of goods or services through our web site. Our membership form has an opt-out mechanism so users purchasing a membership from us may elect to not have their email address added to our marketing and promotional address lists.

Users who no longer wish to receive our newsletter or other marketing and promotional materials from us or our partners may opt-out of receiving these communications by replying to any such promotional email indicating your desire to no longer receive such emails or by emailing our Webmaster at Webmaster@DrWell.com.
Users of our web site will be notified if, in connection with the use of a particular service on our web site, their information will be collected by any outside third-party. At such time, the user can determine whether they wish to proceed with a service that will involve an outside party having access to their information.

**Collecting Information From Children Younger than 13**

The [www.DrWell.com](http://www.DrWell.com) web site does not knowingly collect or use any personal information from children under the age of 13 without obtaining verifiable parental consent.

**Notification of Changes in Use of Information**

Our privacy policy is subject to change. In the event of any change, we will provide notice of such change on our web site. If we want to use your personal information in a manner different from that stated to you at the time you provided such information to us, we will notify you of such change via email in addition to posting notification of such change on our web site. At such time, you can determine whether you wish to allow us to use your information in this different manner. If you have opted out of all communication with our web site or have deleted or deactivated your account with us, then you will not be contacted and your personal information will not be used.

This privacy policy was last updated January 17, 2003.
Exhibit F

drugstore.com logos

drugsstore.com.
Exhibit G
Vendor Confidentiality Agreement
MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement") is made as of ____________, 200__ (the "Effective Date") and between drugstore.com, inc., a Delaware corporation, on behalf of itself and its subsidiaries (collectively, "drugstore.com"), and the entity signing below ("Vendor").

1. **Purpose.** The parties have entered into a Vendor Agreement dated ____________, 200__ (the "Vendor Agreement"), pursuant to which Vendor provides products to drugstore.com that are labeled with the Dr. Weil brand name and/or the Polaris brand name (the "Relationship"). In connection with such Relationship each party may disclose its Confidential Information (the "Disclosing Party") to the other (the "Receiving Party"). The terms and conditions of the disclosure of such Confidential Information will be governed by this Agreement.

2. **Definition of Confidential Information.** "Confidential Information" means any information, technical data or know-how, in any form or format, including, but not limited to, that which relates to business plans, financial projections, agreements with third parties, patents, patent applications, trade secrets, research, product plans, products, services, suppliers, customers, prices and costs, markets, software, developments, inventions, processes, technology, designs, drawings, engineering, hardware configuration, marketing, licenses, budgets or finances of the Disclosing Party that is disclosed by the Disclosing Party to the Receiving Party or that is otherwise learned by the Receiving Party in the course of its discussions or business dealings with, or its physical or electronic access to the premises of, the Disclosing Party, and that has been identified as being proprietary and/or confidential or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as proprietary and/or confidential. Confidential Information also includes all information concerning the existence and progress of the Relationship. Confidential Information does not include information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party prior to its receipt from the Disclosing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; or (iv) can be shown by documentation to have been developed by the Receiving Party without reference to any Confidential Information.

3. **Use of Confidential Information.**

   (a) Each party agrees not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, or the undertaking of, the Relationship. Each party will restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, and subcontractors (collectively, "Personnel") who have a need to know such Confidential Information in
connection with the Relationship; provided that such Personnel shall be bound to the Receiving Party by confidentiality provisions at least as restrictive as those contained in this Agreement. Each party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, those measures that the Receiving Party uses to protect its own Confidential Information, which shall be no less than a reasonable degree of care. Each party agrees to notify the other in writing of any misuse or misappropriation of Confidential Information of the Disclosing Party.

(b) Without limiting the generality of the foregoing, Vendor agrees (i) not to reveal to any third party that it manufactures any product labeled with the Dr. Weil or Polaris brand names; (ii) not to use such information for competitive advantages or purposes; (iii) not to remove any copyright notice, trademark notice, and/or other proprietary legend or indication of confidentiality set forth on or contained in any of the Confidential Information.

4. Return of Materials. Upon the Disclosing Party’s written request but no later than the termination of this Agreement, the Receiving Party promptly will return or destroy (or, in the case of electronic embodiments, permanently erase) all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies, excerpts, and extracts of Confidential Information) in its possession, custody, or under its control.

5. Compliance with Laws. Each party will comply with all applicable federal, state, and local statutes, rules and regulations, including but not limited to, United States export control laws and regulations as they currently exist and as they may be amended from time to time. In the event that the Receiving Party is required to disclosed Confidential Information pursuant to court order or other governmental action, the Receiving Party must use reasonable efforts to provide notice to the Disclosing Party sufficiently in advance to permit the Disclosing Party to contest the requested disclosure and/or seek a protective order, and provided further that the Receiving Party must provide the Disclosing Party reasonable assistance in connection with any such action). Such notice must include, without limitation, identification of the information to be so disclosed and a copy of the order. Any disclosure pursuant to court order or other governmental action hereunder shall not operate to render Confidential Information non-confidential.

6. No Rights Granted. Nothing in this Agreement is intended to grant any rights or licenses under any patent, copyright, trade secret or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party’s Confidential Information other than the limited right to review such Confidential Information in connection with the Relationship between the parties.

7. Reserved.

8. Term. This Agreement is intended to cover Confidential Information disclosed or received by either party prior or subsequent to the date of this Agreement. This Agreement will terminate concurrently with the termination of the Vendor Agreement; provided, however, that
each party’s obligations with respect to the other party’s Confidential Information disclosed or received prior to termination or expiration will survive the expiration or termination of this Agreement.

9. Remedies. Each party agrees that its obligations provided in this Agreement are necessary and reasonable to protect the Disclosing Party and its business, and each party expressly agrees that any breach or threatened breach of this Agreement may cause the Disclosing Party irreparable harm for which there is no adequate remedy at law, and as a result of which, the Disclosing Party shall be entitled to the issuance by a court of competent jurisdiction of an injunction, restraining order or other equitable relief in favor of itself, without the necessity of posting bond, restraining the Receiving Party from committing or continuing to commit any such violation. Any right to obtain an injunction, restraining order, or other equitable relief shall not be deemed a waiver of any right to assert any other remedy that may be available in law or in equity.

10. Miscellaneous. This Agreement shall be binding on and for the benefit of the undersigned parties, their successors and assigns, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party. This Agreement may be executed in two or more counterparts each of which shall be deemed an original and all of which together shall constitute one instrument. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Polaris Health, LLC and Dr. Andrew Weil are intended third party beneficiaries of this Agreement and may take any action that may be necessary, appropriate, or required to enforce its rights in its confidential information and/or intellectual property.

11. Governing Law. This Agreement and any disputes that may arise under, out of or in connection with this Agreement, shall be governed by and construed and enforced in accordance with the internal laws of the State of Washington, and shall be binding on the parties to this Agreement in the United States and worldwide. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively in the state and federal courts of King County, Washington. This Agreement sets forth the entire Agreement between the parties relative to the subject matter, and supersedes all prior or contemporaneous oral or written understandings, statement, representations, or promises.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date below.

Date: ______________________

drugstore.com, inc.                                Vendor

Print Name of Entity

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Dear Larry,

This letter is to confirm our discussion in the meeting held at the headquarters of drugstore.com, inc. in Bellevue on Friday, December 10, 2004, in which it was agreed that we would modify the Minimum Marketing Budgets (§6.1 and §6.2 of the Custom Nutritional Supplement Program Provider And Internet Commerce And Content Agreement) as follows:

1. drugstore.com will spend a total of $700,000 on Marketing (as provided and defined in §6.1 of the Agreement) in 2005;
2. drugstore.com will spend at least $200,000 on Marketing in the First Quarter of 2005; and
3. The Marketing requirements for both drugstore.com, inc. and Polaris Health, LLC for 2004 (as provided in §6.1 and §6.2 of the Agreement) are satisfied.

Please indicate your agreement by signing below and returning a copy to us. Thank you.

Polaris Health, LLC

By: Laurence B. Tree, II
President / C.E.O.

Sincerely,

Jeff Kimmell
Vice President of Healthcare Services and Chief Pharmacy Officer
drugstore.com, inc.