STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** August 3, 2017

Staff Contact: Laura Rader and Nicki Aaker

Agenda Title: For Possible Action: To approve the purchase of various vaccinations for Health and Human Services through Joinder Contracts with GlaxoSmithKline, Merck Sharp & Dohme Corp., and Sanofi Pasteur Inc. in the total amount not to exceed $304,531.00 to be funded from the Health and Human Services Private Vaccine and Vaccine Grant fund accounts for FY2017/2018. (Laura Rader; LRader@carson.org and Nicki Aaker; NAaker@carson.org)

Staff Summary: Carson City Health and Human Services would like to utilize current contracts through the Minnesota Multistate Contracting Alliance for Pharmacy to purchase vaccination for Carson City citizens.

Agenda Action: Formal Action/Motion **Time Requested:** 5 minutes

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Proposed Motion

I move to approve the purchase of various vaccinations for Health and Human Services through Joinder Contracts with GlaxoSmithKline, Merck Sharp & Dohme Corp., and Sanofi Pasteur Inc. in the total amount not to exceed $304,531.00 to be funded from the Health and Human Services Private Vaccine and Vaccine Grant fund accounts for FY2017/2018.

Board's Strategic Goal

Efficient Government

Previous Action

Background/Issues & Analysis

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 and NRS 332.195

Financial Information

Is there a fiscal impact? ☒ Yes ☐ No

If yes, account name/number: Private Vaccine 275-6850-441-06-97, School Located Vaccine 275-6831-441-12-31, and Community Vaccine 275-6866-441-06-25

Is it currently budgeted? ☒ Yes ☐ No

Explanation of Fiscal Impact: Funding is provided by vaccine program income and restricted Grant Fund vaccine and clinic accounts. If approved accounts will be reduced by up to $304,531.00.

Alternatives

Not approve purchase and provide other direction.

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay

2) _____ _____

_____

_____

_____

_____

(Vote Recorded By)

VACCINE FUNDING

	Joinder Contract Amounts	Current Available Funding
General Fund - Health Restricted Funds		
275-6850-441-06-97	$ 191,536.00	$ 300,000.00
Grant Fund		
275-6831-441-12-31	$ 65,995.00	$ 223,000.00
275-6866-441-06-25	$ 47,000.00	$ 121,000.00
TOTAL	**$ 304,531.00**	**$ 644,000.00**

FY17 EXPENDITURES BY VENDOR

GlaxoSmithKline	$ 93,424.00
Merck, Sharp & Dohme	$ 105,000.00
Sanofi Pasteur Inc.	$ 106,107.00
TOTAL	**$ 304,531.00**

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **GlaxoSmithKline LLC**, a Delaware corporation having places of business at 5 Crescent Drive, Philadelphia, PA 19112 and Five Moore Drive, Research Triangle Park, NC 27709 ("GSK" or "Vendor").

Pursuant to Minnesota Statutes Section 16C.03, the Commissioner of Administration may enter into this contract on behalf of MMCAP for the benefit of its members.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members' use. Participation in MMCAP is limited to government facilities such as state agencies, counties, cities, townships, and school districts, as well as other statutorily authorized facilities.

The Vendor wishes to contract with MMCAP to supply products to MMCAP Eligible Members.

1 Term of Contract

1.1 ***Effective date:*** July 1, 2015, or the date MMCAP obtains all required signatures under Minnesota Statutes Section16C.05, subdivision 2, whichever is later.

1.2 ***Expiration date:*** June 30, 2019, or as cancelled pursuant to clause 21. Contract may be extended upon mutual agreement of both parties.

1.3 ***Survival of Terms.*** The following clauses survive the expiration or cancellation of this Contract: 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Contracted Products

2.1 The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP Participating Facilities via MMCAP's Authorized Wholesalers. The MMCAP Authorized Wholesalers are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC. Vendor is authorized to sell vaccine products directly to MMCAP Participating Facilities.

2.1.2 MMCAP reserves the right during the term of the Contract to award or dual award products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by MMCAP Authorized Wholesalers due to "pedigree law" requirements, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by MMCAP Participating Facilities, recall situations, product shortages, failure to supply situations, and in situations that are in the best interest of the MMCAP Participating Facilities.

2.2 Product Availability

2.2.1 It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the needs of the MMCAP Participating Facilities.

2.2.2 Vendor must establish and maintain chargeback agreement(s) with MMCAP's Authorized Wholesalers. Vendor must monitor sales of the Products to ensure that Authorized Wholesalers are purchasing sufficient quantities to meet the inventory needs of the MMCAP Participating Facilities based on usage data provided on Attachment A.

2.2.3 Vendor is authorized to sell vaccine Products directly to MMCAP Eligible Members. All other sales must be through MMCAP's Authorized Wholesalers. Direct sales of non-vaccine pharmaceutical Products to MMCAP Participating Facilities without written authority may result in immediate termination of this Contract at the sole

discretion of MMCAP. In the event direct sales of non-vaccine pharmaceutical Products are approved by MMCAP, Vendor must submit monthly reports of any direct sales using the MMCAP contract. These reports must be in an MMCAP-approved format and submitted to Mn.MMCAP@state.mn.us.

2.2.4 Vendor will post supply updates for vaccines Products on the GSK vaccine-direct website.

2.2.5 Vendor must notify MMCAP immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect Product availability. Notices must be sent to: MMCAP.Contracts@state.mn.us

2.2.6 If the Vendor assigns, discontinues, or deletes a Product during the term of this Contract, Vendor must use reasonable commercial efforts to give prior notice of the assignment, discontinuance, or deletion of such product(s) based on the circumstances therein, and where possible should provide written notice to MMCAP at least 30 days prior to the assignment, discontinuance, or deletion. If the Vendor discontinues or deletes a Product during the term of this Contract, Vendor will honor contract pricing until the inventory of the Product is depleted from MMCAP's Authorized Wholesalers' stock.

2.2.7 **Direct Orders, Payment, and Delivery Terms.** Notwithstanding anything to the contrary in this Agreement, MMCAP hereby agrees that MMCAP Participating Facilities may place orders for any of the Vendor vaccines listed on Attachment A either through MMCAP Authorized Wholesalers or directly from Vendor through www.gskvaccinesdirect.com (the "GSK Direct Website") and that Vendor shall be permitted to fulfill any orders placed directly with Vendor through the GSK Direct Website. MMCAP Participating Facilities purchasing vaccines directly from the Vendor will sign-up, accept, and abide with terms and conditions of the GSK Direct Website.

A. Payment. MMCAP Participating Facilities shall pay for all regular orders, with payment to be received by GSK no later than thirty (30) days for cash payments or EFT payments from the date of the invoice. Unauthorized deductions are not permitted and are in violation of this offer and may result in delayed shipments. MMCAP Participating Facilities shall pay for purchases of GSK Products by check made payable to GSK or by electronic fund transfer (EFT). Payment must be sent to the following address:

GlaxoSmithKline Financial, Inc.
P.O. Box 740415
Atlanta, GA 30374-0415

If GSK does not receive payment within thirty (30) days from the date of invoice, GSK may elect to withhold shipment of GSK products. For further information on EFT, contact GSK Customer Financial Services at 866-334-7111.

B. Ordering. The Order Minimum in effect as of the Effective Date of this contract is the following: a handling fee will be charged for any order of less than 30 doses or $600. The current handling fee is $25. GSK reserves the right to adjust the handling fee without notice.

C. Shipping. GSK will ship the product ordered to the address specified at the time of order in accordance with and subject to the terms and conditions of the GSK Direct Website. If product arrives in broken or damaged condition, the MMCAP Participating Facility shall insist upon carrier's agent noting the damage or breakage on the delivery receipt. GSK shall prepay all carrier charges and insurance against the MMCAP Participating Facility's risk of loss or damage to GSK products during carriage. GSK reserves the right to change this policy.

D. Claims. The MMCAP Participating Facility shall immediately report to GSK any in-transit loss or shortage of GSK products. The MMCAP Participating Facility shall report all claims within fourteen (14) days of the receiving date. Proper documentation must accompany all claims. If appropriate, GSK will issue credit to the MMCAP Participating Facility for the claim. GSK reserves the right to change this policy.

E. Financial and Credit Position. Eligible Member shall maintain an adequate financial condition satisfactory to GSK and substantiate such a condition with audited financial statements or as otherwise requested by GSK. If, in GSK's judgment, at any time before shipment, financial condition becomes impaired or unsatisfactory to GSK, GSK may delay, deny and/or require cash payment or appropriate security before shipment.

2.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish no Product under this Contract that is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.

2.4 **Pricing.**

A. General. Except as provided in subsections B and C of this Section 2.4, the Contract Prices to be offered to MMCAP's Eligible Members will be current Wholesale Acquisition Cost (WAC) at the time of purchase less the discount stated on the price exhibit. In the event of a change by GSK in such Product's Wholesaler Acquisition Cost (WAC), the Product's contract price shall immediately, automatically, and without notice, be changed to equal such Product's new WAC price. Vendor will make commercially reasonable efforts to send notices of WAC increases to: MMCAP.Contracts@state.mn.us. Vendor will provide written notice to MMCAP prior to the removal of any Products from Attachment A. If Products are being removed from the market, Vendor will honor contract pricing until MMCAP-Authorized Wholesalers' and Vendor's inventories are depleted.

B. HIV Products. For the products listed below* and any other (present or future) GSK Products indicated for the treatment of HIV or any cancer, the contract prices to be offered to MMCAP Eligible Members will be equal to such product's Wholesaler Acquisition Cost (WAC) at the time of purchase, notwithstanding anything to the contrary in the Agreement.

*Product Lines:

All ARRANON NDC #: 00007-4401-06
All COMBIVIR NDC #s: 49702-0202-18 & 49702-0202-29
All EPIVIR NDC #s: 00173-0663-00, 00173-0662-00, 49702-0205-48, 49702-0203-18 & 49702-0204-13
All EPZICOM NDC #s: 49702-0206-13
All LEXIVA NDC #s: 49702-0207-18 & 49702-0207-18
All MEPRON NDC #s: 00173-0547-00 & 00173-0665-18
All MEPRON NDC #s: 00173-0547-00 & 00173-0665-18
All RESCRIPTOR NDC #s: 49702-0209-24, 49702-0225-17 & 63010-0021-18
All RETROVIR NDC #s: 49702-0211-11, 49702-0213-05 & 49702-0212-48
All SELZENTRY NDC #s: 49702-0223-18 & 49702-0224-18
All TIVICAY NDC #: 49702-0228-13
All TRIUMEQ NDC#: 49702-0213-13
All TRIZIVIR NDC #s: 49702-0217-18
All VIRACEPT NDC #s: 63010-0027-70 & 63010-0010-30
All ZIAGEN NDC #s: 49702-0222-48, 49702-0221-18 & 49702-0221-44

C. Vaccines. For GSK Products that are vaccines, the contract prices to be offered to MMCAP Eligible Members will be those set forth on Attachment A. Such prices shall remain fixed, except that GSK may adjust such prices once within each calendar year. Notice of any change in Contract Price for any GSK Product will be sent to MMCAP thirty (30) days prior to the effective date of the price change.

2.5 Failure to Supply Contracted Pharmaceuticals.
2.5.1 If Vendor fails to maintain sufficient inventory to meet the anticipated needs of MMCAP Participating Facilities for any Products, the ordering MMCAP Participating Facility may purchase an alternate equivalent generic product on the open market for the period in which the Vendor is unable to provide the Product. Notwithstanding the foregoing, the Vendor will not be liable for any excess cost over the MMCAP contracted price and the alternate price of the product supplied by the alternate vendor.
2.5.2 If Vendor cannot supply in sufficient quantities, MMCAP may at its discretion add an additional vendor(s) as needed to meet the needs of its members.

2.6 First DataBank, Inc. All contracted prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc., unless such designation is expressly waived by an MMCAP Authorized Representative. If NDC codes are not applicable (e.g., OTC products), Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]). If the Product does not have an NDC number or a UPC code, Vendor must use its product number with leading zeroes (e.g., product #90024 = 00000-0900-24). Vendor must report contract status to MMCAP's Authorized Wholesalers using only these approved formats.

2.7 Contract Changes.
2.7.1 *Product Offers and Amendments.* Vendor-generated product offers and notifications may be used as amendments to Attachment A by submitting to MMCAP a letter on Vendor's letterhead with the following elements:

- Offer Date
- MMCAP Contract Number
- Action (e.g., addition, deletion, price change, NDC conversion)
- NDC Number
- Product Description
- Packaging
- Contract Price
- Pricing Type (fixed, non-fixed, floating WAC)
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's offer. A typed name, regardless of font, does not constitute a signature.

If the product offer is accepted by MMCAP and is executed by Vendor as well as the authorized State of Minnesota representatives, the product offer letter will automatically amend Attachment A of this Contract. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP will draft all amendments.
2.7.2 Vendor must send confirmation of fully executed Contract amendments to the MMCAP Authorized Wholesalers within 5 business days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Authorized Wholesalers do not receive Contract amendment notification(s), Vendor agrees to honor all chargebacks at the contract price from the date indicated on the fully executed Contract amendment.

2.8 MMCAP Participating Facilities.
Eligible Members shall include City/County/State health care facilities that are in good standing with GSK currently identifying MMCAP as their primary group affiliation. Eligible Members may not have multiple group affiliations with GSK unless specifically approved by GSK. The Eligible Members of City/County/State include:

- City/County/State hospitals.
- City/County/State clinics.
- City/County/State non-health related offices; City Jails, Detention Centers, Fire Departments, etc.
- County or State Correctional facilities.
- City/County/State residential school, college/university without a hospital.

- Non-profit organizations with statutory authority to purchase from state contracts (at GSK's sole discretion)

2.8.1 Eligibility. GSK will determine the eligibility of the Participating Member utilizing the following requirements. GSK may declare that a Participating Member shall no longer be eligible as a Participating Member under this Agreement if any of the following requirements for eligibility are no longer met.

i) Must have an in-house/in-patient pharmacy, which dispenses to Participating Member's patients only;
ii) Must employ a staff pharmacist, which may include physician dispensing unit;
iii) Must have dispensations limited to prescriptions by:
  a) physicians employed by or on the professional staff of the Participating Member or
  b) Participating Member's staff with prescribing privileges
iv) Must report all discounts received pursuant to this Agreement as may be required under 42 CFR § 1001.952 (h); and
v) Participating Members certify on MMCAP and/or GSK's MMCAP Declaration Form (See Declaration Form Attachment B) or a form acceptable to GSK, that any GSK Product purchased under this Agreement are offered solely for such member's "own use" and shall not be acquired for the purpose of competing against private enterprise. For purposes of this section, the term "own use" shall be as defined by the United States Supreme Court in its opinions reported at Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), and Jefferson County Pharmaceutical Association, Inc. v. Abbott Laboratories, et al., 103 S. Ct. 1011 (1983).

2.8.2 Participating Membership Changes.
GSK shall determine which of MMCAP's current Participating Facilities identified on MMCAP's Membership Roster are eligible for pricing and terms of Agreement and into which class of trade each belongs. New Eligible MMCAP Participating Facilities will only become eligible for the Contract Prices under this Agreement as determined by GSK. In order to be added to this Agreement, Participating Members shall complete a GSK Declaration Form, which notice shall include the institution name, DEA/HIN or other acceptable identification numbers, name of department contact, telephone number of department contact, email address of department contact, address of the institution, Class of Trade designation, and Own Use certification.. Participating Members will be added to pricing and terms of agreement upon verification by GSK, and eligibility will be effective based solely upon the eligibility effective date in GSK's contract system, usually within 30 days. MMCAP will notify GSK in writing if they wish to remove any Participating Facilities and GSK will, upon verification, notify Company of the removed Participating Facilities along with the effective date(s). GSK may rely upon the conclusion of a third-party data source as to the Class of Trade to which a proposed member belongs.
GSK will notify the Authorized Wholesaler, MMCAP, and the MMCAP Participating Facility whether it agrees to extend the terms of this Agreement to such proposed members and the effective date of such addition.
2.8.3 Membership Declaration Form. Vendor's Group Purchasing Organization Membership Declaration Form is attached and incorporated as Attachment B.

2.9 Administrative Fee.
2.9.1 In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases (minus any credits) made through the MMCAP Authorized Wholesalers or directly with the Vendor. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to 1.5% of MMCAP Participating Facilities' purchases for all Products, minus any credits. The administrative fee must be paid no later than 60 days after the end of the quarter. Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155.
Notwithstanding anything within the agreement to the contrary, no ASF shall be paid by GSK to MMCAP for sales of, COMBIVIR, EPIVIR, EPZICOM, HYCAMTIN, LEXIVA, MEPRON, MYLERAN, RESCRIPTOR, RETROVIR, SELZENTRY, TRIZIVIR, VIRACEPT and ZIAGEN, or any other HIV product(s) (i.e., products that may be listed in the HIV therapeutic class) that may be marketed by GSK in the future, unless such products are otherwise expressly specified in a separate ASF Exhibit for the provision of the GPO Obligations by MMCAP.

The vendor must submit a quarterly Administrative Fee Data Report that includes both direct (sales made direct from vendor to MMCAP facility) and indirect purchases (sales made through an MMCAP Authorized Wholesaler). The quarterly Administrative Fee Data Report must contain the fields detailed below. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to: Mn.MMCAP@state.mn.us at the end of each quarter, but no later than 60 days after the end of the quarter. Failure to comply with this provision may constitute breach of this Contract.
Administrative Fee Data Report fields:

- MMCAP Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)
- MMCAP Assigned Manufacturer Number (4150)
- Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
- Invoice Date (Point of Sale Date)
- Invoice Number
- MMCAP Participating Facility Name
- Vendor's Account Number for the MMCAP Facility
- MMCAP Participating Facility DEA Number, if applicable
- MMCAP Participating Facility HIN Number, if applicable
- MMCAP Participating Facility Address
- MMCAP Participating Facility City
- MMCAP Participating Facility State
- Product's NDC (Use all 11 digits (00076888888))
- Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- Credit Indicator (C = credit)
- Contracted Units (The number of units purchased on contract.)
- MMCAP Contracted Unit Price
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars.)

2.9.2 In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and to reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.
2.9.3 *ASF Warranty and Representation.* MMCAP represents and warrants that it (a) meets the definition of a group purchasing organization as set forth in 42 C.F.R.Section 1001.952 (j)(2) and (b) has a written Agreement with each Participating Member which states that MMCAP's participating vendors will pay a fee to MMCAP of three percent (3%) or less of the purchase price of the goods provided by participating vendors or otherwise complies with 42 C.F.R. Section 1001.952(j)(l). MMCAP agrees that it will disclose in writing to each Participating Member at least annually, and to the Secretary of Health and Human Services, U.S. Department of Health and Human Services, upon request, the amount it receives from GSK with respect to purchases made by or on behalf of the Participating Member.

2.10 *Returned Goods/Credits.* The Vendor will supply a copy of its returned goods/credit policy to MMCAP's Authorized Wholesalers upon request.

2.11 *Reserved.*

2.12 *DEA Number and HIN Numbers.* Unless the MMCAP Participating Facility purchases controlled substances, the Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from MMCAP Participating Facilities.

2.13 Own *Use.* All items acquired by MMCAP Participating Facilities under this Contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise. For purposes of this section, the term "own use" shall be as defined by the United States Supreme Court in its opinions reported at Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), and Jefferson County Pharmaceutical Association, Inc. v. Abbott Laboratories, et al., 103 S. Ct. 1011 (1983).

2.14 *Product Dating.* All Products supplied directly to MMCAP Participating Facilities must have an expiration date of at least six months later than the delivery date unless the unique stability characteristics of the product require a shorter dating period. However, all Products supplied must still be usable on the date received by the MMCAP Participating Facility.

2.15 *Publication Authorization.* Each party agrees that it will not use for its own commercial purposes any trademark, service mark, or corporate name of the other party hereto without the prior written consent of the other party. However, as contemplated below in Section 8, GSK may use or indicate the MMCAP contract status in selected GSK promotional activities directed to Participating Member facilities including, but not limited to written communication, presentation items, and academic and physician detailing. In addition, MMCAP will work with GSK to notify Participating Member physicians of the formulary status of GSK Products and to develop and implement pull-through programs and patient compliance programs.

2.16 *Storage and Handling Requirements.* GSK expects that MMCAP Participating Facilities will take such precautions as are necessary to prevent the GSK Products MMCAP Participating Facilities receive from falling into the hands of those who may not lawfully possess or handle them, and shall fully comply with local, state and federal laws applicable to the storage, and shipment of pharmaceutical products and/or Vaccines.
MMCAP Participating Facilities shall maintain all federal, state and local licensure or registration necessary for the lawful handling and use of all Vaccines and shall immediately notify GSK of any denial, revocation or suspension of any such licensure or registration or any changes in the Vaccines which MMCAP Participating Facilities are authorized to handle and use.
MMCAP Participating Facilities shall handle and store GSK Products in a clean and orderly location and in a manner that will assure that the proper rotation and quality of such products are maintained. MMCAP Participating Facilities shall comply with GSK criteria on storing and shipping GSK products that require special handling. MMCAP Participating Facilities shall allow physical inspection of storage facility at any time GSK requests.

2.17 *Customer Service.*
2.17.1 *Primary Account Representative.* Vendor will assign a Primary Account Representative to MMCAP for this Contract and will provide best efforts to provide a minimum of 72 hours advanced notice to MMCAP if that person is reassigned. The Primary Account Representative will be responsible for:

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.17.2

In the event that the Primary Account Representative is unresponsive and does not meet MMCAP's needs, the Vendor will assign another Primary Account Representative upon MMCAP's request.
2.17.2. *Business Reviews.* Vendor will perform at least one business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor and MMCAP and at a minimum address the following: a review of sales to members, pricing and contract terms, administrative fees, FDA and DEA issues, supply issues, pipeline update, outstanding contract issues, wholesaler or customer issues, and any other necessary information.

2.18 *Dispute Resolution* Vendor and MMCAP will handle dispute resolution for unresolved contract eligibility issues using the following procedure:
2.18.1 *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time.

2.18.2 *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the situation and develop a proposed resolution and plan of action. The Vendor will have 30 calendar days to cure the issue.
2.18.3 *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP members as a result of such failure to proceed will be borne by the Vendor.
2.18.4 *Termination Rights.* In the event that either party cannot resolve the dispute with either party may cancel this Contract upon 60 days' written notice to the other party.
2.18.5 *No Waiver.* This clause will in no way limit or waive either party's right to seek available legal or equitable remedies.

3 Authorized Agent
MMCAP's Authorized Agent is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155.
The Vendor's Authorized Agent is Babatunde Adedeji – Contract Development Manager – 5 Crescent Drive, Mail Code, NY0300 , Philadelphia, PA 19112.

4 Assignment, Amendments, Waiver, and Contract Complete
4.1 *Assignment.*
The right and/or obligations of this Contract may not be assigned, delegated, transferred, conveyed or sold, by operation of law or otherwise, without the prior written consent of the other party; such consent will not be unreasonably withheld.
4.2 *Amendments* Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office. Vendor agrees to use the amendment process set forth in Article 2.7 above.
4.3 *Waiver.* If MMCAP or Vendor fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
4.4 *Contract Complete.* This Contract contains all negotiations and agreements between MMCAP and the Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

5 Indemnification.
5.1 *Failure to Manufacture in Compliance with GMP.* Vendor hereby agrees to indemnify and hold MMCAP and Participating Members ("Purchaser") harmless from and against any claim, loss, liability, damage, , or expense , including reasonable attorneys' fees (hereinafter, "Loss"), arising directly from any claim regarding Vendor's failure to manufacture such products in compliance with FDA Good Manufacturing Practices ("GMP"), provided that Purchaser provides notice and cooperation as set forth below. This indemnity does not extend to any portion of the loss due to Purchaser's own conduct, such that the Loss, or any part thereof, would not have occurred but for Purchaser's conduct. This indemnity does not extend to anyone other than Purchaser, and no third party, including any person or entity having an ownership, affiliate, agency, or employment relationship with Purchaser shall have any rights under this provision.

5.2 *Infringement.* Vendor agrees that it shall indemnify and hold Purchaser harmless from and against any claim, loss, liability, damage, cost, expense, including reasonable attorneys' fees, by or to a third party (hereinafter a "Loss") arising directly from any claim that the Products furnished under this Agreement, infringe any existing patent, trademark, copyright, or other proprietary right of any third party, provided that Purchaser provides notice and cooperates as set forth below. This indemnity does not extend to any portion of the loss due to Purchaser's own conduct, such that the Loss, or any part thereof, would not have occurred but for Purchaser's conduct. This indemnity does not extend to anyone other than Purchaser and no third party, including any person or entity having an ownership, affiliate, agency, or employment relationship with Purchaser, shall have any rights under this provision.

5.3 Notice, Cooperation and Conduct of Litigation. Purchaser shall promptly notify Vendor of any claim asserted against it for which indemnification is sought, and shall promptly deliver to GSK a true copy of any such claim including but not limited to, a true copy of any summons or other process, pleading or notice issued in any lawsuit or other proceeding to assert or enforce such claim. Where acceptance of the obligation to indemnify is deemed proper by GSK, GSK reserves the right to control the investigation, trial and defense of such lawsuit or action (including all settlements and negotiations to effect settlement) and any appeal arising therefrom and to employ or engage attorneys of its own choice. Purchaser may, at its own cost, participate in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. Purchaser, its employees, agents, servants and representatives shall provide full cooperation to GSK at all times during the pendency of the claim or lawsuit, including, without limitation, providing GSK with all available information concerning the claim.

5.4 Limitation of Damages. In no event shall GSK be liable for loss of profit or use, incidental or consequential damages in any claim asserted by MMCAP eligible members under this Contract.

6 Audits

6.1 MMCAP Audits Rights. Minnesota Statutes Section 16C.05, subdivision 5, requires that, "the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

6.2 *GSK Audit/Records Rights.*

6.2.1 GSK Audit Rights. During the Term of this Contract and for two (2) years thereafter, GSK shall have the right to or the right to engage an independent firm to audit MMCAP and its Participating Members to verify their performance and compliance with their obligations under the Contract. GSK or such independent auditing firm will be authorized to have complete and unrestricted access to any and all information including all systems and processes reasonably necessary to perform procedures pursuant to this section of the Contract, including the right upon reasonable prior written notice to MMCAP, to audit, or to engage an independent firm to audit, all Documentation at MMCAP business locations during normal working hours. MMCAP and its Participating Members shall have the right to specify certain confidential or proprietary information that should not be disclosed to GSK; provided, however, that information shall be made available on an unrestricted basis to the auditing firm, as necessary, for such firm to perform procedures requested by GSK pursuant to this section of the Contract. Any and all information required will be requested by GSK and/or the independent auditing firm from MMCAP and its Participating Members, and MMCAP and its Participating Members will make all reasonable efforts to ensure the requested information is made available to the independent auditing firm within a specified period of time as agreed to by GSK and MMCAP and its Participating Members.

6.2.2 MMCAP Record Retention. MMCAP shall for the Term of this Contract plus two (2) years, keep and maintain accurate records with respect to its Participating Members, all information relating to the purchase of Products by Participating Members and all such other information that is necessary to verify MMCAP and the Participating Members' performance and compliance with their obligations under the Contract. MMCAP shall upon written request allow GSK to inspect, at reasonable times, all such information and shall furnish such information to GSK consistent with the forgoing paragraph, provided, however, that under no circumstances shall MMCAP be required to disclose information contrary to applicable law or in violation of patient confidentiality.

6.3. Confidential Information. During the term of this Contract and for a period of three (3) years following the date of expiration or termination of this Contract, MMCAP agrees to make best effort to keep the terms of this Contract non-public. If the situation arises where disclosure is requested, notification of a request to release would be sent immediately to the Vendor's Authorized Representative. Vendor will acknowledge receipt of the notification within five business days or MMCAP will be free to release the information. Upon notification to MMCAP, Vendor, at its own expense, may pursue an action to enjoin the disclosure of information considered by the Vendor to be "confidential information."

Without prior notice, MMCAP may release the following information:

a. Contract Release and contract documents to MMCAP Members and Participating Facilities;
b. Contract pricing to MMCAP's Authorized Wholesalers for use in the Authorized Wholesaler's ordering, invoicing, and reporting systems;

c. Contract pricing to other third parties under non-disclosure agreement or contract with MMCAP to perform specific tasks such as auditing and data analysis; and
d. Member State Attorneys General or auditors requiring contract or pricing data to perform their duties.

7 Government Data Practices and Intellectual Property

7.1. *Government Data Practices.* The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify MMCAP, and consult with the agency as to how the Vendor should respond to the request. The Vendor's response to the request will comply with applicable law. Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Contract.

7.2. *Intellectual Property.* The Vendor warrants that any materials or products provided or produced by the Vendor or utilized in the performance of this Contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify the Vendor.

If such a claim of infringement has occurred, or in the Vendor's opinion is likely to occur, the Vendor must either procure for MMCAP the right to continue using the material or product or replace or modify materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor, and at the Vendor's expense.

8 Publicity and Endorsement

8.1 *Publicity.* Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract. Provided, however, Vendor may use or indicate the MMCAP contract status, price and/or the discount amounts in selected GSK promotional activities directed to Participating Members including, but not limited to, written communication and presentation items.

8.2 *Endorsement.* The Vendor must not claim that MMCAP endorses its products or services.

9 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota. Except to the extent that the provisions of this Contract are clearly inconsistent therewith, this Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this Contract entails delivery or performance of services, such services will be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

10 Antitrust

The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

11 Force Majeure The obligation of either party to perform under this Contract will be excused during each period of delay caused by acts of God and other extraordinary events ("Force Majeure Event") , such as war, riot, insurrection, civil commotion, sabotage, strike or other labor disturbances, fire, flood, earthquake, accidents, explosions that damage plants or facilities, shortages of power or materials, acts or orders of governmental authorities, or any other cause reasonably unavoidable, unforeseeable, and beyond the control of the affected party. In the event that either party ceases to perform its obligations under this Contract due to the occurrences of a Force Majeure Event and its expected duration is thirty (30) days or less, the non-performing party shall take all reasonable steps to recommence performance of its obligations under this Contract as soon as possible. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) days following notice by such party pursuant to this Contract, the other party may terminate this Contract immediately upon written notice to such party.

12 Severability
If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

13 Default and Remedies
Either of the following constitutes cause to declare the Contract or any order under this Contract in default:
(a) Nonperformance of contractual requirements, or
(b) A material breach of any term or condition of this Contract.
Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.
If the default remains after the opportunity for cure, the nondefaulting party may:
(a) Exercise any remedy provided by law or equity; or
(b) Terminate the Contract or any portion thereof, including any orders issued against the Contract.

14 Certification
Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act.

15 Data Disclosure
In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota and other MMCAP Participating Facility obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

16 Insurance Requirements
16.1 Vendor must maintain the following insurance (or a comparable program of self-insurance) in force and effect throughout the term of the Contract.
16.2 Vendor is required to maintain and furnish satisfactory evidence of the following insurance (or of their program of self-insurance):

Commercial General Liability Insurance: Vendor will maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Contract.

Insurance **minimum** limits are as follows:
$5,000,000 – per occurrence
$5,000,000 – annual aggregate
$5,000,000 – annual aggregate – Products/Completed Operations

The following coverages must be included:
Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products Liability
MMCAP named as an Additional Insured

16.3 Additional Insurance Conditions:

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will notify MMCAP within 5 business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days' advance written notice to MMCAP;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor's policy(ies) will include legal defense fees in addition to its liability policy limits;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.

16.4. MMCAP reserves the right to immediately terminate the Contract if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

17 Laws and Regulations
Any and all services, articles or equipment offered and furnished shall comply fully with all State and federal laws and regulations, including Minnesota Statutes Section 181.59 and Minnesota Statutes Chapter 363A prohibiting discrimination and business registration requirements of the Minnesota Secretary of State's Office.

18 Best Price. If Vendor determines in good faith (e.g., if there is any change in any GSK Product's WAC or change in legislation) or GSK receives any notice, opinion, determination, or ruling from the Centers for Medicare and Medicaid Services ("CMS" f/k/a the Health Care Financing Administration) that the discounts and rebates provided under this Contract may establish a lowered federal "Best Price," or increased "Unit Rebate Amount" pursuant to Section 1927 (c) of the Social Security Act (Public Law 74-271, 42 U.S.C. Section 1396r-8(c)), (collectively, "a Best Price Impact") then GSK reserves the right to immediately make any and all adjustments to the GSK Product discount and/or rebate, so as to avoid establishment of a Best Price Impact and to eliminate and correct such effect. Upon discovery, GSK will provide timely written notice to MMCAP and the affected MMCAP Participating Facilities if this occurs. In the event of such a Best Price Impact, Vendor reserves the right to immediately make any and all adjustments to a Product's or Products' discounts, so as to avoid establishment of the Best Price Impact and to eliminate and correct such effect, upon prior notice to Company. This includes Vendor's right to offset current or future ASF that may be due to MMCAP, and/or the responsibility for repayment of such ASF by MMCAP.

19 Regulatory Reporting Requirements.

19.1 *Compliance with Anti-Kickback Provisions.* MMCAP and Eligible Members will comply with applicable provisions of 42 U.S.C. 1320a-7b prohibiting illegal remuneration (including any kickback, bribe, or a prohibited cost incentive or discount) and the applicable provisions of any similar state law, rule or regulation prohibiting the payment of such illegal remuneration. MMCAP or such Eligible Members will comply with the applicable requirements set forth at 42 C.F.R. 1001.952(h) by, among other things, appropriately reporting the discounts described in this Contract in the costs claimed to or charges made under the Medicare, Medicaid, TRICARE/CHAMPUS, or any other Federal health care program or state funded health care program, and providing information and documentation regarding any discount and/or rebate that may be provided under this Contract, upon request, to the Secretary of the Department of Health and Human Services and/or a State agency.

19.2 *Group Purchasing Organization.* MMCAP represents and warrants that it is a "Group Purchasing Organization" as defined in 42 C.F.R. § 1001.952(j) and agrees that it shall comply with the conditions set forth therein to ensure that any payment of administrative or other fees by GSK to MMCAP qualifies within the MMCAP safe harbor for purposes of 42 U.S.C. § 1320a-7b.

19.3 *Other Reporting Requirements.* Vendor and MMCAP agree that Vendor, pursuant to 42 C.F.R. section 1001.952 (h) and (j), has informed MMCAP and Participating Members of their federal statutory and regulatory reporting obligations.

19.4 *Compliance with State Laws.* MMCAP and its Participating Members shall comply with applicable reporting requirements to any health care corporation, health care insurer, other third party reimburser, or any patient imposed pursuant to the following law Minn. Stat. § 62J.23

The terms of this Contract shall apply only to those eligible Members located in the Continental U.S., Alaska and Hawaii provided that the terms of this Contract shall not apply to Products dispensed in any state if the state (or state agency) has in force or enacts, implements or modifies a law, rule or regulation (such as a state unitary pricing, anti-discount or pricing, rebate or other law intended to impact the pricing, discounts or reimbursement of prescription drugs or penalize GSK for such pricing, discounts or reimbursement) or interpretation thereof and which law (1) prohibits or restricts in any material way the pricing, discounts and/or rebates described in this Contract, (2) requires GSK to provide the same or similar pricing, discounts and/or rebates to other parties, including purchasers, users or otherwise of GSK's Products, to which GSK would not normally provide such pricing, discounts and/or rebates, or (3) otherwise results in a potentially adverse impact on GSK. In such case, GSK shall provide reasonable notice of its intent to exercise its rights under this clause, it being understood that the failure to give such notice does not waive any rights under this clause.

20 Anti-Bribery and Corruption

GSK is committed to the highest ethical standards and requires that all GSK employees and third parties acting for or on behalf of GSK conduct their activities in compliance with all anti-corruption laws and regulations. MMCAP and GSK agree that MMCAP is not a third party acting for or on behalf of GSK. Notwithstanding the forgoing, MMCAP and GSK agree that nothing in this Contract requires that MMCAP make improper payments or other transfer of value to any private or government official or entity for the purpose of influencing or as a reward for any act, omission, or decision to secure an improper advantage or to improperly assist GSK in obtaining or retaining business.

21 Cancellation. MMCAP or the Vendor may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment for all purchase orders fulfilled for direct sales to MMCAP members. Additionally, Vendor will honor all Chargeback sales from Wholesalers through the Contract cancellation date.

22 Affirmative action requirements for contracts in excess of $100,000 and if Vendor has more than 40 full-time employees in Minnesota or its principal place of business. The State of Minnesota intends to carry out its responsibility for requiring affirmative action by its vendors.

22.1 Covered contracts and Vendors. If the Contract exceeds $100,000 and Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then Vendor must comply with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules 5000.3400-5000.3600. If Vendor is covered by Minnesota Statutes Section 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, it must certify that it is in compliance with federal affirmative action requirements.

22.2 Minnesota Statutes Section 363A.36. Minnesota Statutes Section 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

22.3 Minnesota Rules 5000.3400-5000.3600.

(a) General. Minnesota Rules 5000.3400-5000.3600 implements Minnesota Statutes Section 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules 5000.3400-5000.3600 including, but not limited to, Minnesota Rules 5000.3420-5000.3500 and 5000.3552-5000.3559.

(b) Disabled Workers. Vendor must comply with the following affirmative action requirements for disabled workers.

(1) Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(2) Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of Vendor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Vendor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

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(c) Consequences. The consequences for Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State of Minnesota.

(d) Certification. Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

1. GLAXOSMITHKLINE LLC

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: VP, National Accounts

Date: 6/17/15

2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: Sandra Christensen

Title: Pharmacy Analyst

Date: 6-25-15

3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: _____

Title: _____

Date: _____

By: Dai Hoang PharmD MBA

Title: Pharmacist Senior

Date: June 25, 2015

MMS15112
Attachment B

TO: **(URGENT - RESPONSE REQUIRED)**

PLEASE FAX THIS FORM BACK TO RACHEL GEER at 919-315-5325 C/C/S

GLAXOSMITHKLINE

GROUP PURCHASING ORGANIZATION MEMBERSHIP DECLARATION w/ SURVEY

SmithKline Beecham d/b/a GlaxoSmithKline requires that any facility that wishes to take advantage of prices or rebates under a group purchasing organization (GPO) or Alliance with which GlaxoSmithKline has entered into a contract to designate only one GPO whose contract(s) such facility will access to purchase GlaxoSmithKline products.

Multiple designations, even for different product groups, will not be honored. Designations may be changed, but will require thirty (30) days advance written notice to GlaxoSmithKline. GlaxoSmithKline, reserves the right to refuse to extend a contract price to a facility that has failed to designate a GPO/Alliance or that seeks to purchase under agreements with multiple alliances.

PLEASE COMPLETE ALL REQUESTED INFORMATION. (PLEASE PRINT) FAX BACK TO: 919-315-5325 Attn: Rachel Geer

FACILITY NAME _____

DEA # _____

ADDRESS _____

TELEPHONE _____ fax#: _____

** GROUP PURCHASING ORGANIZATION REQUESTED _____
PLEASE REMOVE ME FROM (IF APPLICABLE) _____

PRIMARY WHOLESALER (NAME, CITY, STATE) _____

TYPE OF BUSINESS:

- ☐ On-site inpatient hospital pharmacy
- ☐ On-site outpatient hospital pharmacy
- ☐ On-site hospital clinic
- ☐ Off-site satellite clinic (affiliated with _____ (Hospital Name)
- ☐ State Agency
- ☐ Oncology clinic / pharmacy
- ☐ Student health center
- ☐ Surgery Center
- ☐ Nursing Home Provider/Long Term Care
- ☐ Home health care/home infusion
- ☐ HMO/Managed health care
- ☐ Other (please describe): _____

Is this facility owned, leased, or managed by a hospital or hospital system? YES NO
If so, name and location of hospital or hospital system _____

Is a pharmacy or physician-dispensing unit physically located within this facility? YES NO

Is this pharmacy or physician dispensing unit a closed-door pharmacy?
(i.e. only serves patients and employees of the facility? YES NO

Is this facility for profit? YES NO

ELIGIBILITY: By signing below, Facility certifies that the above information is correct and certifies and agrees that any GlaxoSmithKline product purchased under any agreement shall be for its "Own Use," as defined by the United States Supreme Court in its opinions report at Abbott Laboratories et al. V. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), and Jefferson County Pharmaceutical Association, Inc., V. Abbott Laboratories, et al., 103 S. Ct. 1011 (1983).

_____ _____
Printed Name Signature

_____ _____
Title Date

**** Identify your designation of a group purchasing organization for purchases of GlaxoSmithKline products.**

For Internal use Only:

CRA/Membership Coordinator Reviewed Member information, updates will be fed from CSS to CARS Initials _____
Affiliation: Accepted Rejected if so, Reason

Minnesota Multistate Contracting Alliance for Pharmacy
Minnesota Department of Administration
50 Sherburne Avenue, Suite 112 Administration Building, St. Paul, MN 55155

Attention Confidentiality Protections in this Contract:

Re: Merck Sharp & Dohme MMS15146

The following contract contains language that protects the terms and pricing found in this contract. Please review Article 23 to ensure your compliance.

If you have any questions, please contact MMCAP at 651-201-2420.

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLICANCE FOR PHARMACY

The Contract is between the State of Minnesota, acting through it Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **Merck Sharp & Dohme, Corp, a subsidiary of Merck & Co., Inc.**, PO Box 4, WP39-412, West Point, PA 19486 ("Merck or Vendor").

Pursuant to Minnesota Statutes Section 16C.03, the Commissioner of Administration may enter into this contract on behalf of MMCAP for the benefit of its members.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members' use. Participation in MMCAP is limited to facilities within member states that are specifically permitted by the member state's statutes to purchase goods from the member state's contracts. Participation is generally available to facilities run by state agencies, counties, cities, townships, and school districts.

The Vendor wishes to contract with MMCAP to supply products to MMCAP Participating Facilities (as defined in Section 2.8).

1 **Term of Contract**

1.1 **Effective date:** July 1, 2015 or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

1.2 **Expiration date:** June 30, 2019, or as cancelled pursuant to clause 19. The contract may be extended upon written mutual agreement of the parties.

1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this Contract: 2.10 Returned Goods/Credits; 2.13 Own Use; 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 13. Default and Remedies; 15. Data Disclosure; 21. Exclusion; 23. Confidentiality; 27. Overpayments and Undercharges.

2. **Contracted Pharmaceuticals**

2.1 **Products**

The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP-Contracted Distributors for use by MMCAP Participating Facilities, unless provided according to the exception found in Article 2.2. The current MMCAP-Contracted Distributors are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC.

2.2 **Product Availability through Distributors.**

Vendor and MMCAP agree that MMCAP Participating Facilities may only place orders through the MMCAP distributor's network, and not directly with Vendor.

Purchasing through MMCAP-Contracted Distributors:

The prices for Products covered by this contract will be provided to those MMCAP-Contracted Distributors identified by MMCAP as servicing MMCAP Participating Facilities. Vendor does not establish or control the actual sale prices of Products provided to MMCAP Participating Facilities by MMCAP Contracted Distributors. Rather, those prices are the subject of agreements between the MMCAP Participating Facilities and the MMCAP-Contracted Distributors.

Vendor anticipates that MMCAP-Contracted Distributors will request "chargebacks" to Vendor based on MMCAP Participating Facilities' purchases. To enable Vendor to verify the chargebacks, MMCAP agrees to make available to Vendor, upon its request, proof acceptable to Vendor of all quantities and prices of Product purchased under this contract for the term of this contract and three months thereafter.

Vendor will use commercially reasonable efforts to provide written notice of all Product backorders to MMCAP. Backorder notices must be sent to: MMCAP.Contracts@state.mn.us.
MMCAP will notify Vendor promptly in writing of any deletions or proposed additions to the list of MMCAP-Contracted Distributors.
Vendor will have no obligation to ship Product to any wholesalers in the capacity as MMCAP-Contracted Distributors including the current distributors identified in section 2.1.1 unless and until Vendor is able to reach an agreement with the wholesaler that is acceptable to Vendor. Vendor will use commercially reasonable efforts to notify MMCAP of any issues (e.g., failure to negotiate terms, etc.) with Contracted Distributors that could affect Product availability. Notices must be sent to MMCAP.Contracts@state.mn.us

2.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Merck Product that is a drug that is part of this contract has, if required by law, has an FDA-Certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file.

2.4 **Pricing**

2.4.1 Changes in Price. In the event of a price and/or discount change under this contract, the Vendor shall advise the MMCAP office in writing and provide a revised Attachment A. Vendor has, in its sole discretion, the right to increase or otherwise change the Catalog Prices of any Product at any time upon written notice to MMCAP. Except to the extent otherwise specifically provided herein, Merck's Terms and Conditions of Sale in effect at the time of purchase for the Product shall govern purchases under this agreement. Notwithstanding any other provision of this contract, Merck reserves the right to immediately adjust the discounts on Merck Products available under this contract in the event that the current contract prices available to MMCAP are forecasted by Merck or deemed to set a new Medicaid best price, or a new federal Supply Schedule price, or set a price lower that the price of the relevant Merck Vaccine(s) under Merck's contract with the U.S. Center for Disease Control and Prevention ("CDC") (if applicable).

2.4.2 Vendor must notify all MMCAP-Contracted Distributors of price changes within (5) business days of notifying MMCAP.

2.4.3 In the event of any price increase, MMCAP reserves the right to obtain quotes from other manufacturers and reserves the right to award the product to the Vendor with the best value to MMCAP members.

2.4.4 As specifically noted on the attached price list, the prices are floating Catalog or percentage off Catalog. MMCAP Participating Facilities (as defined in Section 2.8), will receive Discount Guarantees as reflected on the attached pricing list for the Merck Products covered by this Agreement, except as otherwise specified. "Discount Guarantee" means that when the Merck Catalog price changes for a Product in this Agreement, the price of that Product will immediately change, so the MMCAP Participating Facility will receive the same percent discount off the new Merck Catalog price. Initial prices will be discounted from the Merck Catalog in effect on the Effective Date of the Agreement, or the date of the purchase order, whichever is later. The Merck Catalog Price is subject to change at any time.

2.4.5 If the Vendor maintains "Class of Trade" distinctions, the Vendor must follow the requirements of Article 2.8.1 below.

2.5 **Failure to Supply Contracted Pharmaceuticals.**

2.5.1 If the Vendor assigns, discontinues, or deletes a Product from its contract Product line during the course of this contract the Vendor must provide written notice to MMCAP. MMCAP will notify promptly MMCAP Participating Facilities and MMCAP-Contracted Distributors. In the event of a Vendor Product recall or a court action impacting supply of Vendor Product, Vendor will conduct all Vendor Product recalls per its established procedure.

2.5.2 Nothing in the Contract shall be construed to limit or restrict Vendor's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of any Merck product at any time.

2.6 **First DataBank, Inc.** Vendor must make all contracted Products available to be included in the database of First DataBank, Inc. unless such designation is expressly waived by an MMCAP Authorized Representative.

2.7 **Contract Changes.**

2.7.1 *Notifications.*

Vendor shall advise MMCAP by Notification for the following items:

- Change in Vendor's catalog price for a Product
- Change in the Discount percentage for a Product
- Increase in discount for a Product
- Removal of a Product at the NDC Level
- Change in NDC # for a Product

The contract changes above will be effective on the date set forth in the notification, and an updated Attachment A will be sent.

2.7.2 *Amendments.*

Vendor shall advise MMCAP by Amendment for the following items:

- Addition of a Product at the NDC Level

Vendor will provide to MMCAP a letter with the following elements for amendments (if applicable):

- MMCAP Contract Number
- Action (i.e., addition)
- NDC Number
- Product Description
- Packaging
- Contract Price
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's offer

The letter shall serve as an amendment to the contract between the Vendor and MMCAP. The amendment must be accepted by MMCAP and a copy, signed by an authorized State of Minnesota representative, must be returned to Vendor.

2.7.3 Vendor must send confirmation of fully executed Contract amendments to the MMCAP-Contracted Distributors within 5 working days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Contracted Distributors do not receive Contract amendment notification(s), Vendor agrees to honor all chargebacks at the contract price from the date indicated on the fully executed Contract amendment.

2.8 **MMCAP Participating Facilities.**

The Vendor must extend the contract prices to all MMCAP Participating Facilities accepted by the Vendor as MMCAP Participating Facilities. The Vendor must allow qualified new state agencies and political subdivisions joining MMCAP to be added to the current participants' list of MMCAP Participating Facilities and access contract prices throughout the term of this contract subject to the eligibility requirements below.

MMCAP reserves the right to add and delete other members, during the life of this contract subject to the foregoing. Notwithstanding the foregoing, in accordance with Vendor's policy, only those facilities wholly owned by the government, i.e., state, city, county, township, etc. will be eligible to participate under this contract. Other entities, such as quasi-political agencies, not-for-profit agencies and non-governmental, private or parochial schools are excluded from contract eligibility. In the event there are changes in the operation of and/or ownership of any of MMCAP Participating Facilities, MMCAP shall advise Vendor immediately.

2.8.1 MMCAP shall provide to Merck an up-to-date participant list ("MMCAP Participant List" or "List") which may be amended by MMCAP from time to time. A "Participating Facility" will become an "Eligible Participating Facility" for purposes of this agreement when MMCAP adds the Facility to the MMCAP Participation List, and Merck, at its sole discretion, accepts the Facility as a Participating Facility. A Facility will cease to be an Eligible Participating Facility for purposes of this Agreement at the time either MMCAP or Merck determines that the Facility is no longer an Eligible Participating Facility.

2.8.2 Electronic eligible Participating Facility lists will be sent to MMCAP upon request.

2.8.3 For any changes to Merck's list of MMCAP Participating Facilities eligible for specific Merck contract pricing, Merck will reference the information provided on the MMCAP Membership List, notice provided to Merck (e.g. declaration letter), and/or enrollment form to determine the Merck eligible effective date for the MMCAP Participating Facility. MMCAP Participating Facilities, declaring MMCAP as their primary GPO, should send notice (e.g. declaration letter) by email to the following address: MembershipUpdates@merck.com. Discounts for MMCAP Participating Facilities will be effective as of the MMCAP Participating Facility's first purchase under the Agreement. All determinations regarding a Member's class of trade designation and eligibility will be made at Merck's sole discretion. In the event of a dispute regarding a MMCAP Participating Facility's class of trade designation, MMCAP and Merck agree to negotiate in good faith to resolve such disputes, which includes, but is not limited to, the exchange of supporting documentation of a MMCAP Participating Facility's class of trade designation.

2.9 **Administrative Fee.**

2.9.1 **Safe Harbor Compliance**: MMCAP represents and warrants that it is a "group purchasing organization" as defined in 42 C.F.R. § 1001.952 (j) and is therefore eligible to receive payment of administrative fees under such regulation as a safe harbor (under 42 C.F.R. § 1001.952) to fraud, kickbacks, or other prohibited activities described in Section 1128B of the Social Security Act (the "Act"). During the term of this Agreement, MMCAP represents and warrants that it will have a written agreement with each MMCAP Participating Facility that provides the following: The agreement states that participating vendors from which the MMCAP Participating Facility will purchase goods or services will pay a fee to MMCAP of three (3) percent or less of the purchase price of the goods or services provided by that vendor. In addition, MMCAP represents and warrants that it will disclose at least annually to each MMCAP Participating Facility, and to the Secretary of the Department of Health and Human Services upon request, the amount of administrative fees paid to MMCAP by Merck.

2.9.2 **Payment of Administrative Fees**: In consideration of the reports and services provided by MMCAP, Merck will pay an administrative fee at the percentage rate of 1% on all product net sales purchases (minus any returns or credits) made by MMCAP Participating Facilities that are subject to this contract and are made through MMCAP-Contracted Distributors with the exception of the following products for which Merck will not pay an administrative fee: ISENTRESS, KEYTRUDA, CRIXIVAN and NUVARING through the MMCAP Eligible University NUVARING Discount Program. The Administrative Fee earned by MMCAP shall be paid by check or electronic funds transfer. If the administrative fee is paid by check, Merck will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to the administrative fee as set forth above. The administrative fees earned by MMCAP shall be paid within one hundred and twenty (120) days following the end of each Calendar Quarter during the term of the Agreement, and each payment shall be accompanied by records determining the amount of such payment. The quarterly administrative fee data files must be sent to: MnMMCAP@state.mn.us for each Contract Quarter no later than 120 days after the end of the Contract Quarter. Failure to comply with this provision may constitute breach of this contract. Administrative Fee Report Fields (Note: if these data are not available, Merck may leave the noted field blank):

- MMCAP Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)- May be left blank
- MMCAP Assigned Manufacturer Number- May be left blank
- Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)-May be left blank
- Invoice Date (Point of Sale Date)-May be left blank
- Invoice Number- May be left blank
- MMCAP Participating Facility Name
- Vendor's Account Number for the MMCAP Facility
- MMCAP Participating Facility DEA Number, if applicable
- MMCAP Participating Facility HIN Number, if applicable
- MMCAP Participating Facility Address
- MMCAP Participating Facility City
- MMCAP Participating Facility State

- Product's NDC (Use all 11 digits)
- Product Name
- Credit Indicator (C=Credit)- May be left blank
- Contracted Units (the number of units purchased on contract.)
- MMCAP Contracted Unit Price
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030)
- Vendor Contracted Sales (Contracted Units*Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal percentage*Vendor Contracted Sales. Report in dollars.)

To the extent administrative fees are erroneously paid by Merck, MMCAP shall refund such administrative fees to Merck in a timely manner, not to exceed 90 days from the time an error is discovered. A request by MMCAP to reconcile administrative fee calculations must be made within ninety (90) calendar days after receipt of original administrative fee payment. Items in dispute must be clearly identified and accompanied by documentation to support the request for review.

Purchases Eligible for Payment of Administrative Fees. If administrative fees are to be paid on the basis of chargeback data, such fees shall only be paid upon those purchases for which chargeback data has been received and accepted by Merck. If administrative fees are to be paid on the basis of internal sales data, such fees will only be paid upon those purchases for which internal sales data has been received and accepted by Merck. The method of payment of administrative fees (Chargeback data, and/or internal sales data) for Products is set forth in Attachment A.

Unless otherwise specifically set forth in Attachment A, purchases made by MMCAP Participating Facilities at prices mandated by the federal government or any state government or voluntarily provided to such entities at prices below mandated prices (including but not limited to purchases by Disproportionate Share Hospitals at federally mandated discounted prices or below such prices) shall not be used in the administrative fee calculation.

2.10 **Returned Goods/Credits.** Vendor agrees to accept the return of Products in accordance with Vendor's published policy in effect at the time of purchase, provided, however, that Vendor agrees to accept the return of products delivered by Vendor in error without charge and for full credit. Vendor reserves the right to change this policy. A copy of Vendor's returned goods policies are available to MMCAP upon request.

2.11 **Value-Added Programs.** Deleted in its entirety.

2.12 **DEA Number and HIN Numbers.** Unless MMCAP Participating Facilities purchases controlled substances, the Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration (DEA) number assigned to it in order to be eligible for contract prices. The Vendor may require a Health Industry Number (HIN) from MMCAP Participating Facilities. Even if a DEA number is not required, MMCAP agrees that the receiving facility for an MMCAP Participating Facility must be in compliance with state and federal licensing requirements authorizing the handling of products. MMCAP hereby consents to release its member's DEA registration and HIN number(s) to Merck Sharp & Dohme, Corp. and to MMCAP-Contracted Distributors in order to administer this Agreement and for Merck Sharp & Dohme, Corp. to release its DEA registration number(s) to MMCAP-Contracted Distributors in order to administer this Agreement.

2.13 **Own Use.** No MMCAP Participating Facility shall purchase any Merck Product under this Agreement except Merck Product for the institution's "own use" in accordance with Abbot Laboratories v. Portland Retail Druggists Association, 425 U.S. 1 (1976) and Merck product purchased at a discount not be resold by a MMCAP Participating Facility. If Merck Product purchased under this Agreement is not dispensed consistent with this Section 2.13, such MMCAP Participating Facility will provide Merck with an accounting for all such dispensing and shall return all discounts attributable to such dispensing to Merck. Such accounting shall be made and return of discounts paid prior to the end of the month following any purchases not for "own use."

For any violation of this "own use" provision Merck may exclude such MMCAP Participating Facility from participation in this Agreement. Return of discounts is a non-exclusive remedy for violation of this "own use" provision and supplements other available legal and equitable remedies to which Merck may be entitled. Notwithstanding institution's "own use" policies, Merck products purchases at a discount under this Agreement may not be transferred to entities that are not MMCAP Participating Facilities under this Agreement .If Attachment A provides that discounted pricing is available only for dispensing for inpatient use or otherwise provides a specific limitation on the permitted utilization of discounted product, this "own use" clause shall not be interpreted as expanding the permitted use or dispensing of the Product under this Agreement. MMCAP Participating Facilities are on notice of restrictions on the resale of prescription pharmaceutical products imposed by law, including without limitation the Prescription Drug Marketing Act, and especially 21 U.S.C. § 353(c).

2.14 **Product Dating.** Deleted in its entirety.

2.15 **Direct Contract with Participating Facilities.** MMCAP does not authorize any direct contracts with its members using "MMCAP Pricing." Any direct contracts between the Vendor and a MMCAP Participating Facility may not refer to the pricing as "MMCAP Pricing."

3. **Authorized Representatives.** MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155. The Vendor's Authorized Representative is the appropriate Private Sector Customer Manager, Merck & Co., Inc., WP39-412, 770 Sumneytown Pike, West Point, PA 19486-0004.

Merck field representatives are available to MMCAP Participating Facilities' healthcare professionals for discussions regarding the benefits and limitations of Merck products. Vendor and MMCAP agree that Merck field representatives will continue to call on and communicate with physicians, directors of pharmacy and other appropriate member personnel of MMCAP and MMCAP Participating Facilities to provide Product related information for the Vendor Products subject to this contract.

Should MMCAP or a MMCAP Participating Facility, or one of its agents or employees, wish to use, discuss, or promote one or more of Vendor's Products in a fashion inconsistent with or contrary to the said Prescribing Information for those Products ("Out of Label Discussion"), such Out of Label Discussion shall be its independent act, and in doing so shall it be acting outside of this contract and not as Vendor's agent or representative.

4. **Assignment, Amendments, Waiver, and Contract Complete**

4.1 *Assignment.* Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement.

4.2 *Amendments.* Any amendment to this Contract must be in writing and will not be effective until it has been executed by both parties. Vendor agrees to use the amendment process set forth in Article 2.7 above.

4.3 *Waiver.* If MMCAP or Vendor fails to enforce any provision of this Contract, that failure does not waive the provision or such party's right to enforce that provision or any other provision of this Contract.

4.4 *Contract Complete.* This Contract, including all Attachments hereto, constitutes the entire contract and understanding of the parties, subject to subsequent amendments pursuant to Section 4.2, and supersedes all prior agreements, written or oral, between the parties.

5. **Liability.** Each party will be responsible for their own acts and behavior and the results thereof. The Parties shall be considered independent of each other at all times. Nothing in this Contract shall be construed to constitute the existence of any agency, joint venture, partnership, or fiduciary relationship between the Parties. MMCAP shall choose the means to be employed in carrying out its obligations under this Contract.

6. **State Audits.** Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.
Vendor shall have the right, upon written notice, to review and audit data and other documentation of MMCAP and any MMCAP Participating Facility, as necessary to verify MMCAP's or such MMCAP Participating Facility's compliance with its obligations under this contract. An independent third-party auditor may, at Vendor's sole discretion, conduct such review and audit, provided that such auditor shall agree to maintain the confidentiality of MMCAP and each MMCAP Participating Facility's confidential data and documentation. Vendor's ability to audit shall be limited to once in any consecutive twelve (12) month period. The terms of this audit section shall survive termination of this contract for a period of one year.

7. Government Data Practices

7.1 *Government Data Practices.* The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as is applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this clause, the Vendor must immediately notify MMCAP, and provide a reasonable opportunity to object to such request. MMCAP will give the Vendor instructions concerning the release of the data to the requesting party before the data is released.

8. **Publicity Endorsement**

8.1 **Publicity.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, information pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

8.2 **Endorsement.** The Vendor must not claim that MMCAP endorses its Products or services.

9. **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Contract. In the event of any dispute relating to the terms, conditions or performance of any obligation of this Contract, MMCAP, each MMCAP Participating Facility and Vendor shall first engage in good faith negotiations, including the involvement of senior management, before instituting any litigation. Absent extenuating circumstances that require earlier legal action in order to avoid irreparable harm or substantial damages, such negotiations shall proceed for a minimum of 30 days. For purchases placed through MMCAP Contracted Distributors, the terms and conditions of sale shall be as agreed to between the MMCAP Contracted Distributors and the MMCAP Eligible Participating Facility.

10. **Antitrust.** Deleted in its entirety.

11. **Force Majeure.** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, war, raw material shortage, labor dispute, or other events that are beyond that party's reasonable control.

12. **Severability.** If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

13. **Default and Remedies.** A material breach of any term or conditions of this contract constitutes cause to declare the Contract or any order under this Contract in default:

Written notice of default, and a reasonable opportunity to cure (not to be less than 30 days), must be issued by the part claiming default. Time allowed for cure will not diminish or eliminate any liability for damages. If the default remains after the opportunity for cure, the nondefaulting party may:
(a) Exercise remedy provided by law or equity; or
(b) Terminate the Contract or any portion thereof; including any orders issued against the Contract.

14. **Certification.** Manufacturer warrants that, at the time of shipping, Products will, in all material respects, have been manufactured in conformance with current good manufacturing practices as set forth in Title 21 of the Code of Federal Regulations effective at the time of manufacture, and will not be manufactured, sold or shipped in violation of any applicable federal, state, or local laws or regulations in any material respect. This warranty is in lieu of all other warranties, express or implied, and all other warranties, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
Because Vendor cannot control the conditions under which drugs are administered, its guaranty is only pharmaceutical in character, relating solely to the identity and quality of ingredients used in the products at the time they are manufactured and the care and skill exercised in their manufacture.

15. **Data Disclosure.** In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

16. **Insurance Requirements.**
Vendor warrants that it maintains a policy or program of insurance or self-insurance at levels sufficient to support the obligations herein.

17. **Laws and Regulations.** Both Parties will comply with all applicable Minnesota and federal laws, including Minnesota Statues Section 181.59.

18 **Affirmative action requirements for contracts in excess of $100,000 and if Vendor has more than 40 full-time employees in Minnesota or its principal place of business.** The State of Minnesota intends to carry out its responsibility for requiring affirmative action by its vendors.

18.1 *Covered contracts and Vendors.* If the Contract exceeds $100,000 and Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then Vendor must comply with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules 5000.3400-5000.3600. If Vendor is covered by Minnesota Statutes Section 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, it must certify that it is in compliance with federal affirmative action requirements.

18.2 ***Minnesota Statutes Section 363A.36.*** Minnesota Statutes Section 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

18.3 ***Minnesota Rules 5000.3400-5000.3600.***

18.3.1 *General.* Minnesota Rules 5000.3400-5000.3600 implements Minnesota Statutes Section 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules 5000.3400-5000.3600 including, but not limited to, Minnesota Rules 5000.3420-5000.3500 and 5000.3552-5000.3559.

18.3.2 *Disabled Workers.* Vendor must comply with the following affirmative action requirements for disabled workers.

18.3.2.1.1 Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

18.3.2.1.2 Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

18.3.2.1.3 In the event of Vendor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

18.3.2.1.4 Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

18.3.2.1.5 Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Vendor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

18.3.3 *Consequences.* The consequences for Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State of Minnesota.

18.3.4 *Certification.* Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

19. Cancellation.

A. Termination of Contract Upon Notice by a Party. Either MMCAP or Merck may terminate this Contract with or without cause upon thirty (30) days' prior written Notice.

B. Individual Applicable Product Termination. Any individual Product, (including any individual strength, presentation, form or formulation thereof), listed in Attachment A may be terminated from this Contract by Merck upon thirty (30) days' prior written Notice.

In addition, Merck may, in its sole discretion, terminate any Product Special Pricing Program included on Attachment A in accordance with the terms of the Special Pricing Program without terminating the entire Product from the Contract.

C. Immediate Termination. MMCAP or Merck may terminate this Contract immediately upon material breach by the other Party. MMCAP or Merck may terminate this Contract immediately upon a determination or opinion by any court or any governmental agency that the arrangements and transactions required or contemplated under the Contract constitute a violation of any law or regulation. Merck may terminate this Contract immediately upon the insolvency, dissolution, liquidation, receivership or other similar reorganization of MMCAP, whether voluntary or involuntary.

D. Survival. Expiration or termination of this Contract for whatever the reason shall not affect the rights and obligations of the Parties accruing prior to the effective date of such expiration or termination or reasonably intended to survive termination, as defined in Section 1.3.

MMCAP represents and warrants that it has the full power and authority to act on behalf of MMCAP Participating Facilities for purposes of this Agreement and that, in order to purchase Merck products at a discount pursuant to this Agreement, each MMCAP Participating Facility is contractually obligated to MMCAP to comply with terms and conditions of this Agreement and MMCAP will enforce such contractual obligations.

20. **Disclosure Requirements.**

MMCAP, for itself, and its MMCAP Participating Facilities are aware of and will comply with Section 1128B(b) of the Act (42 U.S.C. 1320a-7b) and 42 C.F.R. § 1001.952(h) and 42 C.F.R § 1001.952(j) with respect to Products supplied under this Contract. Specifically, MMCAP and its MMCAP Participating Facilities acknowledge that the Act requires proper disclosure of any discounts, rebates, administrative fees, credits, reimbursements and other like programs provided for herein and represent and warrant that MMCAP and its MMCAP Participating Facilities will comply with such disclosure requirements.

MMCAP, for itself, and its MMCAP Participating Facilities represent and warrant that they will accurately report the net effective discount price, and any other information that must be disclosed under applicable law, for each Product for which a discount has been paid under this Contract to the U.S. Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, enrollees and other individuals to the extent required under applicable federal or state law. Without limitation of the foregoing, all discounts and other remuneration paid by Merck under this Contract, and any other information that must be disclosed under applicable law, shall be disclosed to the Centers for Medicare and Medicaid Services ("CMS") in accordance with (i) CMS guidance (as it may be revised from time to time), (ii) any disclosure requirements in MMCAP and its MMCAP Participating Facilities' pharmacy contracts with Medicare Part D plans or other third-parties; and (iii) any other disclosure or reporting obligations or requirements imposed by federal or state laws, regulations, or guidance. Confidential treatment shall be requested for any disclosures made to CMS and Medicare Part D Plans to the extent permitted by law.

MMCAP represents and warrants that it has informed and will continue to inform its Participating Facilities of the disclosure obligations set forth in this Section and has provided and will continue to provide MMCAP Participating Facilities with all information necessary, including but not limited to the value of the discounts provided under this Contract, the net effective prices of the Products, and any other information that must be disclosed under applicable law, for the MMCAP Participating Facilities to comply with the reporting obligations set forth in this Section.

21. **Exclusion.**

MMCAP represents and warrants that prior to the effective date of this Contract, it has screened itself, and its officers and directors against the Exclusions Lists and that it has informed Merck if it or any of its officers or directors has been in Violation. After the execution of the Contract, MMCAP shall notify Vendor in writing immediately if any such Violation occurs or comes to its attention. Vendor shall also have the right, in its sole discretion, to terminate this Contract immediately in the event of any such Violation.

Vendor represents and warrants that prior to the effective date of this Contract, it has screened itself, and its officers and directors against the Exclusion Lists and that it has informed MMCAP if it or any of its officers or directors has been in Violation. After the execution of the Contract, Vendor shall notify MMCAP in writing immediately if any such Violation occurs or comes to its attention. MMCAP shall also have the right, in its sole discretion, to terminate this Contract immediately in the event of any such Violation.

For the purpose of this Section the term "Violation" shall mean that either MMCAP, or any of its officers or directors or Vendor, or any its officers or directors has been: (1) convicted of any of the felonies identified among the exclusion authorities listed on the U.S. Department of Health and Human Services Office of Inspector General (OIG) website, including 42 U.S.C. 1320a-7(a) (http://oig.hhs.gov/ exclusions/authorities.asp); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (https://oig.hhs.gov/ exclusions/index.asp) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (http://www.sam.gov); or (3) listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or non-procurement programs, including under 21 U.S.C. 335a (http://www.fda.gov/ora/compliance_ref/debar/) (each of (1), (2) and (3) collectively the "Exclusions Lists").

22. **Product Position** As a condition of receiving discounts for an individual Merck Product offered under this Agreement, MMCAP shall agree not to, during the term of this Contract, place the individual Merck Product in a disadvantageous position (disadvantaging activities). If MMCAP should decide to pursue any additional savings through formulary management, MMCAP will provide Merck with 90 days advanced notice during which time Merck will be given an opportunity to provide MMCAP with a proposal.

Nothing in this Agreement is intended to restrict, limit or preclude an individual physician from making an independent prescribing decision based on such physician's medical judgment in the best interest of his/her patient's care. Furthermore, neither party shall take any action to restrict, limit or preclude a physician from exercising the physician's independent prescribing authority in the best interest of his/her patient care as determined by the physician in consultation with his/her patient, based on the physician's independent medical judgment.

An example of an activity that would constitute placing an individual Product in a disadvantageous position includes but is not limited to:

- Establishing a formulary that excludes the individual Product, if the formulary includes a therapeutic category or categories in which such individual Product competes.
- Promoting a competitor's product, in a therapeutic class in which the individual Product competes, to be utilized in a manner other than what is stated in the prescribing information.
- Counterdetailing the individual Product. For purposes of this Agreement, "Counterdetailing" shall include, but will not be limited to, (a) any communications by MMCAP that disadvantages or discourages the dispensing of the individual Product in favor of a competitive product within the same therapeutic class,. (b) any effort by MMCAP to actively encourage an Participating Facility to disadvantage or discourage the dispensing of the individual Product in favor of a competitive product within the same therapeutic class or to actively replace prescriptions or purchases of the individual Product with competitive products, whether generic or branded within the same therapeutic class,. Counterdetailing does not include (i) actions related to drug interactions with other prescription or over-the-counter drug products, (ii) actions related to contraindications for the individual Product, (iii) restrictions or curtailment of the individual Product for clinical reasons relating to patient safety as generally accepted in the U.S. medical community , or (iv) generic substitution or intervention, provided that the substituted generic is the biological equivalent (AB rated) of individual Product.

If MMCAP places an individual Product under this Agreement in a disadvantageous position Merck shall have the option of (1) immediately discontinuing the payment of administrative fees, if any, on

such individual Product, (2) immediately changing the prices of such individual Product to current Catalog prices, and/or (3) immediately deleting such individual Product from this Agreement. If Merck does not provide MMCAP a proposal during the 90-day period or if Merck's proposal is not accepted by the MMCAP Pharmacy & Therapeutics Committee, MMCAP will be able to place individual Products under this Agreement in a disadvantageous position with the understanding that options 1, 2 and 3detailed above apply.

23. Confidentiality.

During the term of this Contract and for a period of five (5) years following the date of expiration or termination of this Contract, MMCAP agrees to keep the pricing of this Agreement non-public, except when such disclosure is required by applicable law. If the situation arises where disclosure is requested, notification of a request to release would be sent immediately to the Vendor's Authorized Representative. Vendor will acknowledge receipt of the notification within five business days or MMCAP will be free to release the information. Upon notification to MMCAP, Vendor, at its own expense, may pursue an action to enjoin the disclosure of information considered by the Vendor to be "confidential information."

Without prior notice, MMCAP may release the following information:
a. Contract Release and contract documents to MMCAP Members and Participating Facilities;
b. Contract pricing to MMCAP's Contracted Distributors for use in the Contracted Distributor's ordering, invoicing, and reporting systems;
c. Contract pricing to other third parties under non-disclosure agreement or contract with MMCAP to perform specific tasks such as auditing and data analysis; and
d. Member State Attorneys General or auditors requiring contract or pricing data to perform their duties

24. Notices. All notices shall be sent by registered or certified mail, overnight delivery with tracking capability, facsimile with confirmed receipt to the individual listed below (or such other address as a party may from time to time designate in writing), or electronic mail to mmcap.contracts@state.mn.us and shall be deemed to have been given on the date of mailing by registered or certified mail, overnight delivery or facsimile or electronic mail. All administrative correspondence (membership lists, prime vendor lists, etc.) shall be sent to:

For Merck:	For MMCAP:
Joe Denshaw	MMCAP Manager
Director	Minnesota Multistate Contracting Alliance for Pharmacy
Customer Contract Management	112 Administration Building
WP39-412	50 Sherburne Avenue
Merck Sharp & Dohme, Corp.	St. Paul, MN 55155
West Point, PA 19486-0004	(651) 201-2420
(215) 652-7091	mmcap.contracts@state.mn.us
Fax: 215-616-9001	
contractprocessing@merck.com	

25. **Additional Terms and Conditions.**
Merck reserves the right to adjust or eliminate discounts or rebates on Merck Products (including any dosage strength, presentation, dosage form, or formulation of an Applicable Product), or any fixed dose combination of the active ingredient of such Applicable Product with a generic agent (e.g. HCTZ or metformin) by Notice as of the later of the following two dates:

- The first day of the first calendar month commencing after the date of expiration of patent exclusivity based on the Basic Product Patent for such Merck Product; or
- The first day of the first calendar month commencing after the date of expiration of any other exclusivity based on or applied to the Basic Product Patent for such Merck Product.

Merck reserves the right to adjust or eliminate discounts or rebates on a Merck Product by Notice if a product that is approved by the FDA as bioequivalent to the Merck Product becomes available for commercial distribution in the United States before the later of the two dates set forth above.

26. **Counterparts.** This Contract may be executed in counterparts, all of which, taken together, shall form a single Agreement.

27. **Authority.** MMCAP represents and warrants that is has the full power and authority to act on behalf of MMCAP Participating Facilities for purposes of this Agreement and that, in order to purchase Merck products pursuant to this Agreement, each MMCAP Participating Facility is contractually obligated to MMCAP to comply with terms and conditions of this contract and MMCAP will enforce such contractual obligations.

28. **Overpayments and Undercharges.**
During the term of this Contract and for a period of three (3) years following the date of expiration or termination of this Contract, if Vendor reasonably determines as a result of an inspection or audit of MMCAP and/or a Participating Facility, or through other information, that all or any part of the pricing on Products previously granted by Vendor to MMCAP and/or the Participating Facility is inconsistent with the terms and conditions of this Agreement, the Participating Facility shall pay the undercharge to Vendor no later that thirty (30) days after Vendor notifies MMCAP in writing of the undercharge. In the event Vendor has overcharged the MMCAP Participating Facility, the Vendor will credit the MMCAP Participating Facility within thirty (30) days of the discovery. MMCAP agrees to help facilitate the recovery of any overpayment from Participating Facilities.

1. MERCK SHARP & DOHME, CORP, a SUBSIDIARY OF MERCK & CO., INC.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: Sr. Manager Market Policy

Date: 6/15/2015

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: Dorothea Christensen

Title: Pharmacy Analyst

Date: 06-08-15

3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: Dao Hong, PharmD MBA

Title: Pharmacist Senior

Date: June 8, 2015

Merck Sharp & Dohme, Corp., a subsidiary of Merck & Co., Inc. Contract MMS15146

Amendments 1 - 3 are not posted for viewing

MMCAP AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS15146

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., P.O. Box 4, WP39-440, West Point, PA 19486-0004 ("Merck" or "Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS15146 ("Agreement").

Reference: MMCAP AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS15146 ("Amendment No. 4")

This amendment ("Amendment 4) amends contract MMS15146 executed between Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc. and the State of Minnesota through its Commissioner of Administration on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) effective July 1, 2015 ("Agreement"). The purpose of this Amendment 4 is 1) to add the Special Pricing Product Program entitled, "Department of Corrections Program for ZEPATIER™"; and 2) to add administrative fee of 1% for net sales of ZEPATIER™ to the Agreement. Now, therefore, the parties agree as follows:

1. The specific terms and conditions of the Department of Corrections Program For ZEPATIER™ and enrollment form are enclosed as a new Schedule E to be added to the Agreement.

2. Section 2.9.2 is hereby amended to include an administrative fee of 1% for the net sales of the Department of Corrections Program For ZEPATIER™.

All other terms and conditions of the Agreement remain unchanged.

If you accept Amendment No. 4, please sign, date, and return one copy to contractprocessing@merck.com, or facsimile number 215-616-9001, or Customer Contract Management, Merck Sharp & Dohme Corp., 770 Sumneytown Pike, WP39-412, West Point, PA 19486-0004. If an electronic copy is submitted to Merck via email or fax, it is not necessary to also mail a hard copy of the signed Amendment. Amendment No. 4 shall become effective April 15, 2016, provided that this Amendment is accepted by MMCAP and a signed copy of this letter is returned to Merck on or before March 31, 2016. Otherwise, the effective date of this Amendment shall be either the first day or the fifteenth day of the month beginning at least fifteen (15) days after Merck receives an executed copy. This offer may be deemed withdrawn if Merck does not receive a fully executed Amendment by June 30, 2016.

If you have questions regarding this Amendment, please contact your Merck Senior Account Manager, John Durand at 262-212-6040.

MMCAP AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS15146

1. MERCK SHARP & DOHME, CORP.,
a subsidiary of Merck & Co., Inc.

The vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: Sr. Vice President, Integrated Account Management

Date: 3-25-16

2. STATE OF MINNESOTA FOR MMCAP
In accordance with Minn. Stat. § 16C.03, subd. 3

By: _____

Title: Pharm Analyst

Date: 03-25-16

3. COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. § 16C.03, subd. 2

By: _____

Title: _____

Date: March 25, 2016

SCHEDULE E: ENROLLMENT FORM
DEPARTMENT OF CORRECTIONS PROGRAM FOR ZEPATIER™

Return Completed Form to lopprocessingcenter@merck.com with a copy to MMCAP.Contracts@state.mn.us

Name of Participating Facility: _____
To be valid, form must be completed by an individual authorized to complete form for the Participating Facility. Provide the identification information for each Participating Facility at the end of this form.

Group Purchasing Organization ("GPO") Selection Declaration:
By signing this document, the Participating Facility is authorizing Merck Sharp & Dohme, Corp, a subsidiary of Merck & Co., Inc. ("Merck") to change its group purchasing affiliation and acknowledges and agrees to be bound by the terms and conditions set forth herein. The Participating Facility is selecting or changing its GPO selection for buying Merck products:

Current GPO Affiliation: _____
New GPO Affiliation: Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP")

Signature: _____ Date: _____

Name/Title: _____

Covered Products

NDC	Product
00006-3074-02	Zepatier™(elbasvir and grazoprevir). Carton containing two (2) 14-count child-resistant dose packs for a total of 28 tablets

For purposes of the Department of Corrections Program for Zepatier™ (the "Program"), the above Covered Product is referred to as "ZEPATIER." Capitalized terms not herein defined shall have such meanings as set forth in MMCAP Contract Number: MMS15146, effective July 1, 2015, by and between MMCAP and Merck (the "Agreement"). The Participating Facility agrees that it has read and fully understands the terms and conditions of the Agreement and agrees to be bound by the terms and conditions set forth in the Agreement.

Choice of Discount Structure

To qualify for the discounts on purchases of ZEPATIER, the Participating Facility must achieve the Participation Requirements set forth below. All discounts are based off the Merck published Catalog price at the time of purchase. Merck reserves the right to adjust the Catalog price at any time.

Select One Discount Type	Discount	Participating Facility's Requirements
	[redacted]	• ZEPATIER must be designated as the exclusive Hepatitis C Virus Direct Acting Antiviral on formulary • Participating Facility must be in the Correctional Institutions class of trade as determined by Merck for dispensing to Eligible Inmates (as such term is defined below)
	[redacted]	• ZEPATIER must be on formulary • Participating Facility must be in the Correctional Institutions class of trade as determined by Merck for dispensing to Eligible Inmates (as such term is defined below)

Exclusive Status:
Exclusive on formulary status for ZEPATIER is hereby defined as the only Hepatitis C Virus Direct Acting Antiviral on formulary for all approved indications for medically appropriate patients. In addition, designating ZEPATIER as the exclusive Hepatitis C Virus Direct Acting Antiviral on formulary means that the Participating Facility will:

- List ZEPATIER as the exclusive Hepatitis C Virus Direct Acting Antiviral on formulary for all approved indications on all communications regarding Hepatitis C Virus Direct Acting Antiviral products to the Participating Facility's physicians, pharmacists, and other appropriate parties; and

MERCK

SCHEDULE E: ENROLLMENT FORM
DEPARTMENT OF CORRECTIONS PROGRAM FOR ZEPATIER™

Return Completed Form to lopprocessingcenter@merck.com with a copy to MMCAP.Contracts@state.mn.us

- Not prefer, either directly or indirectly, any competing Hepatitis C Virus Direct Acting Antiviral product listed below over ZEPATIER for use in its approved indications except for reasons of a contraindication or individual patient medical appropriateness (for clarity, Participant may have other Hepatitis C Virus Direct Acting Antivirals on formulary for individual patients for whom ZEPATIER is contraindicated or has otherwise been determined not to be medically appropriate by a prescriber).

On Formulary Status:
On Formulary Discount status for ZEPATIER is hereby defined as a Hepatitis C Virus Direct Acting Antiviral on formulary for all approved indications for medically appropriate patients. In addition, designating ZEPATIER as a Hepatitis C Virus Direct Acting Antiviral on formulary means that the Participating Facility will:

- List ZEPATIER as a Hepatitis C Virus Direct Acting Antiviral on formulary for all approved indications on all communications regarding Hepatitis C Virus Direct Acting Antiviral products to the Participating Facility's physicians, pharmacists, and other appropriate parties; and
- Not prefer, either directly or indirectly, any competing Hepatitis C Virus Direct Acting Antiviral product listed below over ZEPATIER for use in its approved indications except for reasons of a contraindication or individual patient medical appropriateness (for clarity, the Participating Facility may have other Hepatitis C Virus Direct Acting Antivirals on formulary for individual patients for whom ZEPATIER is contraindicated or has otherwise been determined not to be medically appropriate by a prescriber).

Hepatitis C virus Direct Acting Antiviral Competing Products
ZEPATIER, Sovaldi, Harvoni, Technivie, Viekira Pak

Eligibility and Enrollment

Eligibility to be a Participating Facility in the Program is limited to the Correctional Institutions class of trade (as such class of trade is determined by Merck in its sole discretion as set forth in Section 2.8.3 of the Agreement) that (1) purchase ZEPATIER for use in the treatment of Eligible Inmates (as such term is defined below), and (2) list ZEPATIER as Exclusive or On Formulary for Hepatitis C Virus Direct Acting Antivirals. "Eligible Inmate" means an individual incarcerated at a Participating Facility, provided; however, that Eligible Inmates shall not include individuals (i) enrolled in other organizations that purchase ZEPATIER other than pursuant to this Product Program, (ii) for whom entities, organizations, or governmental programs other than the Participating Facility are directly responsible for paying the cost of pharmaceutical products administered or dispensed to such individual (i.e., the Participating Facility may not seek reimbursement from a third party for the cost of Covered Product), or (iii) parolees, with the exception of parolees who may receive a limited and reasonable supply of pharmaceutical products they have already been prescribed when leaving the Participating Facility.

Product purchased under this Program may only be purchased by a Participating Facility for its own use for the treatment of Eligible Inmates.

In the event that a Participating Facility no longer lists ZEPATIER as (1) the Exclusive or (2) an On Formulary Hepatitis C Virus Direct Acting Antiviral, Participating Facility agrees to notify Merck (through Merck Customer Contract Management) in writing within five (5) business days. Notifications received by Merck in the first fifteen days of a calendar month will result in termination of participation in the Program and termination of discounts effective on the first day of the following calendar month. Notifications received by Merck after the fifteenth day of a calendar month and before the first day of the next calendar month will result in termination of participation in the Program and termination of discounts effective on the fifteenth day of the following calendar month. After delivery of such notice, the Participating Facility shall remain enrolled in the Program but will lose Formulary Commitment Discounts. The Participating Facility may still be eligible for GPO base pricing, if any, on ZEPATIER consistent with the terms of the agreement between the Participating Facility's GPO and Merck.

Newly Enrolling Participants: Participating Facilities that are in the Correctional Institutions class of trade may elect to enroll in the Program for ZEPATIER by submitting this enrollment form and following the required enrollment procedures. By submitting the enrollment form, newly-enrolling Participating Facilities in the Program for ZEPATIER are representing and warranting that they have designated ZEPATIER as (1) the Exclusive or (2) an On Formulary Hepatitis C Virus Direct Acting Antiviral.

MERCK

SCHEDULE E: ENROLLMENT FORM
DEPARTMENT OF CORRECTIONS PROGRAM FOR ZEPATIER™

Return Completed Form to lopprocessingcenter@merck.com with a copy to MMCAP.Contracts@state.mn.us

General Terms and Conditions

The Participating Facility must be accepted by Merck, in its sole discretion, as eligible to participate in the Program. Merck reserves the right to modify these terms, in its sole discretion, upon fifteen (15) days' written notice to the Participating Facility and after fifteen (15) days of delivery of such notice, the Participating Facility shall be automatically enrolled by Merck into an updated Program for ZEPATIER. By participating in the updated Program, the Participating Facility shall be deemed to have agreed to the terms of the updated Program. Unless explicitly authorized by Merck, discounts offered under this Program shall not be combined with any other discounts or rebates.

Merck may terminate the Program for any reason or no reason within fifteen (15) days' written notice to the Participating Facility. Nothing herein shall be construed to limit or restrict Merck's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of ZEPATIER at any time.

Merck has the right to request verification and documentation and to conduct inspections and/or audits of the Participating Facility's books, records, and files to ensure compliance with the terms hereunder and the terms of the Agreement. Merck may terminate enrollment of the Participating Facility in the Program immediately upon breach of the terms contained herein or those terms set forth in the Agreement. In the event of any breach by the Participating Facility, the Participating Facility shall return to Merck all discounts received during the time of any such breach. The Participating Facility and Merck agree to negotiate in good faith the date by which all such discounts shall be received by Merck. Return of discounts and removal from Merck/MMCAP contract pricing is the exclusive remedy for the violation of the terms of the Program and the Agreement.

The Participating Facility may terminate their enrollment in the Program for any reason or no reason at all within fifteen (15) days written notice to Merck.

The effective dates for the Participating Facility's enrollment in the Program will be based on the date Merck receives the form via tracked overnight courier, fax, or email and accepts the form. Forms received and accepted by Merck in the first fifteen days of a calendar month will result in an effective date of the first day of the following calendar month. Forms received and accepted by Merck after the fifteenth day of a calendar month and before the first day of the following calendar month, will result in an effective date of the fifteenth day of the following calendar month. In order to enroll in the Program, please return this completed form to below address:

Merck Sharp & Dohme Corp.
Customer Contract Management
770 Sumneytown Pike WP39-412
West Point, PA 19486
Email:lopprocessingcenter@merck.com
Fax: 215-616-1770

All other notices required under the terms set forth herein and under the Agreement shall be sent to Merck at the address set forth above.

MERCK

SCHEDULE E: ENROLLMENT FORM
DEPARTMENT OF CORRECTIONS PROGRAM FOR ZEPATIER™

Return Completed Form to lopprocessingcenter@merck.com with a copy to MMCAP.Contracts@state.mn.us

Participant Identification

Complete Participant Identification information below. **Multiple copies of this page may be submitted or a separate list with all of the required information may be attached.**

Facility Name:		
*DEA Number: or HIN Number(required if no DEA)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
Current Authorized Wholesaler		
Merck Account Manager or Representative: If known		
Facility Name:		
*DEA Number: or HIN Number(required if no DEA)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
Current Authorized Wholesaler		
Merck Account Manager or Representative: If known		
Facility Name:		
*DEA Number: or HIN Number(required if no DEA)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
Current Authorized Wholesaler		

MERCK

Merck Sharp & Dohme, Corp., a subsidiary of Merck & Co., Inc.
Contract MMS15146

Amendment 6
is not posted for viewing

MMCAP AMENDMENT NO. 7 TO MMCAP CONTRACT NO. MMS15146

THIS AMENDMENT is by and between the State of Minnesota, acting through its Commissioner of Administration on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., P.O. Box 4, WP39-440, West Point, PA 19486-0004 ("Merck" or "Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS15146 ("Agreement").

Reference: MMCAP AMENDMENT NO. 7 TO MMCAP CONTRACT NO. MMS15146 ("Amendment No. 7")

This Amendment 7 amends contract MMS15146 executed between Merck and MMCAP effective July 1, 2015 ("Agreement"). The purpose of this Amendment 7 is: 1) to add base pricing for NEXPLANON® (etonogestrel implant); 2) to update section 2.9.2 Payment of Administrative Fees to include NEXPLANON® as one of the products Merck will not pay an administrative fee; 3) to add Theracom LLC and Curascript SD Specialty Distribution as Vendor-Contracted Distributors for purchases of Nexplanon® made by MMCAP Eligible Members to the Agreement; and to update Section 2.2 Product Availability to include Vendor-Contracted Distributors for Nexplanon®; 4) to delete Schedule E of the Agreement in its entirety and replace it with a revised Schedule E Special Pricing Product Program entitled, "Discount Program for ZEPATIER™." Now, therefore, the parties agree as follows:

1. Attachment A will be updated to include the following:

Catalog Name	NDC	Size	Discount off Catalog Price
NEXPLANON® (etonogestrel implant)	00052-4330-01	Single rod implant pre-loaded in disposable applicator	[redacted]
NEXPLANON® (etonogestrel implant)	00052-0274-01	Single-rod implant pre-loaded in disposable applicator	[redacted]

2. The first sentence of Section 2.9.2 is hereby amended to include NEXPLANON® as one of the products Merck will not pay an administrative fee.

   Section 2.9.2 Payment of Administrative Fees: In consideration of the reports and services provided by MMCAP, Merck will pay an administrative fee at the percentage rate of 1% on all product net sales purchases (minus any returns or credits) made by MMCAP Participating Facilities that are subject to this contract and are made through MMCAP-Contracted Distributors with the exception of the following products for which Merck will not pay an administrative fee: ISENTRESS, KEYTRUDA, CRIXIVAN, NEXPLANON and NUVARING through the MMCAP Eligible University NUVARING Discount Program.

3. Section 2.2 Product Availability through Distributors is updated to include the following:

   Purchasing Nexplanon® through Vendor-Contracted Distributors:

   MMCAP Participating facilities will order Nexplanon® from Theracom LLC and Curascript SD Specialty Distribution (the "Vendor Contracted Distributors") by phone, fax, or online.

   Theracom LLC
   4350 Northern Pike, Suite 105
   Monroeville, PA 15146

   Curascript SD Specialty Distribution
   255 Technology Park
   Lake Mary, FL 32746

   TheraCom
   Telehone: 1-866-318-3492
   Fax: 1-866-769-3882
   Online: www.theracom-nexplanon.com

   Curascript SD Specialty
   Telehone: 1-877-599-7748
   Fax: 1-800-862-6208

MMCAP AMENDMENT NO. 7 TO MMCAP CONTRACT NO. MMS15146

Online: www.curascriptsd.com/nexplanon

4. Schedule E "Enrollment Form Discount Program for ZEPATIER™," of the Agreement is hereby replaced with Schedule E (Rev. 7/15/16 (MMS15146, Amendment 7)) which is attached hereto and incorporated herein.

All other terms and conditions of the Agreement remain unchanged.

If you accept Amendment No. 7, please sign, date, and return one copy to contractprocessing@merck.com, or facsimile number 215-616-9001, or Customer Contract Management, Merck Sharp & Dohme Corp., 770 Sumneytown Pike, WP39-412, West Point, PA 19486-0004. If an electronic copy is submitted to Merck via email or fax, it is not necessary to also mail a hard copy of the signed Amendment. Amendment No. 7 shall become effective August 1, 2016, provided that this Amendment is accepted by MMCAP and a signed copy of this letter is returned to Merck on or before July 15, 2016. Otherwise, the effective date of this Amendment shall be either the first day or the fifteenth day of the month beginning at least fifteen (15) days after Merck receives an executed copy. This offer may be deemed withdrawn if Merck does not receive a fully executed Amendment by October 30, 2016. JK 7-18-16

If you have questions regarding this Amendment, please contact your Merck Senior Account Manager, John Durand at 262-212-6040.

1. MERCK SHARP & DOHME, CORP.,
a subsidiary of Merck & Co., Inc.

The vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: Sr. V.P., Integrated Account Management

Date: 7-18-16

2. STATE OF MINNESOTA FOR MMCAP
In accordance with Minn. Stat. § 16C.03, subd. 3

By: _____

Title: SPA Coordinator

Date: 7-15-2016

3. COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. § 16C.03, subd. 2

By: _____

Title: SPA-P

Date: 7/15/2016

SCHEDULE E: ENROLLMENT FORM
DISCOUNT PROGRAM FOR ZEPATIER™

Return Completed Form to iopprocessingcenter@merck.com with a copy to MMCAP.Contracts@state.mn.us

Name of Participating Facility: _____
To be valid, form must be completed by an individual authorized to complete form for the Participating Facility. Provide the identification information for each Participating Facility at the end of this form.

Group Purchasing Organization ("GPO") Selection Declaration:
By signing this document, the Participating Facility is authorizing Merck Sharp & Dohme, Corp, a subsidiary of Merck & Co., Inc. ("Merck") to change its group purchasing affiliation and acknowledges and agrees to be bound by the terms and conditions set forth herein. The Participating Facility is selecting or changing its GPO selection for buying Merck products:

Current GPO Affiliation:_____
New GPO Affiliation: Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP")

Signature:_____ Date:_____

Name/Title:_____

Covered Products

NDC	Product
00006-3074-02	Zepatier™ (elbasvir and grazoprevir). Carton containing two (2) 14-count child-resistant dose packs for a total of 28 tablets

For purposes of the Discount Program for Zepatier™ (the "Program"), the above Covered Product is referred to as "ZEPATIER." Capitalized terms not herein defined shall have such meanings as set forth in MMCAP Contract Number: MMS15146, effective July 1, 2015, by and between MMCAP and Merck (the "Agreement"). The Participating Facility agrees that it has read and fully understands the terms and conditions of the Agreement and agrees to be bound by the terms and conditions set forth in the Agreement.

Choice of Discount Structure

To qualify for the discounts on purchases of ZEPATIER, the Participating Facility must achieve the Participation Requirements set forth below. All discounts are based off the Merck published Catalog price at the time of purchase. Merck reserves the right to adjust the Catalog price at any time.

Select One Discount Type	Discount	Participating Facility's Requirements
	Exclusive 21%	• ZEPATIER must be designated as the exclusive Hepatitis C Virus Direct Acting Antiviral on formulary or where there is no formulary for Direct Acting Antiviral ("DAA") products, Zepatier must be in a position as the first treatment choice to all other DAA products in the Correctional Institution or Mental Health Facility setting for all approved indications for medically appropriate patients. • Participating Facility must be in the Correctional Institutions class of trade or a Mental Health Facility as determined by Merck for dispensing to Eligible Patients (as such term is defined below)
	Parity 9%	• Zepatier is not disadvantaged and receives the same preferences, if any, as to other DAA products in the Correctional Institution or Mental Health Facility setting. • Participating Facility must be in the Correctional Institutions class of trade or a Mental Health Facility as determined by Merck for dispensing to Eligible Patients (as such term is defined below)

Exclusive Status:

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Exclusive on formulary status for ZEPATIER is hereby defined as the only Hepatitis C Virus Direct Acting Antiviral on formulary for all approved indications for medically appropriate patients. In addition, designating ZEPATIER as the exclusive Hepatitis C Virus Direct Acting Antiviral on formulary means that the Participating Facility will:

- List ZEPATIER as the exclusive Hepatitis C Virus Direct Acting Antiviral on formulary for all approved indications on all communications regarding Hepatitis C Virus Direct Acting Antiviral products to the Participating Facility's physicians, pharmacists, and other appropriate parties or where there is no formulary for Direct Acting Antiviral products, Zepatier must be in a position as first treatment choice to all other DAA products in the Correctional Institution or Mental Health Facility setting for all approved indications for medically appropriate patients; and

- Not prefer, either directly or indirectly, any competing Hepatitis C Virus Direct Acting Antiviral product listed below over ZEPATIER for use in its approved indications except for reasons of a contraindication or individual patient medical appropriateness (for clarity, Participant may have other Hepatitis C Virus Direct Acting Antivirals on formulary for individual patients for whom ZEPATIER is contraindicated or has otherwise been determined not to be medically appropriate by a prescriber).

Parity Status:
Parity status for ZEPATIER is hereby defined as a Hepatitis C Virus Direct Acting Antiviral available for all approved indications for medically appropriate patients. In addition, designating ZEPATIER as parity Hepatitis C Virus Direct Acting Antiviral means that the Participating Facility will:

- List ZEPATIER at parity with other branded Direct-Acting Antiviral Agents (DAAs) and receives the same preferences, if any, as other DAAs products in the Correctional Institution or Mental Health Facility setting; and
- Not prefer, either directly or indirectly, any competing Hepatitis C Virus Direct Acting Antiviral product listed below over ZEPATIER for use in its approved indications except for reasons of a contraindication or individual patient medical appropriateness (for clarity, the Participating Facility may have other Hepatitis C Virus Direct Acting Antivirals on formulary for individual patients for whom ZEPATIER is contraindicated or has otherwise been determined not to be medically appropriate by a prescriber).

Hepatitis C virus Direct Acting Antiviral Competing Products
ZEPATIER, Epclusa, Sovaldi, Harvoni, Technivie, Viekira Pak

Eligibility and Enrollment

Eligibility to be a Participating Facility in the Program is limited to the Correctional Institutions or Mental Health Facility class of trade (as such class of trade is determined by Merck in its sole discretion as set forth in Section 2.8.3 of the Agreement) that (1) purchase ZEPATIER solely for use in the treatment of Eligible Patients (as such term is defined below), and (2) list ZEPATIER as Exclusive or Parity for Hepatitis C Virus Direct Acting Antivirals. "Eligible Patient" means an individual incarcerated at a Correctional Institution or a patient at a Mental Health Facility, provided; however, that Eligible Patients shall not include individuals (i) enrolled in other organizations that purchase ZEPATIER other than pursuant to this Product Program, (ii) for whom entities, organizations, or governmental programs other than the Participating Facility are directly responsible for paying the cost of pharmaceutical products administered or dispensed to such individual (i.e., the Participating Facility may not seek reimbursement from a third party for the cost of Covered Product), or (iii) parolees, with the exception of parolees who may receive a limited and reasonable supply of pharmaceutical products they have already been prescribed when leaving the Participating Facility.

Product purchased under this Program may only be purchased by a Participating Facility for its own use for the treatment of Eligible Patients.

In the event that a Participating Facility no longer lists ZEPATIER as (1) the Exclusive or (2) at Parity Hepatitis C Virus Direct Acting Antiviral for the treatment of Eligible Patients, Participating Facility agrees to notify Merck (through Merck Customer Contract Management) in writing within five (5) business days. Notifications received by Merck in the first fifteen days of a calendar month will result in termination of participation in the Program and termination of discounts effective on the first day of the following calendar month. Notifications received by Merck after the fifteenth day of a calendar month and before the first day of the next calendar month will result in termination of participation in the Program and termination of discounts effective on the fifteenth day of the following calendar month. After delivery of such notice, the Participating Facility shall remain enrolled in the Program but will lose Formulary Commitment Discounts. The Participating Facility may still

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be eligible for GPO base pricing, if any, on ZEPATIER consistent with the terms of the agreement between the Participating Facility's GPO and Merck.

Newly Enrolling Participants: Participating Facilities that are in the Correctional Institutions or Mental Health Facilities class of trade may elect to enroll in the Program for ZEPATIER by submitting this enrollment form and following the required enrollment procedures. By submitting the enrollment form, newly-enrolling Participating Facilities in the Program for ZEPATIER are representing and warranting that they have designated ZEPATIER as (1) the Exclusive or (2) at Parity Hepatitis C Virus Direct Acting Antiviral for the treatment of Eligible Patients.

General Terms and Conditions

The Participating Facility must be accepted by Merck, in its sole discretion, as eligible to participate in the Program. Merck reserves the right to modify these terms, in its sole discretion, upon fifteen (15) days' written notice to the Participating Facility and after fifteen (15) days of delivery of such notice, the Participating Facility shall be automatically enrolled by Merck into an updated Program for ZEPATIER. By participating in the updated Program, the Participating Facility shall be deemed to have agreed to the terms of the updated Program. Unless explicitly authorized by Merck, discounts offered under this Program shall not be combined with any other discounts or rebates.

Merck may terminate the Program for any reason or no reason within fifteen (15) days' written notice to the Participating Facility. Nothing herein shall be construed to limit or restrict Merck's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of ZEPATIER at any time.

Merck has the right to request verification and documentation and to conduct inspections and/or audits of the Participating Facility's books, records, and files to ensure compliance with the terms hereunder and the terms of the Agreement. Merck may terminate enrollment of the Participating Facility in the Program immediately upon breach of the terms contained herein or those terms set forth in the Agreement. In the event of any breach by the Participating Facility, the Participating Facility shall return to Merck all discounts received during the time of any such breach. The Participating Facility and Merck agree to negotiate in good faith the date by which all such discounts shall be received by Merck. Return of discounts and removal from Merck/MMCAP contract pricing is the exclusive remedy for the violation of the terms of the Program and the Agreement.

The Participating Facility may terminate their enrollment in the Program for any reason or no reason at all within fifteen (15) days written notice to Merck.

The effective dates for the Participating Facility's enrollment in the Program will be based on the date Merck receives the form via tracked overnight courier, fax, or email and accepts the form. Forms received and accepted by Merck in the first fifteen days of a calendar month will result in an effective date of the first day of the following calendar month. Forms received and accepted by Merck after the fifteenth day of a calendar month and before the first day of the following calendar month, will result in an effective date of the fifteenth day of the following calendar month. In order to enroll in the Program, please return this completed form to below address:

Merck Sharp & Dohme Corp.
Customer Contract Management
770 Sumneytown Pike WP39-412
West Point, PA 19486
Email:lopprocessingcenter@merck.com
Fax: 215-616-1770

All other notices required under the terms set forth herein and under the Agreement shall be sent to Merck at the address set forth above.

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Participant Identification

Complete Participant Identification information below. Multiple copies of this page may be submitted or a separate list with all of the required information may be attached.

Facility Name:		
*DEA Number: or HIN Number(required if no DEA)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
Current Authorized Wholesaler		
Merck Account Manager or Representative: If known		
Facility Name:		
*DEA Number: or HIN Number(required if no DEA)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
Current Authorized Wholesaler		
Merck Account Manager or Representative: If known		
Facility Name:		
*DEA Number: or HIN Number(required if no DEA)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
Current Authorized Wholesaler		

STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **Sanofi Pasteur Inc.,** Discovery Drive, Swiftwater, PA 18370 ("Vendor").

Under Minnesota Statutes Section 16C.03, the Commissioner of Administration on behalf of MMCAP is empowered to engage such assistance as deemed necessary.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members' use. Participation in MMCAP is limited to facilities within member states that are specifically permitted by the member state's statutes to purchase goods from the member state's contracts. Participation is generally available to facilities run by state agencies, counties, cities, townships, and school districts.

The Vendor wishes to contract with MMCAP to supply influenza vaccine products to MMCAP Member Facilities.

1 Term of Contract

1.1 Effective date: January 1, 2013, or the date MMCAP obtains all required signatures under Minnesota Statutes Section16C.05, subdivision 2, whichever is later.

1.2 Expiration date: December 31, 2014, or as cancelled pursuant to clause 18. This contract has the option to be extended for three additional one year periods as mutually agreed upon by both parties.

1.3 Survival of Terms. The following clauses survive the expiration or cancellation of this Contract: 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Contracted Vaccine

2.1 Products

2.1 Products. Vaccines in Table 1 must be preparations as formulated by the United States Food and Drug Administration, Vaccines and Related Biological Product Advisory Committee for the applicable influenza season. Vendor will supply products at the prices listed in Table 1 (Products), to MMCAP Participating Facilities. MMCAP pricing will not be available to non-MMCAP entities under this Contract.

Table 1 for Influenza Season 2013-2014

Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	Max. Quantity to MMCAP
Fluzone 49281-0392-15	**Multi-Dose 5ml Vial; 6 months & older**	1vial	$86.55	
Fluzone 49281-0013-50	**Single Dose Prefilled 0.5ml Syringes, No Preservative; 36 months & older**	10 pk	$100.92	2.6M doses (all presentations combined)
Fluzone 49281-0013-10	**Single Dose 0.5ml Vials, No Preservative; 36 months & older**	10 pk	$105.95	
Fluzone Pediatric 49281-0113-25	**Single Dose Prefilled 0.25ml Syringes, No Preservative; 6-35months**	10 pk	$131.90	
Fluzone High-Dose 49281-0393-65	**Single Dose Prefilled 0.5ml Syringes, No Preservative; 65 years & older**	10 pk	$266.66	
Fluzone Intradermal 49281-0707-55	**Single Dose Prefilled Micoinjection Syringes, No Preservative; 18-64 years**	10 pk	$145.75	

2.1.1 **Contract Year.** Products and pricing listed in Table 1 are for contract year one; otherwise defined as the 2013-2014 influenza season. Products in Table 1 will remain fixed for each influenza season. Price decreases will be accepted at any time and applies to any products under contract for that applicable influenza season. Products and pricing for subsequent contract years will be indicated in an amendment to this contract.

2.1.2 **Substitutions.** Vendor must not substitute any product contained in the contract without an amendment to this agreement and agreement from the MMCAP Participating Facilities.

2.2 Product Availability

2.2.1 It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the needs of the MMCAP Participating Facilities.

2.2.2 Vendor must monitor sales of the Products to ensure that inventory needs of the MMCAP Participating Facilities.

2.2.3 If the Vendor assigns, discontinues, or deletes a Product during the term of this Contract, Vendor must use reasonable commercial efforts to give prior notice of the assignment, discontinuance, or deletion of such product(s) based on the circumstances therein, and where possible should provide written notice to MMCAP at least 30 days' prior to the assignment, discontinuance, or deletion. If the Vendor discontinues or deletes a Product during the term of this Contract, Vendor will honor contract pricing until the inventory of the Product is depleted.

2.2.4 Prebooking, Order Minimums, Delivery and Payment terms

2.2.4.1 **Prebooking.** MMCAP Participating Facilities purchasing vaccine listed in Table 1 at the contracted price must place prebook orders directly from Vendor.

Phone: 800-VACCINE (800-822-2463)
Monday through Friday, between 8 AM and 6:30 PM Eastern Time
Fax: Fax orders are not accepted for Fluzone.
Website: www.vaccineshoppe.com*
Mail: Sanofi Pasteur Inc.
Attn: Customer Account Management
Discovery Drive
Swiftwater, PA 18370-0187

**An additional 1% savings is available for all orders placed through our on-line channel.*

Title to merchandise sold will pass to the MMCAP Participating Facility upon delivery at the MMCAP Participating Facility's destination. All shipments FOB are made by common carrier.

2.2.4.2 **Order Confirmation.** MMCAP Participating Facilities may modify or cancel any pre-booked order(s) any time prior to shipment. Vendor will send an email confirmation to each MMCAP Participating Facility once their order(s) have been processed and respective prebook doses are available.

2.2.4.3 Delivery. Vendor expects to make a partial shipment of each member's total Fluzone request of 50% or more by September 30, 2013 with the balance to be completed by October 31, 2013. Vendor reserves the right to schedule shipments and/or make partial shipments with prior notification.

2.2.4.4 Claims. Claims for loss, shortage, breakage, leakage, or other damage occurring in transit must be submitted to Vendor at its headquarters within 10 days from date of invoice, for replacement or credit of affected product(s), which includes but is not limited to vaccines, in accordance with Section 2.1. The sole and exclusive remedy of the MMCAP Participating Facility is Vendor credit or replacement, as applicable, of affected product(s); no other remedy (including, but not limited to, incidental, consequential, or other damages of any kind) will be available. Loss, shortage, breakage, leakage, or other damage claims must also be accompanied by freight bill with notation by the common carrier of the loss, shortage, breakage, or damage, or accompanied by the carrier's concealed loss or damage report where the loss is of a concealed nature. Where loss, shortage, breakage, leakage, or other damage has occurred in transit, the MMCAP Participating Facility agrees to cooperate fully with Vendor in Vendor's effort to establish a claim against the transportation company. Claims submitted without appropriate documentation will be denied.

All claims involving discounts, pricing, credits, or returns, for direct sales must be reported to Vendor's headquarters within 1 year of the date of invoice for the purchase in question. Inappropriate deductions taken from MMCAP Participating Facility payments, including but not limited to those made after this deadline, will be reflected against the account and could jeopardize future shipments

2.2.4.5 Payment. Terms are 2% - 30/Net 31 for any items shipped, including partial shipments. Prompt payment discount does not apply to any appropriate Federal Excise Taxes/Surcharges.

Invoices should be paid in full within 30 days (or at contract terms, if applicable) of the invoice date. Vendor reserves the right to charge a fee of the lesser of 1.5% per month or the maximum permissible rate if payment is not received

within terms. Federal Excise Tax is not subject to any discounts. Payment may be sent to the remittance address indicated on the invoice. Payment by check is recognized when received at the lock-box address indicated on the invoice. MasterCard®, VISA®, Discover®, and American Express® are accepted as payment for purchases. All accounts must be paid in United States Dollars. Arrangements for establishing payment via Electronic Fund Transfer may be made by contacting Credit Services at 1-800-VACCINE (1-800-822-2463).

Regardless of Vendor's terms offered above, if the cash discount due date falls on a Saturday, Sunday, or a bank holiday, the discount is considered earned if payment is received no later than the next banking day.

The MMCAP Participating Facility is responsible for paying all applicable federal, state, and local taxes and excises in effect at the time product is shipped by Vendor.

2.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application or Abbreviated New Drug Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish no Product under this Contract that is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.

Vendor guarantees that any product(s) comprising any shipment or other delivery made by Vendor will not be, at the time of such shipment or delivery, adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, as amended and in effect at the time of said shipment or delivery (the "Act"), or within the meaning of any applicable state or local law in which the definitions of adulteration or misbranding are substantially the same as those contained in the Act; and such merchandise is not, at the time of such shipment or delivery, merchandise which may not be introduced into interstate commerce under the provisions of sections 404 or 505 of the Act; and such merchandise is merchandise which may be legally transported or sold under the provisions of any other applicable federal, state, or local laws, rules or regulations. Notwithstanding the foregoing, no guarantee is made with respect to merchandise which becomes adulterated or misbranded within the meaning of the Act by reason of causes beyond the control of Vendor.

THE WARRANTIES DESCRIBED IN THIS SECTION AND IN VENDOR'S TERMS AND CONDITIONS OF SALE FOR PRODUCTS ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR REGARDING PRODUCTS SOLD HEREUNDER. ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

2.4 **Pricing.**

2.4.1 Influenza vaccines. Contract prices to be offered to MMCAP Eligible Members will be those set forth in Table 1 and prices will remain fixed. Except for price decreases, Vendor may adjust such prices once each year via amendment. Notice of any change in Contract Price for any Vendor Product will be sent to MMCAP 30 days prior to the effective date of the price change. Price decreases will be accepted at any time.

2.5 **Failure to Supply Contracted Pharmaceuticals.**

2.5.1 If Vendor cannot supply in sufficient quantities, MMCAP may at its discretion add an additional vendor(s) as needed to meet the needs of its members.

2.5.2 Vendor must notify MMCAP in writing within a commercially reasonable time of Vendor's knowledge of its inability to supply any Products. Notices must be sent to: MMCAP.Contracts@state.mn.us.

2.6 **First DataBank, Inc.** All contracted prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc., unless such designation is expressly waived by an MMCAP Authorized Representative.

If NDC codes are not applicable (e.g., OTC products), Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]).

2.7 **Contract Changes.**

2.7.1 **Amendments.** Amendments will be processed as needed and for subsequent influenza seasons. All amendments must clearly identify, by section, what is being amended.

2.8 **MMCAP Participating Facilities.**

2.8.1. The Vendor must allow new MMCAP Participating Facilities joining MMCAP to be added to the MMCAP Membership List (password protected and published online at www.mmcap.org) and to access contract prices throughout the term of this Contract. As new MMCAP Participating Facilities are added to MMCAP, the Vendor will be given 7 days from date of notification to implement contract pricing. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Membership List has been posted online.

2.8.2 MMCAP reserves the right to add and delete MMCAP Participating Facilities during the term of this Contract; however, Vendor retains the right to determine which MMCAP Participating Facilities may receive its pricing.

2.8.3 Eligible Members will include City/County/State health care facilities that are in good standing with Vendor. The Eligible Members of City/County/State include:

City/County/State hospitals.
City/County/State clinics.
City/County/State non-health related offices; City Jails, Detention Centers, Fire Departments, etc.
County or State Correctional facilities.
City/County/State residential school, college/university without a hospital.

In order to be eligible for contract pricing under the Contract, an MMCAP Participating Facility must be able to certify that (1) the MMCAP Participating Facility is purchasing the Vendor's products for its "own use," as defined in *De Modena, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, 743 F. 2d 13888 (9 Cir. 1984), applying the holding of the U.S. Supreme Court in *Abbott Laboratories, et al. v. Portland Retail Druggist Association, Inc.*, 425 U.S. 1 (1976); or (2) the Facility is a nonprofit institution, eligible for membership through MMCAP (Minnesota Statutes Section 16C.03, subdivision 10)for all purposes under the Nonprofit Institutions Act, 15 U.S.C. § 13c, for which purchases of said products are made for said Facility's "own use". Any Participating Facilities that cannot meet the above criteria are not eligible to purchase products under this Agreement.
2.8.4 Vendor does not have class of trade restrictions related to MMCAP participating facilities.
2.8.5 Certification, eligibility, or GPO declaration forms maintained by Vendor must be attached and incorporated into this Contract, if applicable.
2.9 **Administrative Fee.** In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases of products (minus any credits). The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to three percent (1.5%) of MMCAP Participating Facilities' purchases for all Products. The initial payment is due on February 15 of each contract year for purchases delivered by December 31. If this amount does not cover all purchases, additional payments must be made by July 31 of the contract year for all other purchases until all amounts due are fully paid. The check will be remitted to the following address:

MMCAP-State of Minnesota
Attn: Administrative Fee Coordinator
50 Sherburne Ave, Suite 112
St. Paul, MN 55155

With the first payment, Vendor must submit an Administrative Fee Data Report. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to: Mn.MMCAP@state.mn.us Failure to comply with this provision may constitute breach of this Contract.

2.10 **Reports.**
2.10.1 **Prebooking Reports.** Vendor must supply MMCAP with automatic monthly updates during prebooking and delivery. The report will be sent on the 15th of each month during the influenza prebooking and delivery season, if the 15th falls on a weekend/holiday the report is due the next business day. The monthly reports must include the following data and be sorted by state, city and customer name (in that order):

Customer Name
Customer Number
Order Number
Bill to Address
Bill to City
Bill to State
NDC
Product Name
Pack Size
Contract Price
Quantity Ordered (in packs)
Quantity Shipped

Extended Price (Quantity * Price)
Ship Date
Tracking Number

Vendor will be provided a template of the expected report upon request.

2.10.2 Final Sales Report. Vendor(s) must be supply to the MMCAP Office an accurate final sales report of the applicable influenza season within 30 days of Vendor's final shipment. Vendor must submit to MMCAP a final sales report to Mn.MMCAP@state.mn.us. This data MUST include the following for every transaction between Vendor and the MMCAP Participating Facility:

Required Data Field Full Name
MMCAP-assigned facility ID
MMCAP Facility Name
Blank Field
Vendor-assigned Account number for the MMCAP Facility
Invoice Number
Invoice Line Number
Purchase Order Number
Invoice date (mmddccyy)
Buyer name or equivalent of buyer ID for person submitting the invoices
Vendor's (distributor) SKU item number
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.
Label Name
Unit Dose
Pack Size
Unit
Case Size
Dose
Strength
Route
Unit Price (99999.9999)
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
Blank Field
Bill to Address 1
Bill to City
Bill to State (2 alpha postal code)
Bill to Zip (standard 5-4 format, no dash necessary)
Ship to Address 1
Ship to City
Ship to State (2 alpha postal code)
Ship to Zip (standard 5-4 format, no dash necessary)
Service Fee (9999.9999)
MMCAP Contract Number (MMSxxxxx)
Blank Field
Credit Indicator (C for credit)
Blank Field

Manufacture Name (MFG Name)
Blank Field
Blank Field

Balance of page Intentionally Left Blank

Monthly Usage Report - Fixed Length Fields

Required Data Field Full Name	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP_id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP_Name	Alpha Numeric		30	1	8	37
Blank Field	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	InvoiceDate	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack_Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case_Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantiy shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
Blank Field	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocity	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocity	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxxx)	contractnumber	Alpha Numeric		10	1	400	409
Blank Field	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
Blank Field				4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Blank Field		Alpha Numeric		4	1	464	467
Blank Field		Alpha Numeric		1	1	468	468

2.10.3 In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and to reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

2.10.4 **ASF Warranty and Representation.** MMCAP represents that it (a) meets the definition of a group purchasing organization as set forth in 42 C.F.R. 1001.952 (j)(2) and (b) has a written Agreement with each Participating Member which states that MMCAP's participating vendors will pay a fee to MMCAP of three percent (3%) or less of the purchase price of the goods provided by participating vendors or otherwise complies with 42 C.F.R. Section 1001.952(j)(1). MMCAP agrees that it will disclose in writing to each Participating Member at least annually, and to the Secretary of Health and Human Services, U.S. Department of Health and Human Services, upon request, the amount it receives from the Vendor with respect to purchases made by or on behalf of the Participating Member.

2.11 **Returned Goods/Credits.**

Fluzone vaccine is a non-returnable product however, this Agreement provides for the following returnability:

Upon expiration, MMCAP Participating Facilities may return 25% of unused doses shipped before October 31, 2013 and/or 50% of unused doses shipped after October 31, 2013 and receive full credit of the net purchase price, less excise tax to be used on future purchases of Fluzone vaccine. Returns must be received by August 31, 2014.

Sanofi Pasteur shall not be responsible for, and shall not accept returns of, product(s) adversely affected by force majeure conditions, including but not limited to power outages, flood or other utility or weather related occurrences.

All returns must comply with federal and state laws and regulations. All expired product(s) must be shipped prepaid to Vendor at GENCO Pharmaceutical Services, 6101 N. 64th Street, Milwaukee, WI 53218. Collect shipments will not be accepted. Include MMCAP Participating Facility name, address and account number inside the return package. Contact Customer Account Management for instructions on returning product due to physical defect or for purchases not made directly from Vendor. All product(s) manufactured by Vendor and returned to Vendor at Capital Returns will be destroyed. Direct all questions regarding the Return Goods Policy to Customer Account Management at 1-800-VACCINE (1-800-822-2463). The Return Goods Policy is subject to change without prior notification.

Direct purchases of non-returnable product(s) may be returned within 1 year of expiration for Federal Excise Tax credit, if applicable.

Vendor reserves the right to designate additional specific products or product configurations as not returnable for exchange or credit.

Vendor Representatives are not permitted to deliver or pick up product(s) from the MMCAP Participating Facility for return. Vendor Representatives can offer information about the return policy; however, the ultimate decision and the responsibility for selecting the items and making the return rest with the MMCAP Participating Facility.

2.12 **Value-Added Programs.** MMCAP Participating Facilities must be offered any programs normally offered to the Vendor's general customer base (e.g., continuing education courses, marketing information, etc.) at the same or lower cost as that offered to the general customer base.

2.13 **DEA Number and HIN Numbers.** Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from MMCAP Participating Facilities.

2.14 **Own Use.** All items acquired by MMCAP Participating Facilities under this Contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise. For purposes of this section, the term "own use" will be as defined by the United States Supreme Court in its opinions reported at *Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc.*, 425 U.S. 1 (1976), and *Jefferson County Pharmaceutical Association, Inc. v. Abbott Laboratories, et al.*, 103 S. Ct. 1011 (1983).

2.15 **Product Dating.** All Products supplied to MMCAP Participating Facilities must have an expiration date of at least six months later than the delivery date unless the unique stability characteristics of the product require a shorter dating period. However, all Products supplied must still be usable on the date received by the MMCAP Participating Facility.

2.16 Direct Marketing, Advertising, and Offers with Member Facilities. Any direct advertising, marketing, or direct offers with MMCAP Participating Facilities for on- or off- contract products must be approved by MMCAP. Violation of this Article may be cause for immediate cancellation of this Contract.

2.17 Storage and Handling. MMCAP Participating Facilities taking physical possession of Vendor product(s) are fully responsible for complying with all applicable federal, state, and local laws and regulations relating to the storage, handling, and distribution of such products.

2.18 Customer Service.

2.18.1 Primary Account Representative. Vendor will assign a Primary Account Representative to MMCAP for this Contract and must provide a minimum of 72 hours advanced notice to MMCAP if that person is reassigned. The Primary Account Representative will be responsible for:

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.18.2

In the event that the Primary Account Representative is unresponsive and does not meet MMCAP's needs, the Vendor will assign another Primary Account Representative upon MMCAP's request.

2.18.2. Business Reviews. Vendor will perform at least one business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor and MMCAP and at a minimum address the following: a review of sales to members, pricing and contract terms, administrative fees, FDA and DEA issues, supply issues, pipeline update, outstanding contract issues, wholesaler or customer issues, and any other necessary information.

2.19 State Specific Requirements - See Exhibit A which is attached and incorporated

3 Authorized Representatives. MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155. The Vendor's Authorized Representative is Jill Bingham, Deputy Director, State Government Contracts, Discovery Drive, Swiftwater, PA 18370.

4 Assignment, Amendments, Waiver, and Contract Complete

4.1 *Assignment.* Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement.

4.2 *Amendments.* Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office. Vendor agrees to use the amendment process set forth in Article 2.7 above.

4.3 *Waiver.* If MMCAP fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

4.4 *Contract Complete.* This Contract contains all negotiations and agreements between MMCAP and the Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

5 Liability.

5.1. The Vendor must indemnify, save, and hold MMCAP, its agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the performance of this Contract by the Vendor or the Vendor's agents or employees; or injury or death to person(s) or property, alleged to have been caused by some defect in Products under this Contract, when the Product has been supplied by and dispensed strictly in accordance with federal, state, and local regulations and the applicable provisions of the package insert. This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify the Vendor.

5.2. Limitation of Remedies. Vendor will not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause with respect to the product(s) or this agreement, whether such claim is based upon breach of contract, breach of warranty, negligence, strict liability in tort, negligence, or any other legal theory.

6 **State Audits.** Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

7 **Government Data Practices and Intellectual Property**

7.1. ***Government Data Practices.*** The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this Article, the Vendor must immediately notify MMCAP, and consult with the agency as to how the Vendor should respond to the request. The Vendor's response to the request will comply with applicable law.

7.2. ***Intellectual Property Indemnification.*** The Vendor warrants that any materials or products provided or produced by the Vendor or utilized in the performance of this Contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify the Vendor.

If such a claim of infringement has occurred, or in the Vendor's opinion is likely to occur, the Vendor must either procure for MMCAP the right to continue using the material or product or replace or modify materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor, and at the Vendor's expense.

8 **Publicity and Endorsement**

8.1 **Publicity.** Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

8.2 **Endorsement.** The Vendor must not claim that MMCAP endorses its products or services.

9 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Except to the extent that the provisions of this Contract are clearly inconsistent therewith, this Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this Contract entails delivery or performance of services, such services will be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

10 **Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

11 **Force Majeure.** Vendor will not be liable for delays in shipment, reductions of shipment amounts or default in delivery for any cause beyond its reasonable control including, but not limited to:

(a) an actual or potential national shortage of any vaccine,
(b) actions by federal, state or local governmental agencies, units, bodies or officials relating to an actual or potential national shortage of any vaccine, including, but not limited to, guidelines, recommendations or requests to limit, alter or change vaccine sales or distribution or to limit the persons who should be vaccinated
(c) government action (to the extent such action is not covered by the preceding subparagraph (b)), public health emergencies, war, riots, civil commotion, embargoes, acts of terrorism or martial laws,
(d) Vendor's inability to obtain necessary materials from its usual sources of supply,

(e) shortage of labor, raw material, production or transportation facilities of other delays in transit,
(f) labor difficulty involving employees of Vendor,
(g) fire, flood or other casualty, or
(h) other contingencies of manufacture or shipment.

In the event of any delay in Vendor's performance due in whole or in part to any cause beyond its reasonable control, Vendor will have such additional time for performance as may be reasonably necessary under the circumstances. If by reason of any such force majeure event, the quantities of any vaccine, or other materials used in the production thereof, reasonably available to Vendor will be less than its total needs to fulfill orders of prebook requests for vaccine, Vendor may allocate its available supply if any such vaccine among its existing or prospective buyers and/or its affiliates in such manner as Vendor deems proper, without thereby incurring liability for failure to perform under any applicable agreement.

12 **Severability.** If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

13 **Default and Remedies.** Either of the following constitutes cause to declare the Contract or any order under this Contract in default:

(a) Nonperformance of contractual requirements, or
(b) A material breach of any term or condition of this Contract.

Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.
If the default remains after the opportunity for cure, the nondefaulting party may:

(a) Exercise any remedy provided by law or equity; or
(b) Terminate the Contract or any portion thereof, including any orders issued against the Contract.

14 **Certification.** Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act.

15 **Data Disclosure.** In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

16. **Insurance Requirements**

A. Vendor must maintain the following insurance (or a comparable program of self-insurance) in force and effect throughout the term of the Contract.

B. Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies (or of their program of self-insurance):

1. **Workers' Compensation Insurance:** Vendor will provide Workers' Compensation insurance at statutory minimums for all its employees, including Coverage B, Employer's Liability below and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the same: .

   Insurance **minimum** limits are as follows:
   $100,000 – Bodily Injury by Disease per employee
   $500,000 – Bodily Injury by Disease aggregate
   $100,000 – Bodily Injury by Accident

2. **Commercial General Liability Insurance:** Vendor will maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Contract.

   Insurance **minimum** limits are as follows:
   $5,000,000 – per occurrence
   $5,000,000 – annual aggregate
   $5,000,000 – annual aggregate – Products/Completed Operations

   The following coverages must be included:
   Premises and Operations Bodily Injury and Property Damage
   Personal and Advertising Injury
   Blanket Contractual Liability
   Products and Completed Operations Liability
   MMCAP named as an Additional Insured

3. **Commercial Automobile Liability Insurance (If Applicable):**
   Auto Liability insurance is not necessary unless the Vendor, Vendor's employees, or subcontractors will be driving on state property or on the property of MMCAP Members or MMCAP Participating Facilities or will be using, owned, hired, or non-owned vehicles to conduct business on behalf of MMCAP.
   Vendor will maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted the Vendor will require the subcontractor to maintain Commercial Automobile Liability insurance.

   Insurance **minimum** limits are as follows:
   $2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

   In addition, the following coverages should be included:
   Owned, Hired, and Non-owned Automobile

C. **Additional Insurance Conditions:**

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will notify MMCAP within 5 business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days' advance written notice to MMCAP;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor's policy(ies) will include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.

D. MMCAP reserves the right to immediately terminate the Contract if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

17 Minnesota Statutes Section 181.59. The vendor will comply with the provisions of Minnesota Statutes Section 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction will contain provisions by which the contractor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, will, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no contractor, material supplier, or vendor, will, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

18 Cancellation. MMCAP or the Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment, determined in a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date.

19. Customer Reports. The MMCAP Participating Facility will comply with all applicable federal and state laws, rules, and regulations. As part of the cost reporting process or otherwise, the MMCAP Participating Facility may be obligated to report and provide information concerning any discounts or rebates provided by Vendor pursuant to 42 U.S.C. § 1320a-7b(b)(3)(A) and/or 42 C.F.R. § 1001.952(h)(1), other federal or state laws, or agreements with third-party payers.

1. SANOFI PASTEUR INC.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Jill Bingham

Title: Deputy Director, State Government Contracts

Date: 12/20/12

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: [signature]

Title: SPA-P

Date: 12/21/2012

3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: [signature]

Title: _____

Date: Dec. 21, 2012

EXHIBIT A

2.19 **State Specific Requirements.** Except with respect to those of the State of California, as modified, Sanofi Pasteur does not acknowledge the contract language requirements of individual states in this Agreement. With respect to various administrative fees required by certain states, it is Sanofi Pasteur's position that the payment of fees to these states that are related to MMCAP's efforts at managing the over-all contract would not meet our requirements for transparency in the payment of such remuneration. Our practices require that such fees be paid to the group purchasing organization responsible for administering the contract. In this case, that entity is MMCAP. MMCAP is a "group purchasing organization," as that term is defined in 42 C.F.R. § 1001.952(j), and the administrative fees paid to MMCAP fit under the GPO safe harbor of the Anti-Kickback Act. Payment directly to the State would not be covered under the same safe harbor.

2.19.1 STATE OF NEW YORK

The State of New York "piggybacks" off of the MMCAP contract. This means that the State of New York requires a separately negotiated contract for the sale of influenza vaccine in its state. For further information or for a copy of the agreement, contact:

Todd Kayser, Purchasing Officer
New York State Office of General Services
Division of Purchasing
Esp Corning Tower Bldg 38th Floor
Albany, NY 12242
Phone: 518.474.4501
Fax: 518-474-5052
Email: todd.kayser@ogs.state.ny.us

2.19.2 STATE OF CALIFORNIA

The following applies only to purchases made by entities designed by the State of California:

1.0 INTRODUCTION

This language is required pursuant to the Agreement of Understanding and Joint Powers Agreement, California Agreement No. 1-08-65-54 between the State of California and MMCAP. This Amendment confirms the mutual understanding of the State of California, Department of General Services (DGS), acting on behalf of the State of California; Vendor and the State of Minnesota, Department of Administration, MMCAP, located at 50 Sherburne Avenue, Room 112, St. Paul, MN 55155.

It is the intent of this language to incorporate the laws and requirements of the State of California into MMCAP Influenza Vaccine Contract with respect solely to purchases made by the State of California.

The terms of this language are established pursuant to the State of California Government Code Sections 14977.1, 14978, and Public Contract Code Section 10298. It is the intent of this Amendment that Purchasers will receive any discount(s) available under the MMCAP Influenza Vaccine Contract on all purchases of Contractor's Covered Product(s). The DGS procures drugs and administers contracts for entities participating in the Statewide Pharmaceutical Program established by Government Code Sections 14977 through 14982.

2.0 DEFINITIONS

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

Term	Definition
Calendar Quarters	The quarters to be used for calculating the Calendar Quarters of this Agreement will be those ending on March 31, June 30, September 30, and December 31 of each calendar year during the term of this Amendment.
California Contract Administrator	The California State's authorized contracting official designated to manage this contract or agreement. California's Contract Administrator shall be synonymous with "Buyer."
Covered Product(s) or Product(s)	The items described in MMCAP Contract section 2.1 "Products"
Eligible Entities	California State and Local Governmental Agencies completing the MMCAP California Facility Membership Application and Facility Membership Agreement, Attachment A of the Agreement of Understanding and Joint Powers Agreement, California Agreement No. 1-08-65-54 and approved by the DGS.
California Local Governmental Agency	A California city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges, empowered to expend public funds (California Public Contract Code 10298).
Original Contract	MMCAP Influenza Vaccine Contract.
MMCAP Participating Facility	The definition of MMCAP Participating Facility in this Contract, section 2.7 is augmented with the following: Any California State or California Local Governmental Agency which completes the MMCAP California Facility Membership Application, Attachment A to the Agreement of Understanding and Joint Powers Agreement, between the State of California and MMCAP and approved by the DGS and MMCAP.
California State Agency	The California State Departments of Corrections and Rehabilitations (CDCR), Mental Health (DMH), and Developmental Services (DDS) and other State Agencies under the California DGS authority.

3.0 TERMS AND CONDITIONS

3.1 CONTRACT TERMS & CONDITIONS

3.1.1 This Amendment is non-mandatory for California State Agencies and California Local Governmental Agencies.

3.1.2 The California DGS may contract on behalf of California Participating Facilities for Influenza Vaccines available through the Original Agreement.

3.1.3 The California General Provisions section 4.0 of this Amendment shall prevail if there is a conflict between this Amendment and the terms and conditions of the Original Agreement.

3.1.4 The California DGS may terminate this Amendment at any time upon 60 days' prior written notice. Upon termination or other expiration of the Original Agreement, each party will assist the other party in orderly termination of the contract and transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the Vendor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

3.2 CONTRACT ADMINSTRATION

Any notice required to be given pursuant to the terms and provision of this Agreement will be in writing and will be sent by certified mail, return receipt requested to:

Vendor	**Sanofi Pasteur Inc.**
Vendor Contact Name	**Jill Bingham**
Title	**Deputy Director, State Government Contracts**
Adress	**Discovery Drive, Swiftwater, PA 18370**
Phone	**570-957-3486**
E-Mail	**jill.bingham@sanofipasteur.com**

State of California
Vimbai Kajese, MPH
Contract Administrator
Department of General Services
707 3rd Street, 2nd Floor, Cube 02-233A
West Sacramento, CA 95605-2811
(916) 375-4926
vimbai.kajese@dgs.ca.gov

State of Minnesota, MMCAP Program
Jennifer VanderPlaats, CPhT
MMCAP Pharmaceutical Analyst
50 Sherburne Avenue, Suite 112
St. Paul, MN 55155
(651) 201-2414
Jennifer.VanderPlaats@state.mn.us

3.3 PURCHASE DOCUMENTS

This section augments the ordering instructions from the Original Agreement section 2.2 Pre-Booking.

3.3.1 California State Agencies must use the Purchasing Authority Purchase Order (Std. 65). An electronic version of the Std. 65 is available at the Office of State Publishing web site: http://www.dgs.ca.gov/osp (select Standard Forms). All Purchasing Authority Purchase Orders (Std. 65) must contain the following:

- Agency Order Number (Purchase Order Number)
- Ordering Agency Name
- Agency Billing Code
- Purchasing Authority Number
- Leveraged Procurement Number (Contract Number)

- Supplier Information (Contact Name, Address, Phone Number, Fax Number, E-mail)
- Line Item number
- Quantity
- Unit of Measure
- Commodity Code Number/NDC
- Product Description
- Unit Price
- Extension Price

3.3.2 California Local Governmental Agencies may use their own purchase document. The purchase documents must include the same data elements as listed above (Exception: Purchasing Authority Number is used by State departments only). The Vendor. will not accept purchase documents from local agencies without a State issued billing code.

3.4 PARTICIPATING FACILITIES MEMBERSHIP PROCESS

The California DGS will notify the MMCAP Office of facilities wishing to participate in the Original Agreement by providing them with a DGS executed MMCAP California Facility Membership Application. Upon MMCAP Office approval of these applications, the MMCAP Office will provide a Participating Facility ID Number to the DGS and advise Vendor. The DGS and MMCAP will maintain and reconcile a list of participating facilities. Vendor shall refer any contacts for California facilities not approved by the California DGS to the California Contract Administrator.

3.5 PROBLEM RESOLUTION

California MMCAP Participating Facilities shall inform the California Contract Administrator of any technical or contractual difficulties encountered during contract performance in a timely manner. This includes and is not limited to informal disputes, supplier performance, outstanding deliveries, etc.

3.8 EFFECTIVE DATES

This language shall be effective upon approval and will continue until the Termination Date of the MMCAP Influenza Vaccine Contract unless terminated early in accordance with the terms and conditions of the Original Agreement or this Amendment. The Vendor may not commence performance until such approval has been obtained.

4.0 STATE OF CALIFORNIA CONTRACT REQUIREMENTS – General Provisions

The following State of California Standard Terms and Conditions (Articles 4-57) are herby included into the Amendment and are applicable only to products and services provided to the State of California:

1. **DEFINITIONS:** The following terms for Articles 4-57 of this Amendment shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

a) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.

b) **"Buyer"** means the State's authorized contracting official.

c) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.

d) **"Contractor"** means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
e) **"Goods"** (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
f) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.

2. CONTRACT FORMATION: **General Provision No. 2 is hereby deleted.**

3. COMPLETE INTEGRATION: **General Provisions No. 3 augments Section 4.4 "Contract Complete," of the MMCAP Agreement.** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

4. SEVERABILITY: **General Provision No. 4 augments Section 12, "Severability," of MMCAP Agreement.** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR: **General provision No. 5 is hereby deleted.**

6. APPLICABLE LAW: **General provision No. 6 is hereby deleted.**

7. COMPLIANCE WITH STATUTES AND REGULATIONS:
a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
b) If this contract is in excess of $500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

8. CONTRACTOR'S POWER AND AUTHORITY: The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.

The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or

compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

9. ASSIGNMENT: General Provision No. 9 is hereby deleted. Refer to Section 4.1, "Assignment," of MMCAP Agreement.

10. WAIVER OF RIGHTS: General Provision No. 10 augments Section 4.3, "Waiver" of MMCAP Agreement. Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. ORDER OF PRECEDENCE: In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

a) MMCAP Agreement, unless terms of this language are in conflict,
b) these General Provisions – Non-IT Commodities;
c) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
d) statement of work, including any specifications incorporated by reference herein;
e) special terms and conditions; and
f) all other attachments incorporated in the contract by reference.

12. PACKING AND SHIPMENT: General Provision No.12 is hereby deleted. Refer to Section 2.3 "Delivery" of MMCAP Agreement.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: General Provision No. 13 is hereby deleted. Refer to Section 2.2, "Prebooking" of MMCAP Agreement.

15. DELIVERY: General provision No. 15 is hereby deleted. Refer to Section 2.3, "Delivery" of MMCAP Agreement.

16. SUBSTITUTIONS: Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

17. INSPECTION, ACCEPTANCE AND REJECTION:

a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.

b) All goods may be subject to inspection and test by the State or its authorized representatives.

c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

d) All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.

e) The State shall give written notice of rejection of goods within a reasonable time after receipt of such goods. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

18. SAMPLES: General Provision No.18 is hereby deleted.

19. WARRANTY: General Provision 19 is hereby deleted. Refer to Sections 5 "Liability" of MMCAP Agreement.

20. SAFETY AND ACCIDENT PREVENTION:

In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

21. INSURANCE: General Provision No. 21 is hereby deleted. Refer to Section 16 "Insurance Requirements" of MMCAP Agreement.

22. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

(a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefore.

b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

23. TERMINATION FOR THE CONVENIENCE OF THE STATE:

a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.

b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

i) Stop work as specified in the Notice of Termination.

ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

iii) Terminate all subcontracts to the extent they relate to the work terminated.

iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.

24. TERMINATION FOR DEFAULT: General Provision 24 augments Section 13 "Default and Remedies" of MMCAP Agreement.

a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;

ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or

iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).

b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.

f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.

g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

25. FORCE MAJEURE: General Provision No. 25 is hereby deleted, Refer to, Section 11, "Force Majeure" of MMCAP Agreement.

26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT: General Provision No. 26 is hereby deleted. Refer to Section 13, "Default and Remedies" of MMCAP Agreement.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance,

and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

28. INDEMNIFICATION: **General Provision No. 28 augments by Section 5, "Liability" of MMCAP Agreement.**
Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation which may be injured or damaged by contractor in the performance of this contract.

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in Vendor's usual and customary format. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

31. TAXES: . The State will only pay for any Federal Excise Taxes, State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

32. NEWLY MANUFACTURED GOODS: **General Provision No. 32 is hereby deleted.**

33. CONTRACT MODIFICATION: **General Provision No. 33 augments Section 4.2, "Amendments" of MMCAP Agreement.** No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

34. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

The State grants to MMCAP the right to obtain all sales data related to sales of product to MMCAP Participating Facilities within the State.

35. NEWS RELEASES: **General Provision No. 35 augments by Section 8.1, "Publicity" of MMCAP Agreement.** Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

36. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY: **General Provision No. 36 augments by Section 7.2, "Intellectual Property Indemnification" of MMCAP Agreement.**

a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.

b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,

ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.

d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.

e) The contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,

ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or

iii) The modification by the State of the equipment furnished hereunder or of the software; or

iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.

f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

g) The foregoing states the entire liability of the contractor to the State with respect to infringement of patents, copyrights or trade secrets.

37. EXAMINATION AND AUDIT: **General Provision No. 37 augments Section 6, "State Audits" of MMCAP Agreement.** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

39. STOP WORK: **General Provision 39 is hereby deleted.**

40. **PRIORITY HIRING CONSIDERATIONS:** If this contract includes services in excess of $200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

41. **COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

42. NONDISCRIMINATION CLAUSE:

a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into

this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

43. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

44. **ASSIGNMENT OF ANTITRUST ACTIONS:** In conjunction with the Attorney General of the State of Minnesota, Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
a) the supplier offers and agrees it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
    i) the assignee has not been injured thereby, or
    ii) the assignee declines to file a court action for the cause of action.

45. **DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
    i) the dangers of drug abuse in the workplace;
    ii) the person's or organization's policy of maintaining a drug-free workplace;
    iii) any available counseling, rehabilitation and employee assistance programs; and,
    iv) penalties that may be imposed upon employees for drug abuse violations.
c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
    i) will receive a copy of the company's drug-free policy statement; and,

ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

46. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

47. SWEATFREE CODE OF CONDUCT:
a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

48. RECYCLING: General Provision No. 48 is hereby deleted.

49. CHILD SUPPORT COMPLIANCE ACT: For any contract in excess of $100,000, the contractor acknowledges in accordance with PCC Section 7110, that:
a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department. Sanofi Pasteur is a multistate employer reporting in Pennsylvania.

50. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

51. ELECTRONIC WASTE RECYCLING ACT OF 2003: General Provision No. 51 is hereby deleted.

52. USE TAX COLLECTION: In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its

retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

53. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.

54. **DOMESTIC PARTNERS:** For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code section 10295.3.

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AMENDMENT NO. 1 TO MMCAP CONTRACT NO. MMS13000

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Sanofi Pasteur, Inc., Discovery Drive, Swiftwater, PA 18370-0187 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS13000 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

(1505JV)

Due to a scrivener's error the intent was for the administrative fee to be 1.5%. Section 2.9 of the Original Contract is replaced with the following.

2.9 **Administrative Fee.** In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases of products (minus any credits). The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to one and one-half percent (1.5%) of MMCAP Participating Facilities' purchases for all Products. The initial payment is due on February 15 of each contract year for purchases delivered by December 31. If this amount does not cover all purchases, additional payments must be made by July 31 of the contract year for all other purchases until all amounts due are fully paid. The check will be remitted to the following address:

MMCAP-State of Minnesota
Attn: Administrative Fee Coordinator
50 Sherburne Ave, Suite 112
St. Paul, MN 55155

With the first payment, Vendor must submit an Administrative Fee Data Report. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to: Mn.MMCAP@state.mn.us Failure to comply with this provision may constitute breach of this Contract.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

1. **SANOFI PASTEUR, INC.**
The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Jill Bingham
Jill Bingham, Deputy Director
Title: State Government Contracts
Date: 6/13/13

2. **STATE OF MINNESOTA FOR MMCAP**
In accordance with Minn. Stat. ' 16C.03, Subd. 3

By: Sandra Christensen
Title: Pharmacy Analyst
Date: 07-2-13

3. **COMMISSIONER OF ADMINISTRATION**
In accordance with Minn. Stat. ' 16C.05, Subd. 2

By: Kathleen Pontius
Title:
Date: July 2, 2013

Amendment 2

sanofi pasteur

The vaccines division of sanofi-aventis Group

June 11, 2013

FEDERAL EXPRESS

Ms. Jennifer VanderPlaats
Minnesota MultiState Contracting Alliance for Pharmacy
Materials Management Division
Minnesota Department of Administration
50 Sherburne Avenue, Room 112
St. Paul, MN 55155

Subject: MMCAP Contract # MMS13000
Sanofi Pasteur Inc.'s Contract # 423394

Dear Ms. VanderPlaats:

We are excited to introduce a new member of the Fluzone Vaccine Family - Fluzone® Quadrivalent Influenza Virus Vaccine, licensed by the Food and Drug Administration (FDA) on June 7, 2013.

This new Fluzone vaccine formulation will be offered in three presentations at this time:

- a 10 pack of single-dose (0.5mL) prefilled syringes (NDC # 49281-413-50)
- a 10 pack of single-dose (0.5mL) vials (NDC # 49281-413-10)
- a 10 pack of single-dose (0.25mL) prefilled syringes (NDC # 49281-513-25)

A revised contract Addendum with prices on these new products is enclosed for your reference. Please sign, date, and return a copy of the Addendum to me to signify acceptance of this offer. You may fax the signed copy to my attention at (570) 957-3272. Upon receipt, I will add this product to your contract. All other terms and conditions of your contract shall remain in full force and effect.

To learn more about Fluzone Quadrivalent Vaccine, please visit www.VaccineShoppe.com. If you have any questions, please do not hesitate to contact me at (570) 957-3486.

We look forward to continuing a mutually beneficial business relationship.

Regards,

Jill Bingham
Deputy Director, State Government Contracts

JB:jav
Enclosure

MMS13000
Amendment 2

ADDENDUM A

Minnesota Multistate Contracting Alliance for Pharmacy
Contract #423394
Period Covered: 6-10-13 through 12-31-13

NDC #	DESCRIPTION	CONTRACT PRICE PER UNIT	PROMO PRICE THROUGH 8/31/13	FEDERAL EXCISE TAX PER UNIT	TOTAL PROMO PRICE (w/excise tax)
49281-413-50	FLUZONE® Quadrivalent Influenza Virus Vaccine, No Preservative 36 months and older 10-Pack 0.5mL Prefilled Syringes 2013/2014 Vaccine Season *NON-RETURNABLE* (Needles not included)	$154.61	$146.88	$7.50	$154.38
49281-413-10	FLUZONE® Quadrivalent Influenza Virus Vaccine, No Preservative 36 months and older 10-Pack 0.5mL Vials 2013/2014 Vaccine Season *NON-RETURNABLE*	$154.61	$146.88	$7.50	$154.38
49281-513-25	FLUZONE® Quadrivalent Influenza Virus Vaccine No Preservative: Pediatric Dose 6 months - 35 months 10-Pack 0.25mL Syringes 2013/2014 Vaccine Season *NON-RETURNABLE* (Needles not included)	$194.90	$185.16	$7.50	$192.66

Note 1: All Fluzone vaccine reservation requests must be sent to Sanofi Pasteur Inc. Fluzone vaccine orders through wholesalers via the wholesaler chargeback mechanism are **not** permitted under this contract.
Note 2: An additional 1% discount is available for all reservations placed through our website at www.vaccineshoppe.com.
Note 3: An additional 2% discount is available for those members participating in prompt pay per the terms of the contract.
Note 4: Influenza vaccine has been added to the list of vaccines subject to Federal Excise Tax. Therefore, Federal Excise Tax will be collected on all doses of 2013/2014 vaccines at a rate of $0.75 per dose.

Jill Bingham
Deputy Director, State Government Contracts

Accepted by: [signature] Title: SPA-P Date: 6/12/2013

In order to ensure that you receive correct pricing, please return a signed copy of this page by mail or fax to 570-957-3272.

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. §16C.05, subd 2

By: [signature]

Title: _____

Date: June 12, 2013

sanofi pasteur
The vaccines division of sanofi aventis Group

SANOFI PASTEUR

MMS13000
Amendment #3

December 13, 2013

FEDERAL EXPRESS

Ms. Jennifer VanderPlaats
Minnesota Multistate Contracting
Alliance for Pharmacy
Materials Management Division
Department of Administration
50 Sherburne Ave, Room 112
St. Paul, MN 55155

Subject: MMCAP Contract #MMS13000
Sanofi Pasteur Inc. Contract #424508

Dear Ms. VanderPlaats:

Sanofi Pasteur Inc. is pleased to offer the following Fluzone® contract terms for the 2014-2015 season:

Reservations can be placed against the awarded contract amount until March 31, 2014. After cutoff occurs, reservation requests will be accepted subject to product availability.

Pricing: The attached **Addendum A** provides the 2014-2015 vaccine formulations, prices, and discounts. Payment terms will remain at 2% 30, Net 31 days.

End of Season Performance Credit: MMCAP Participating Facilities who retain 90% of their total Fluzone doses shipped in the prior year will earn an additional 2% credit on both the 0.25mL Fluzone Quadrivalent vaccine and Fluzone High-Dose vaccine. Fluzone reservation must be confirmed by March 31, 2014 to be eligible. The credit must be used against Fluzone vaccine purchases.

Distribution Policy: Sanofi Pasteur Inc. expects to make a partial shipment of each MMCAP Participating Facilities' total Fluzone request of 50% or more by September 30, 2014 with the balance to be completed by October 31, 2014. Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification.

MMS 13000
Amendment #3

MMCAP Contract #MMS13000
Sanofi Pasteur Inc. Contract: 424508

December 13, 2013

Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses shipped before October 31, 2014 and/or 50% of unused doses shipped after October 31, 2014 and receive full credit of the net purchase price, less excise tax to be used on future purchases of Fluzone vaccine. Full credit of the Federal Excise Tax will be given per the Sanofi Pasteur Inc. Terms and Conditions of Sale. Returns must be received by August 31, 2015.

Expiration Date: Sanofi Pasteur Inc. also proposes to exercise the 1st extension option, which shall extend the contract through 12/31/2015.

Except as modified herein, all provisions of the Agreement shall continue in full force and effect.

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2014-2015 season. Should you have any questions, please do not hesitate to contract me at (570) 957-3486.

Regards,

Jill Bingham

Jill Bingham
Deputy Director, State Government Contracts

Enclosure

MMS 13000
Amendment #3

ADDENDUM A

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #424508

FLUZONE® INFLUENZA VIRUS VACCINE - 2014/2015 VACCINE SEASON

NDC #	DESCRIPTION	CONTRACT PRICE	PROMOTION PRICE[a]	PRICE W/ ALL AVAILABLE DISCOUNTS[b]	FEDERAL EXCISE TAX (FET)[c]	PRICE W/ ALL AVAILABLE DISCOUNTS + FET
49281-394-15	6 months and older, 5mL Multi-Dose Vial	$89.23	$86.55	$83.97	$7.50	$91.47
	No Preservatives					
49281-014-50	36 months and older, 10-Pack 0.5mL Syringes	$100.84	$97.81	$94.90	$7.50	$102.40
	High-Dose					
49281-395-65	65 years of age and older, 10-Pack 0.5mL Syringes	$285.88	$285.88	$277.36	$7.50	$284.86
	Intradermal - No Preservative: 18-64 years of age					
49281-709-55	10 Single Dose Prefilled Microinjection Systems	$148.72	$144.26	$139.96	$7.50	$147.46
	Quadrivalent					
49281-621-15	6 months and older, 5mL Multi-Dose Vial	$151.77	$147.22	$142.83	$7.50	$150.33
	Quadrivalent					
	No Preservative: 36 months and older					
49281-413-50	10-Pack 0.5mL Prefilled Syringes	$160.78	$155.96	$151.31	$7.50	$158.81
	Quadrivalent - No Preservative					
49281-413-10	36 months and older, 10-Pack 0.5mL Vials	$168.82	$163.75	$158.87	$7.50	$166.37
	Quadrivalent - No Preservative: Pediatric Dose					
49281-513-25	6 months - 35 months, 10-Pack 0.25mL Syringes	$194.90	$194.90	$189.09	$7.50	$196.59

[a] Reservation must be confirmed by March 31, 2014 to be eligible. No discount is available on the 0.25mL Fluzone Quadrivalent vaccine and Fluzone High-Dose vaccine

[b] Discounts include promotion price, a 1% discount available for all reservations placed online at www.vaccineshoppe.com, and a 2% discount available to those members participating in the prompt pay terms of the contract.

[c] Influenza vaccine has been added to the list of vaccines subject to Federal Excise Tax. Therefore, Federal Excise Tax will be collected on all doses of 2014/2015 vaccines at a rate of $0.75 per dose.

Jill Bingham

Jill Bingham, Deputy Director, State Government Contracts

Accepted by: [signature] Title: SPA-P Date: 12/18/2013

In order to ensure that you receive correct pricing, please return a signed copy of this page by mail or fax to 570-957-3272.

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. §16C.05, subd 2

By: [signature]

Title:

Date: Dec 18, 2013

Sanofi Pasteur Inc.
Contract MMS13000

Amendment 4
is not posted for viewing

SANOFI PASTEUR

MMS 13000
Amendment #5

January 15, 2015

Ms. Jennifer VanderPlaats
Minnesota Multistate Contracting
Alliance for Pharmacy
Materials Management Division
Department of Administration
50 Sherburne Ave, Room 112
St. Paul, MN 55155

Subject: MMCAP Contract #MMS13000
Sanofi Pasteur Inc. Contract **#425594**

Dear Ms. VanderPlaats:

Sanofi Pasteur Inc. is pleased to offer the following Fluzone® contract terms for the 2015-2016 season:

Reservations can be placed against the awarded contract amount until March 31, 2015. After cutoff occurs, reservation requests will be accepted subject to product availability.

Pricing: The attached **Addendum** A provides the 2015-2016 vaccine formulations, prices, and discounts. Payment terms will remain at 2% 30, Net 31 days.

End of Season Performance Credit: MMCAP Participating Facilities who retain 90% of their total Fluzone doses shipped in the prior year will earn an additional 2% credit on both the 0.25mL Fluzone Quadrivalent vaccine and Fluzone High-Dose vaccine. Fluzone reservation must be confirmed by March 31, 2015 to be eligible. The credit must be used against Fluzone vaccine purchases.

Distribution Policy: Sanofi Pasteur Inc. expects to make a partial shipment of each MMCAP Participating Facilities' total Fluzone request of 50% or more by September 30, 2015 with the balance to be completed by November 15, 2015. Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This only applies to each Member's confirmed request for the 2015-2016 influenza season and must be confirmed by March 31, 2015. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2015 will be excluded from the shipping guarantees above.

MMS13000
Amendment #5

MMCAP Contract #MMS13000
Sanofi Pasteur Inc. Contract: 425594

January 15, 2015

Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses shipped before October 31, 2015 and/or 50% of unused doses shipped after October 31, 2015 and receive full credit of the net purchase price, less excise tax to be used on future purchases of Fluzone vaccine. Full credit of the Federal Excise Tax will be given per the Sanofi Pasteur Inc. Terms and Conditions of Sale. Returns must be received by August 31, 2016.

Expiration Date: Sanofi Pasteur Inc. also proposes to exercise the 2nd extension option, which shall extend the contract through 12/31/2016.

Except as modified herein, all provisions of the Agreement shall continue in full force and effect.

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2015-2016 season. Should you have any questions, please do not hesitate to contact me at (570) 957-0330.

Regards,

Pamela Garcia-Gomez
Deputy Director, State Government Contracts

Enclosure

Addendum A

MMS 13000 Amendment #5

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #425594

FLUZONE® INFLUENZA VIRUS VACCINE - 2015/2016 VACCINE SEASON

NDC #	DESCRIPTION	CONTRACT PRICE	PROMOTION PRICE [a]	PRICE W/ ALL AVAILABLE DISCOUNTS [b]	FEDERAL EXCISE TAX (FET) [c]	PRICE W/ ALL AVAILABLE DISCOUNTS + FET
	Trivalent					
49281-396-15	6 months and older, 5mL Multi-Dose Vial	$89.23	$86.55	$83.97	$7.50	$91.47
	High-Dose					
49281-397-65	65 years of age and older, 10-Pack 0.5mL Syringes	$311.61	$311.61	$302.33	$7.50	$309.83
	Quadrivalent - No Preservative Intradermal					
49281-708-40	18-64 years of age, 10 Single Dose Pre-filled Microinjection Systems	$185.87	$180.29	$174.92	$7.50	$182.42
	Quadrivalent					
49281-623-15	6 months and older, 5mL Multi-Dose Vial	$151.77	$147.22	$142.83	$7.50	$150.33
	Quadrivalent - No Preservative					
49281-415-50	36 months and older, 10-Pack 0.5mL Pre-filled Syringes	$160.78	$155.96	$151.31	$7.50	$158.81
	Quadrivalent - No Preservative					
49281-415-10	36 months and older, 10-Pack 0.5mL Vials	$168.82	$163.76	$158.88	$7.50	$166.38
	Quadrivalent - No Preservative, Pediatric Dose					
49281-515-25	6 - 35 months, 10-Pack 0.25mL Pre-filled Syringes	$200.74	$200.74	$194.76	$7.50	$202.26

a Reservation must be confirmed by March 31, 2015 to be eligible. No discount is available on the 0.25mL Fluzone Quadrivalent vaccine and Fluzone High-Dose vaccine

b Discounts include promotion price, a 1% discount available for all reservations placed online at www.vaccineshoppe.com, and a 2% discount available to those members participating in the prompt pay terms of the contract.

c Influenza vaccine has been added to the list of vaccines subject to Federal Excise Tax. Therefore, Federal Excise Tax will be collected on all doses of 2015/2016 vaccines at a rate of $0.75 per dose.

Pamela Garcia-Gomez, Deputy Director, State Government Contracts

Accepted by: _____ Title: SRA I Date: 1/16/2015

In order to ensure that you receive correct pricing, please return a signed copy of this page by mail or fax to 570-957-3272.

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. §160.05, subd 2

By: Dan Hoang Pharm D MBA

Title: Pharmacist Senior

Date: January 20, 2015

Sanofi Pasteur Inc.
Contract MMS13000

Amendment 6
is not posted for viewing

AMENDMENT NO. 7 TO MMCAP CONTRACT NO. MMS13000 (425594)

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Sanofi Pasteur, Inc., Discovery Drive, Swiftwater, PA 18370-0187 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS13000 (425594) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

(HP)

Effective when signed Article 5 of the Original Contract is deleted in its entirety and replaced with the following:

5 Liability.

5.1. The Vendor must indemnify, save, and hold MMCAP, MMCAP Participating Facilities, including their agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the alleged injury or death to person(s) or property, alleged to have been caused by some defect in Products under this Contract, when the Product has been supplied by and dispensed strictly in accordance with federal, state, and local regulations and the applicable provisions of the package insert. This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify the Vendor.

5.2. Limitation of Remedies. Vendor will not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods, or from any other cause with respect to the product(s) or this agreement, whether such claim is based upon breach of contract, breach of warranty, negligence, strict liability in tort, negligence, or any other legal theory.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

1. SANOFI PASTEUR, INC.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____

Title: Associate Vice President Pricing and Pharmacoeconomics

Date: 2-19-15

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

In accordance with Minn. Stat. § 16C.03, subd. 3

By: Dan Hoang, PharmD, MBA

Title: Pharmacist Senior

Date: February 19, 2015

3. COMMISSIONER OF ADMINISTRATION

In accordance with Minn. Stat. § 16C.05, subd. 2

By: Heather Christ

Title: _____

Date: Feb. 19, 2015

AMENDMENT NO. 8 TO MMCAP CONTRACT NO. MMS13000 (425594)

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and Sanofi Pasteur, Inc., Discovery Drive, Swiftwater, PA 18370-0187 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS13000 (425594) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

(HP)

When signed the following two revisions will become effective:

Revision 1: Section 6 State Audits of the Original Contract will be modified to include the last sentence.

> 6 **State Audits.** Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract. This clause extends to MMCAP Member Facilities as it relates to business conducted with and sales to that Member Facility.

Revision 2: The following term is required by Minnesota law and is added to the Original Contract:

> 20 **Affirmative action requirements for contracts in excess of $100,000 and if Vendor has more than 40 full-time employees in Minnesota or its principal place of business.** The State of Minnesota intends to carry out its responsibility for requiring affirmative action by its vendors.
>
> *20.1 Covered contracts and Vendors.* If the Contract exceeds $100,000 and Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then Vendor must comply with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules 5000.3400-5000.3600. If Vendor is covered by Minnesota Statutes Section 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, it must certify that it is in compliance with federal affirmative action requirements.
>
> *20.2 Minnesota Statutes Section 363A.36.* Minnesota Statutes Section 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
>
> *20.3 Minnesota Rules 5000.3400-5000.3600.*
>
> *(a) General.* Minnesota Rules 5000.3400-5000.3600 implements Minnesota Statutes Section 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minnesota Rules 5000.3400-5000.3600 including, but not limited to, Minnesota Rules 5000.3420-5000.3500 and 5000.3552-5000.3559.
>
> *(b) Disabled Workers.* Vendor must comply with the following affirmative action requirements for disabled workers.
>
> (1) Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
>
> (2) Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(3) In the event of Vendor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

(4) Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(5) Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Vendor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

(c) Consequences. The consequences for Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State of Minnesota.

(d) Certification. Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

1. **SANOFI PASTEUR, INC.**
The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____
PAMELA GARCIA-GOMEZ

Title: DEPUTY DIRECTOR, STATE GOVERNMENT CONTRACTS

Date: 13 APRIL 2015

2. **STATE OF MINNESOTA FOR MMCAP**
In accordance with Minn. Stat. § 16C.03, subd. 3

By: _____

Title: SDA-P

Date: 4-20-2015

3. **COMMISSIONER OF ADMINISTRATION**
In accordance with Minn. Stat. § 16C.05, subd. 2

By: _____

Title: _____

Date: April 20, 2015

By: _____

Title: _____

Date: _____

SANOFI PASTEUR

MMS13000
Amendment # 9
pg 1 of 3

January 13, 2016

Ms. Jennifer VanderPlaats
Minnesota Multistate Contracting
Alliance for Pharmacy
Materials Management Division
Department of Administration
50 Sherburne Ave, Room 112
St. Paul, MN 55155

Subject: MMCAP Contract #MMS13000
Sanofi Pasteur Inc. Contract # 426668

Dear Ms. VanderPlaats:

Sanofi Pasteur Inc. is pleased to offer the following Fluzone® contract terms for the 2016-2017 season:

Reservations can be placed against the awarded contract amount until March 31, 2016. After cutoff occurs, reservation requests will be accepted subject to product availability.

Pricing: The attached Addendum A provides the 2016-2017 vaccine formulations, prices, and discounts. Payment terms will remain at 2% 30, Net 31 days.

End of Season Performance Credit: MMCAP Participating Facilities who retain 90% of their total Fluzone doses shipped in the prior year will earn an additional 2% credit on both the 0.25mL Fluzone Quadrivalent vaccine and Fluzone High-Dose vaccine. Fluzone reservation must be confirmed by March 31, 2016 to be eligible. The credit must be used against Fluzone vaccine purchases.

Distribution Policy: Sanofi Pasteur Inc. expects to make a partial shipment of each MMCAP Participating Facilities' total Fluzone request of 50% or more by September 30, 2016 with the balance to be completed by November 15, 2016. Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This only applies to each Member's confirmed request for the 2016-2017 influenza season and must be confirmed by March 31, 2016. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2016 will be excluded from the shipping guarantees above.

Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses (per presentation) shipped before October 31, 2016 and/or 50% of unused doses (per presentation) shipped after October 31, 2016 and receive full credit of the net purchase price, less excise tax to be used on future purchases of Fluzone vaccine.

SANOFI PASTEUR

MM5130000
Amendment# 9
2 of 3

Full credit of the Federal Excise Tax will be given per the Sanofi Pasteur Inc. Terms and Conditions of Sale. Returns must be received by August 15, 2017.

Expiration Date: Sanofi Pasteur Inc. also proposes to exercise the 3rd extension option, which shall extend the contract through 12/31/2017.

Except as modified herein, all provisions of the Agreement shall continue in full force and effect.

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2016-2017 season. Should you have any questions, please contact me at (570) 957-0330.

Regards,

Pamela Garcia-Gomez
Deputy Director, State Government Contracts

Enclosure

MNS15CCC
Amendment #4
pg 3 of 3

Addendum A

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #426668

FLUZONE® INFLUENZA VIRUS VACCINE 2016-2017 SEASON

NDC #	DESCRIPTION	CONTRACT PRICE	PROMOTION PRICE [a]	PRICE W/ ALL AVAILABLE DISCOUNTS [b]	FEDERAL EXCISE TAX (FET) [c]	PRICE W/ ALL AVAILABLE DISCOUNTS + FET
49281-0625-15	Quadrivalent 6 months and older. 5mL Multi-Dose Vial	$156.42	$151.73	$147.21	$7.50	$154.71
49281-0416-50	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Pre-filled Syringes	$168.82	$163.76	$158.88	$7.50	$166.38
49281-0416-10	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Vials	$173.89	$168.67	$163.65	$7.50	$171.15
49281-0516-25	Quadrivalent - No Preservative: Pediatric Dose 6 - 35 months, 10-Pack 0.25mL Pre-filled Syringes	$214.79	$214.79	$208.39	$7.50	$215.89
49281-0399-65	High-Dose 65 years of age and older. 10-Pack 0.5mL Syringes	$367.70	$367.70	$356.74	$7.50	$364.24
49281-0710-40	Quadrivalent Intradermal - No Preservative 18-64 years of age, 10 Single Dose Pre-filled Microinjection Systems	$168.82	$163.76	$158.88	$7.50	$166.38

a Reservation must be confirmed by March 31, 2016 to be eligible. No discount is available on the 0.25mL Fluzone Quadrivalent vaccine and Fluzone High-Dose vaccine

b Discounts include promotion price, a 1% discount available for all reservations placed online at www.vaccineshoppe.com, and a 2% discount available to those members participating in the prompt pay terms of the contract.

c Influenza vaccine has been added to the list of vaccines subject to Federal Excise Tax. Therefore, Federal Excise Tax will be collected on all doses of 2016-17 vaccines at a rate of $0.75 per dose.

Pamela Garcia-Gomez, Deputy Director, State Government Contracts

Accepted by: Jan VanderHeyden, Title: SPA-P Date: 1/13/2016

In order to ensure that you receive correct pricing, please return a signed copy of this page by mail or fax to 570-957-3272.

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. § 16C.05, subd. 2

By: Heather O'Keefe

Date: Jan 13, 2016

Sanofi Pasteur Inc.
Contract MMS13000

Amendments 11 - 12 are not posted for viewing

SANOFI PASTEUR

MMS13000
Amendment #13
#3

January 13, 2017

Ms. Jennifer VanderPlaats
Minnesota Multistate Contracting
Alliance for Pharmacy
Materials Management Division
Department of Administration
50 Sherburne Ave, Room 112
St. Paul, MN 55155

Subject: MMCAP Contract #MMS13000
Sanofi Pasteur Inc. Contract # 427907

Dear Ms. VanderPlaats:

Sanofi Pasteur Inc. is pleased to offer the following Fluzone® contract terms for the 2017-2018 season:

Pricing: The attached Addendum A provides the 2017-2018 vaccine formulations, prices, and discounts. Payment terms will remain at 2% 30, Net 31 days.

End-of-Season Performance Credit: MMCAP Participating Facilities who retain 90% of their total Fluzone doses shipped in the prior year will earn an additional 2% credit on Fluzone High-Dose vaccine. The credit is to be used against future Fluzone vaccine purchases

Shipping Commitments: Sanofi Pasteur Inc. expects to make a partial shipment of each MMCAP Participating Facilities' total Fluzone request, as follows:

Shipping Commitment Presentation	Shipping Commitment Timelines and Percentages of Total Confirmed Fluzone Vaccine Reservation by March 31, 2017
Fluzone High-Dose vaccine, Fluzone Quadrivalent vaccine 0.5-mL unit-dose syringe, and Fluzone Quadrivalent vaccine 0.25-mL unit-dose syringe	September 30 = 50% October 31 = 100%
Fluzone Quadrivalent vaccine multidose vial, Fluzone Quadrivalent vaccine 0.5-mL unit-dose vial, and Fluzone Intradermal Quadrivalent vaccine	August 31 = 20% September 30 = 100%

Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This only applies to each Member's request for the 2017-2018 influenza season that is confirmed by March 31, 2017. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2017 will be excluded from the shipping commitments above.

Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses (by presentation) and receive full credit of the net purchase price, less excise tax. Credit may be applied to any Sanofi Pasteur vaccine purchased directly from Sanofi Pasteur. Returns will be accepted after May 31, 2018, and must be received by July 31, 2018.

Expiration Date: Sanofi Pasteur Inc. also proposes to exercise the 3rd extension option, which shall extend the contract through 12/31/2017.

Except as modified herein, all provisions of the Agreement shall continue in full force and effect.

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2017-2018 season. Should you have any questions, please contact me at (570) 957-0330.

Regards,

Pamela Garcia-Gomez
Deputy Director, State Government Contracts

Addendum A

MMS 3000
Amendment 13
3 of 12

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #427907

FLUZONE® INFLUENZA VIRUS VACCINE 2017-2018 SEASON

NDC #	DESCRIPTION	CONTRACT PRICE	PROMOTION PRICE [a]	PRICE W/ ALL AVAILABLE DISCOUNTS [b]
49281-0627-15	Quadrivalent 6 months and older, 5mL Multi-Dose Vial	$156.42	$151.73	$147.21
49281-0417-50	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Pre-filled Syringes	$168.81	$163.75	$158.87
49281-0417-10	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Vials	$168.81	$163.75	$158.87
49281-0517-25	Quadrivalent - No Preservative: Pediatric Dose 6 - 35 months, 10-Pack 0.25mL Pre-filled Syringes	$168.81	$163.75	$158.87
49281-0401-65	High-Dose 65 years of age and older, 10-Pack 0.5mL Syringes	$423.70	$423.70	$411.07
49281-0712-40	Quadrivalent Intradermal - No Preservative 18-64 years of age, 10 Single Dose Pre-filled Microinjection Systems	$168.81	$163.75	$158.87

[a] No discount is available on the Fluzone High-Dose vaccine

[b] Discounts include promotion price, a 1% discount available for all reservations placed or confirmed online at www.vaccineshoppe.com, and a 2% discou participating in the prompt pay terms of the contract.

[c] Influenza vaccine has been added to the list of vaccines subject to Federal Excise Tax. Therefore, Federal Excise Tax will be collected on all doses of 2 dose

Pamela Garcia-Gomez, Deputy Director, State Government Contracts

Accepted by: _____ Title: _____ Date: 1/13/2017

In order to ensure that you receive correct pricing, please return a signed copy of this page by email to Pamela.Gomez@sanofipasteur.com

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. § 16C.05, subd. 2

By: _____

Date: Jan. 13, 2017