



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: July 19, 2018

Staff Contact: Carol Akers 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. for a total annual amount not to exceed \$290,000.00 to be funded from the Health and Human Services Private Vaccine revenue and School Located Vaccine and Community Vaccine revenue accounts for FY19. (Carol Akers; CAkers@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 vaccinations for Carson City citizens.

Agenda Action: Formal Action/Motion

Time Requested: 5 minutes

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. for a total annual amount not to exceed \$290,000.00 to be funded from the Health and Human Services Private Vaccine revenue and School Located Vaccine and Community Vaccine revenue accounts for FY19.

Board's Strategic Goal

Efficient Government

Previous Action

Annual approval

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 vaccine accounts. If approved accounts will be reduced by up to \$290,000.00.

Alternatives

Not approve purchase and provide other direction.

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

VACCINE FUNDING (over \$50K each)
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<u>Grant Fund</u>	Joinder Contract Amounts	Current Available Funding
275-6850-441-06-97	\$ 172,000.00	\$ 275,967.00
275-6831-441-12-31	\$ 65,995.00	\$ 293,622.00
275-6866-441-06-25	\$ 52,000.00	\$ 177,578.00
TOTAL	\$ 289,995.00	\$ 747,167.00

FY19 EXPENDITURES BY VENDOR

GlaxoSmithKline	\$ 95,995.00
Merck, Sharp & Dohme	\$ 70,000.00
Sanofi Pasteur Inc.	\$ 124,000.00
TOTAL	\$ 289,995.00



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: GlaxoSmithKline MMS17016

The following contract contains language that protects the terms and pricing found in this contract. Please review Article 6.3 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 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").

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, 2018, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

1.2 Expiration date: December 31, 2022, or as cancelled pursuant to clause 23.

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. 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 2018-2019

Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	Max. Quantity to MMCAP
Fluarix 58160-0898-52	prefilled syringe; 3 years and older	Pack of 10	\$155.88	See Exhibit A
Flulaval 19515-0909-52	prefilled syringe; 6 months and older	Pack of 10	\$155.88	See Exhibit A
Flulaval 19515-0900-11	5 ml MD vial 6 months and older	10 doses per Vial	\$145.69	See Exhibit A

2.1.1 Contract Year. Products and pricing listed in Table 1 are for contract year one; otherwise defined as the 2018-2019 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 will post supply updates for vaccines products on the GSK vaccine-direct website.

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 through www.gskvaccinesdirect.com (the "GSK Direct Website").

2.2.4.2 Order Minimums. See Exhibit A. Vendor at its discretion can accept or refuse any order.

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

2.2.4.4 Delivery. See the attached Exhibit A, which is attached and incorporated, for details.

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

2.2.4.6 Purchase Orders.

MMCAP Members may use their own forms for Purchase Orders. To the extent that the terms of any form conflict with the terms of this Contract, the terms of this Contract supersede. Each MMCAP Member will be responsible for payment of goods and services provided by Vendor; and the MMCAP Office will have no liability for any unpaid invoice of any MMCAP Facility. Vendor agrees to invoice the MMCAP Member for all products shipped or services provided. Vendor will accept Electronic Funds Transfer (EFT) for payment. At time of new account set up, the MMCAP Member will initiate this process with its bank.

2.2.4.6 a. Funds available and authorized/non-appropriation.

By submitting a Purchase Order the MMCAP Member represents it has sufficient funds currently available and authorized for expenditure to finance the costs of the Purchase Order.

2.2.4.6 b. Termination of Individual Purchase Orders.

MMCAP Members may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Vendor, or at such later date as the MMCAP Member may establish in such notice, upon the occurrence of any of the following events:

- (i) The MMCAP Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or the MMCAP Member is prohibited from paying for such goods from the planned funding source; or
- (iii) Vendor commits any material breach of this Contract or a Purchase Order.

Upon receipt of written notice of termination, Vendor will stop performance under the Purchase Order as directed by the MMCAP Member.

(iv) Termination of a standing Purchase Order does not extinguish or prejudice the MMCAP Member's right to enforce such Purchase Order with respect to Vendor's breach of any warranty or any defect in or default of Vendor's performance under such Purchase Order that has not been cured, including any right of the MMCAP Member to indemnification by Vendor or enforcement of a warranty. If a standing Purchase Order is terminated, the MMCAP Member must pay Vendor in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Member.

2.2.4.6 c. Jurisdiction and Venue of Purchase Orders.

Upon completion of the Dispute Resolution process outlined in this Contract, and solely with the prior written consent of MMCAP and the State of Minnesota Attorney General's Office, the MMCAP Member may bring a claim, action, suit

or proceeding against Vendor. The MMCAP Member's request to MMCAP to bring the claim, action, suit, or proceeding must state the initiating party's desired jurisdiction, venue and governing law.

Upon completion of the Dispute Resolution process outlined in this Contract, the Vendor may bring a claim, action, suit or proceeding against MMCAP Member, in Vendor's sole discretion.

As it applies to purchases made by a MMCAP Member, nothing in the Contract will be construed to deprive the MMCAP Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Contract or afforded by the MMCAP Member's law.

2.2.4.7 Payment. MMCAP Participating Facilities must pay for all orders using cash, check, or EFT payments, with payment to be received by Vendor no later than 30 days for cash payments or EFT payments from the date of the invoice. Unauthorized deductions are not permitted and may result in delayed shipments. Payment must be sent to the following address:

GlaxoSmithKline Financial, Inc.

P.O. Box 740415

Atlanta, GA 30374-0415

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

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 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. For Vendor Influenza vaccines, the contract prices to be offered to MMCAP Eligible Members will be those set forth in Table 1. Such prices shall remain fixed, 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 thirty (30) days prior to the effective date of the price change. Price decreases will be accepted at any time and will be applied to any products under contract for that applicable influenza season. GSK reserves the right to decrease the price through a Limited Time Offer (LTO), where GSK has lowered a price temporarily, upon written notice to MMCAP.

2.5 Failure to Supply Contracted Product.

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 product on the open market for the period in which the Vendor is unable to provide the Product.

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).

2.7 Amendments. All Amendments to this contract must be in writing and will not be effective until fully agreed to and executed by both parties. 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.

Eligible Members shall include City/County/State health care facilities that are in good standing with Vendor and currently identifying MMCAP as their primary group affiliation. 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.

2.8.1 Eligibility. Vendor will determine the eligibility of the Participating Member utilizing the following requirements. Vendor 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 dispense to Participating Member's patients only;
- ii) Must have physician dispensing unit;
- iii) Must have dispensations limited to prescriptions by physicians employed by or on the professional staff of the Participating Member;
- 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 GSK's MMCAP Declaration Form (Exhibit B) or a form acceptable to Vendor, that any Vendor 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. MMCAP and Vendor must mutually agree upon which of MMCAP's current Participating Facilities identified on MMCAP's Membership List (password protected and published online at www.mmcap.org) are eligible for pricing and terms of this Contract. New eligible MMCAP Participating Facilities will only become eligible for the Contract Prices under this Contract upon the mutual agreement of MMCAP and Vendor. In order to add members to this Contract, MMCAP must notify Vendor in writing or electronically, of its request to add members to this Contract which notice must include the name, HIN numbers, name of department, telephone number of department and address of the institution. Vendor will notify MMCAP within 30 days of its receipt of the request whether it agrees to extend the terms of this Contract to such proposed members and the effective date of such addition.

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 a half percent (1.5%) of MMCAP Participating Facilities' purchases for all Products. The Administrative Service Fee for sales of vaccine to all MMCAP Participating Facilities will be paid to MMCAP within 90 days after the Return's Expiration Date as stated on Exhibit A. The check will be remitted to the following address:

MMCAP-State of Minnesota
 Attn: Administrative Fee Coordinator
 50 Sherburne Ave, Suite 309
 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 must 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
Quantity 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	billtocty	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	shiptocty	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 (MMSxxxx)	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 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 Vendor with respect to purchases made by or on behalf of the Participating Member.

2.11 Returned Goods/Credits. See the attached Exhibit A for details.

2.12 Value-Added Programs. MMCAP Participating Facilities must be offered any programs normally offered to the Vendor's Cities/Counties/States 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" 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).

2.15 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.

2.16 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 and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

2.17 Storage and Handling Requirements. Vendor expects that MMCAP Participating Facilities will take such precautions as are necessary to prevent the Vendor 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 must maintain all federal, state and local licensure or registration necessary for the lawful handling and use of all Vaccines and must immediately notify Vendor 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 must handle and store Vendor 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 Vendor criteria on storing and shipping Vendor products that require special handling. MMCAP Participating Facilities shall allow physical inspection of storage facility at any time Vendor requests.

2.18 Business Reviews. An annual business review with the Vendor and MMCAP managing director or designee at the MMCAP office or a mutually agreed upon location is required.

2.19 Member-required Participation Agreement (MPA). In order to access this Contract some members require jurisdiction-specific additional paperwork or contract language. Vendor must not sign any member documents without prior MMCAP review and approval. If needed, MMCAP will issue a Member-requested Participation Agreement (MPA) that will be amended into to this Contract. No other mechanism of modifying or "attaching to" MMCAP contracts is authorized. The MPA, which will only apply to the requesting Member and must be signed

in the following order: Member, Vendor, then MMCAP. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that Member. In the event a Member requires a fee be added to the Contract price (e.g., member levied procurement fee or system use fee), that fee must be added on top of the MMCAP-contracted pricing. Vendor may not absorb the fee. Vendor must not pay a member levied fee without first collecting the fee through increased product costs. The fees will be set aside and paid to the member as would be detailed in an MPA.

This Contract cannot be used as a vehicle by which the Vendor and MMCAP member enter in to their own stand-alone agreement..

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 Babatunde Adedeji – Contract Development Manager – 5 Crescent Drive, Philadelphia PA 19112.

4 Assignment, Amendments, Waiver, and Contract Complete

4.1 Assignment.

The right and/or obligations of this Agreement 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 cGMP. Vendor hereby agrees to indemnify and hold MMCAP and its Participating Facilities harmless from and against any and all liability, losses, damages, claims or causes of action, and expenses connected therewith, including reasonable attorneys' fees, caused solely by or as a direct result of Vendor's failure to manufacture such products in compliance with FDA current Good Manufacturing Practices ("cGMP"), provided that purchaser provides notice and cooperation as set forth below.

5.2 Infringement. Vendor agrees that it will indemnify and MMCAP and its Participating Facilities harmless from and against any and all liabilities, demands, claims, actions, or causes of action, assessments, judgments, losses, costs, damages or expenses, including but not limited to reasonable attorneys' fees, which may hereafter be asserted against or incurred by MMCAP and its Participating Facilities, employees, agents' representatives, successors and assigns for the infringement by Vendor of any patent, copyright, trademark or service mark.

5.3 Notice, Cooperation and Conduct of Litigation. MMCAP and its Participating Facilities must promptly notify Vendor of any claim asserted against it for which indemnification is sought, and shall promptly deliver to Vendor 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. Vendor 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 Vendor with all available information concerning the claim.

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

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. This clause extends to MMCAP Member Facilities as it relates to business conducted with and sales to the Member Facility.

6.2 GSK Audit/Records Rights.

6.2.1 GSK Audit Rights. During the Term of this Agreement and for two (2) years thereafter, Vendor has 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 Agreement. Vendor 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 Agreement, 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 have the right to specify certain confidential or proprietary information that should not be disclosed to GSK; provided, however, that information must 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 Agreement. Any and all information required will be requested by Vendor 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 Vendor and MMCAP and its Participating Members.

6.2.2 MMCAP Record Retention. MMCAP must for the Term of this Agreement 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 performance and compliance with their obligations under the Agreement. MMCAP must upon written request allow Vendor to inspect, at reasonable times, all such information and shall furnish such information to Vendor 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 Agreement 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 other third parties under non-disclosure agreement or contract with MMCAP to perform specific tasks such as auditing and data analysis; and
- c. Member State Attorneys General or auditors requiring contract or pricing data to perform their duties.

7 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 MMCAP as to how the Vendor should respond to the request. The Vendor's response to the request will comply with applicable law.

The 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. In the event that the Vendor subcontracts any or all of the work to be performed under the Contract, the Vendor shall retain responsibility under the terms of this paragraph for such work.

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. 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 Agreement 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 Agreement 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 Agreement 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 Agreement, the other party may terminate this Agreement 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 Certifications.

14.1 cGMP 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.

14.2 Debarment and Suspension Certification Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any MMCAP Member Facility; and has not been convicted of a criminal offense related to the subject of this Contract. Vendor further warrants that it will provide immediate written notice to the MMCAP Authorized Representative if this certification changes at any time.

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

- A. Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies (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 and Completed Operations Liability

MMCAP named as an Additional Insured

B. 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.

C. 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. Policies will be made available subject to MMCAP executing a confidentiality agreement satisfactory to Vendor.

17 Laws and Regulations

17.1 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.

17.2 Vendor is in compliance with all currently applicable sections of the Drug Quality and Security Act Title II.

18 Human Rights/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.

(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.

19 Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all amendments, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

20 Best Price. If GSK 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 Agreement 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.

21 Regulatory Reporting Requirements.

21.1 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 Agreement 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 Agreement, upon request, to the Secretary of the Department of Health and Human Services and/or a State agency.

21.2 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.

21.3 Other Reporting Requirements. GSK and MMCAP agree that GSK, 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.

21.4 Compliance with State Laws. MMCAP will comply with applicable reporting requirements to any health

care corporation, health care insurer, other third party reimbursor, or any patient imposed pursuant to the following law Minnesota Statutes Secion 62J.23

The terms of this Agreement apply only to those eligible Members located in the Continental United States, Alaska and Hawaii provided that the terms of this Agreement do 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 Agreement, (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.

22 Anti-Bribery and Corruption. Vendor is committed to the highest ethical standards and requires that all Vendor employees and third parties acting for or on behalf of Vendor conduct their activities in compliance with all anti-corruption laws and regulations. MMCAP and Vendor agree that MMCAP is not a third party acting for or on behalf of Vendor. Notwithstanding the foregoing, MMCAP agrees 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 Vendor in obtaining or retaining business.

23 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, determined in a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date.

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: [Signature]
Title: VP National Accounts
Date: 12/8/17

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: SPA-C
Date: 12/8/2017

3. COMMISSIONER OF ADMINISTRATION

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

By: _____
Title: _____
Date: _____

By: [Signature]
Title: Pharmacist Sr.
Date: 12-8-17

Exhibit A
2018-2019 Influenza Program

NDC No.	Product Description	Contract Price ^{1,2}	Minimum Order Requirement
19515-0900-11	FLULAVAL QUADRIVALENT 5ML Multi-Dose Vials (MDV) 10s (≥6 months of age)	\$145.69	100 Doses = 10 packs of 10 Dose Vials
19515-0909-52	FLULAVAL QUADRIVALENT 0.5ML Tip-Lok No Needle Syringes 10s (≥6 months of age)	\$155.88	100 Doses = 10 Boxes of 10
58160-0898-52	FLUARIX QUADRIVALENT 0.5ML Tip-Lok No Needle Syringes 10s (≥3 years of age)	\$155.88	100 Doses = 10 Boxes of 10

¹ Price for Fluarix® Quadrivalent (QIV)/FluLaval® QIV does not include the Federal Excise Tax of \$0.75 per antigen, per dose.

² GSK reserves the right to decrease the price through a Limited Time Offer (LTO), where GSK has lowered a price temporarily, upon written notice to MMCAP.

Once minimum order is achieved for Fluarix QIV & FluLaval QIV Tip Lok, additional doses can be ordered by the box (10 doses).

Once minimum order is achieved for FluLaval QIV MDV, additional doses can be ordered by the vial/pack (10 doses).

Ordering Process

Direct Purchases:

Participating Members may purchase GSK Influenza Vaccines directly from GSK by placing a pre-book reservation directly with GSK at www.gskdirect.com. GSK online terms and conditions shall apply and will be defined for the Participating Member on website at time of reservation. GSK's online terms and conditions are subject to change without notice to MMCAP or its Participating Members.

Once the Participating Member places their pre-book reservation, confirmation of their reservation and will be subject to a credit check prior to shipment. At its discretion, GSK can accept or refuse any GSK Influenza Vaccine pre-book reservation. All GSK Influenza Vaccine pre-book reservations will be on a first come first serve basis. If the Participating Member wants to increase their GSK Influenza Vaccine pre-book reservation after their initial reservation and after the edit lock-in date (April 2, 2018), then a separate pre-book reservation will have to be placed and that reservation will be subject to availability. GSK Influenza Vaccine pre-book reservations are subject to and conditioned on FDA licensure and sufficient product availability in the United States. Participating Members agree to fully comply with local, state and federal laws applicable to the storage of GSK Influenza Vaccines. GSK online terms and conditions are subject to change. Please check www.gskdirect.com for the most up to date terms & conditions.

The payment term is 0% net 30 days.

Indirect Purchases:

Participating Members may also purchase GSK Influenza Vaccines through authorized GSK Influenza Vaccine distributors. GSK Influenza Vaccines purchased through authorized distributors will be subject to the distributor's terms of sale and will not be eligible for any additional discounts offered through www.gskdirect.com nor for any GSK delivery guarantees and such purchases are not eligible for return.

Shipment of FLUARIX/FLULAVAL Orders

Subject to availability, GSK anticipates shipments of GSK Influenza Vaccines to begin in August 2018 with delivery of the total number of GSK Influenza Vaccine doses prebooked by Participating Member completed by September 30, 2018, provided Participating Members prebook flu vaccine doses on or before April 2, 2018. GSK reserves the right to make partial deliveries based on availability and approval of each GSK Influenza Vaccine. Title to and risk of loss for GSK Influenza Vaccines shipped to Participating Members will pass to Participating Member when delivered. GSK shall prepay all carrier charges and insurance against Participating Member risk of loss or damage to GSK Influenza Vaccines during carriage on

orders when routing is done at GSK's discretion. If Participating Member requests special routing and GSK approves of the routing which results in higher transportation costs than would have been incurred as a result of GSK's routing of choice, then the difference in transportation cost shall be borne by Participating Member.

In the event that a market shortage would require that a federal government agency assume control of product allocation, or in the event that doses of GSK Influenza Vaccines must be made available for sale to government agencies, the product amounts and delivery schedules may be changed to meet such requirements. In addition, in the event there is a shortage of any GSK Influenza Vaccine, GSK shall have the right to prorate such product quantities among Participating Members and other GSK customers in such a manner as it, in its sole discretion, deems appropriate. Therefore, the parties understand and agree that this Exhibit does not extend any agreement or guarantee, express or implied, as to the supply or distribution of any specified quantity of GSK Influenza Vaccine, except as otherwise set forth herein.

Delivery Guarantee

GSK will provide an additional 10% discount on GSK Influenza Vaccine doses, which were pre-booked on or prior to April 2, 2018, and are shipped and invoiced after September 30, 2018. Please note that this delivery guarantee discount will only apply to those doses which are late due to GSK's inability to ship and invoice prior to September 30, 2018. The guarantee will not apply if Participating Member chooses to delay shipment past September 30, 2018. **This delivery guarantee is only available on doses pre-booked and purchased directly from GSK via www.gskdirect.com.**

Early Reservation Discount:

Participating Members will earn an Early Reservation Discount of 2% on their 2018 GSK Influenza Vaccines by confirming a recurring reservation or pre-booking influenza doses through www.gskdirect.com on or prior to April 2, 2018. **This discount is only available on doses pre-booked and purchased directly from GSK via www.gskdirect.com.**

Returns:

Direct Purchases:

Eligible participating members may return up to 30% (unless otherwise specified by applicable state law) of each branded presentation of GSK Flu doses purchased via GSKDirect for full credit (the 30% eligibility is applied per product NDC). In order to qualify for return reimbursement of eligible Flu doses, customers must obtain a **GSK issued Return Goods Authorization (RGA)**¹. The RGA can be obtained via www.GSKDirect.com or by calling the GSK Vaccine Service Center at 1-866-475-8222.

Eligible Flu doses returned must be received at the GSK Return Goods Vendor (Inmar) within the Flu Vaccine Return period, unless otherwise specified by applicable state law. GSK will notify eligible customers of the return window begin date and end date ("The Flu Vaccine Return Period") and when the RGA will be available. GSK Influenza Vaccine doses returned outside of the communicated Flu Vaccine Return period or the period specified by applicable state law, without a GSK issued Return Goods Authorization, or in excess of the return limit will be destroyed and no refund or credit will be issued with the exception of the Federal Excise Tax (FET) that participating facility paid for the product.

- Partial product returns of Flulaval multi-dose vials are ineligible for reimbursement with the exception of the Federal Excise Tax which will be calculated to the nearest quarter vial, unless otherwise specified by state law.
- ¹GSK issued Return Goods Authorization (RGA) – GSK will provide customer with a document in the form of a debit memo authorizing the return of eligible Flu doses. Please note: the creation of a Return Box Label through the GSK Return Goods Vendor (Inmar) is not a guarantee of reimbursement and is not to be used in place of a GSK issued RGA.

- With the exception of any provision to the contrary in these Contract terms (in which case the Contract terms will govern), all other GSK Return Goods Policy provisions apply as published on www.gskdirect.com. GSK's Returns Goods Policy is subject to change on www.gskdirect.com without notice.
- GSK reserves the right, upon written notice to MMCAP, to increase the percentage of each branded presentation which is eligible for return.



GROUP PURCHASING ORGANIZATION MEMBERSHIP DECLARATION w/ SURVEY

In order to take advantage of prices and/or rebates under a Group Purchasing Organization (GPO) or Alliance with GSK contracts, GSK requires an eligible facility to designate only **ONE** GPO whose contract(s) said facility will access to purchase GSK products. **The GPO designation listed below, if different from current files, will remove facility from their current GPO (or other segment) within 30 days of notification.**

Multiple GPO designations, even for different product groups, will **not** be honored. Designations may be changed, but will require thirty (30) days advance written notice to GSK. GSK reserves the right to refuse to extend a contract price to a facility that has failed to designate a GPO/Alliance, seeks to purchase under agreements with multiple alliances, or does not meet contract eligibility requirements. Facility will be added to the designated GPO's contract(s) within thirty (30) days, if GSK determines that all contract eligibility requirements are met. (Declaration forms must be submitted for each location. "Blanket" declaration forms are not accepted.)

PLEASE COMPLETE ALL REQUESTED INFORMATION (PLEASE PRINT) INCOMPLETE FORMS WILL NOT BE PROCESSED

FACILITY NAME _____

DEA # (must be current) _____ STATE LICENSE # _____ STATE LICENSE # EXPIRATION DATE _____

FACILITY STATE LICENSE NAME OR AUTHORIZED HCP STATE LICENSE NAME _____

PHYSICAL ADDRESS _____ SUITE # _____

CITY _____ STATE _____ ZIP _____

TELEPHONE _____ FAX # _____

MUST DESIGNATE SOLE GROUP PURCHASING ORGANIZATION: MMCAP

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
- State CCS funded health clinic
- 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

CERTIFICATION: By signing below, Facility certifies, under penalty of perjury, that all of the above information is true and correct. Further, Facility certifies and agrees that (1) any GSK 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), and (2) GSK may, in its sole discretion, contact Facility's staff, and/or visit Facility's locations to verify that the above information is correct, and Facility agrees to provide such information to GSK as is reasonably necessary for GSK to make such a determination.

Printed Name (Required) Title (Required) Signature (Required) Date (Required)

**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 Merck Sharp & Dohme Corp., P.O. Box 4, WP97-B366, West Point, PA 19486 ("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 as defined in Section 2.8 MMCAP Participating Facilities.

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 27. 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: 2.2.1.1 Claims for Loss or Damage in Shipment; 2.9 Administrative Fee and Disclosure Obligations; 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; 13. Default and Remedies; 15. Data Disclosure; 18. Confidential Information; 19. Exclusion; 21. Duty to Warn; and 25. Overpayments and Undercharges.

2 Contracted Pharmaceuticals

2.1 Products

2.1.1 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.

2.1.2 MMCAP reserves the right during the term of the Contract to award or dual award products that are in the best interest of the MMCAP Participating Facilities.

2.2 Product Availability.

2.2.1 Purchasing Directly from Vendor:

MMCAP agrees that Vendor may accept and fulfill direct orders from any MMCAP Participating Facility for the term of this contract; provided that, Vendor will provide to MMCAP as a supplement to the administrative fee data, a list of all MMCAP Participating Facilities that placed direct orders with Vendor pursuant to this contract during the applicable Contract Quarter.

2.2.1.1 Claims for Loss or Damage in Shipment.

Vendor agrees to address Claims for Loss or Damage in Shipment for Direct Purchases only, in accordance with Vendor's applicable published policy in effect at the time of order. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at

www.merckvaccines.com

2.2.1.2 Order Minimums.

Vendor agrees to apply Order Minimums for Direct Purchases only, in accordance with Vendor's applicable published policy in effect at the time of order. The Order Minimum in effect as of the Effective Date of this Contract is the following: Vaccine orders of less than \$600 per shipping location will be subject to a service charge of \$20. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at www.merckvaccines.com

2.2.1.3 Order Terms and Remittances.

Vendor agrees to the Order Terms and Remittances for Direct Purchases only, in accordance with Vendor's applicable published policy in effect at the time of order. Vendor reserves the right to change this policy. Full Terms & Conditions can be found at www.merckvaccines.com

2.2.2 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. With the exception of direct 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.

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 Contracted Distributors in the capacity as MMCAP-Contracted Distributors unless and until Vendor is able to reach an agreement with the Contracted Distributor that is acceptable to Vendor.

Eligible MMCAP Participating Facilities that purchase vaccines directly from Vendor pursuant to this Agreement will be eligible for a two percent (2%) prompt payment discount on invoice purchases if paid within 90 days from the date of invoice; net 91 days.

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

2.4 Pricing.

1) Definitions.

'Price Guarantee(s)' means that the price of a product in this contract is guaranteed for each Contract Year during the term of the Agreement. Prior to the start of each Contract Year, the vendor has the right to change the price with 30 days' prior written notice.

'Discount Guarantee(s)' means that when the Merck catalog price changes for a Product covered by this contract, the price of that Product will change, so the MMCAP Participating Facilities will receive the same percent discount off the new Merck catalog price, subject to the Vendor's right to change the discount percentage at the start of each Contract Year during the term of the Agreement, with thirty (30) days' prior written notice. For the first thirty (30) calendar days following a Merck catalog price increase, MMCAP Participating Facilities will be entitled to purchase the effected Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Participating Facility will be charged the prior (pre-increase) catalog price.

'Contract Year' shall be the period July 1, 2015, to June 30, 2016, and each subsequent 12 month period shall constitute a separate Contract Year.

'Contract Quarter' shall mean the period July 1, 2015, to September 30, 2015, and each subsequent three month period thereafter.

2) 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 shall have the unilateral right to increase the price or change the discount percentage for Merck Vaccines that have a Discount Guarantee or Price Guarantee as described in Section 2.4(1) upon written notice to MMCAP. Furthermore, Vendor shall have the unilateral right to decrease the price for a Merck Vaccine at any time upon prior written notice to MMCAP. 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 net effective prices available to MMCAP are forecasted by Merck to set a new Medicaid best price (if applicable), or a new Federal Supply Schedule price, or set a price lower than the price of the relevant Merck Vaccine(s) under Merck's contract with the U.S. Centers for Disease Control and Prevention ("CDC").

If there is a change in the Federal Excise Tax, the price of the Product shall automatically change as of the effective date of the change in the Federal Excise Tax, and Vendor shall notify MMCAP of such change.

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

4) 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.

2.5 Failure to Supply Contracted Pharmaceuticals.

2.5.1 Product actually delivered to MMCAP-Contracted Distributors and MMCAP Participating Facilities shall be subject to Section 2.10 Returned Goods/Credits and Section 2.2.1.1 (Claims for Loss or Damage in Shipment), in accordance with Vendor's applicable published Merchandise for Return policy for vaccines.

2.5.2 If the Vendor assigns, discontinues, or deletes a Product from its contracted Product line during the course of this contract the Vendor must provide written notice to MMCAP. MMCAP will promptly notify MMCAP Participating Facilities. 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.

2.5.3 To receive supply status information, MMCAP may register for email alerts to receive the most current information regarding supply at: <https://www.merckvaccines.com/Order-Vaccines/Pages/supply-status.aspx>.

2.5.4 Unless otherwise indicated by the Vendor, if the Vendor discontinues or deletes a Product from its contracted Product line during the course of this contract Vendor will honor contract pricing until the inventory of the Product is depleted from the MMCAP-Contracted Distributors stock. Nothing in this contract shall be construed to limit or restrict Merck'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 Price Guarantee for a Product, as set forth in the definition of a Discount Guarantee in section 2.4
- Change in the Discount Guarantee percentage for a Product, as set forth in the definition of a Discount Guarantee in section 2.4
- 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 (e.g., addition)
- NDC Number
- Product Description
- Packaging
- Contract Price
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's offer. A typed name, regardless of font, does not constitute a signature.

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 at least 2 business days prior to the Amendment Effective Date. The amendment is deemed withdrawn if the Vendor does not receive an executed copy at least 2 business days prior to the Amendment Effective Date.

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 and approved 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.

The Vendor must submit the eligibility requirements and updated eligibility lists on a monthly basis e-mailed in an Excel spreadsheet and sent to: MMCAP.Contracts@state.mn.us.

2.9 Administrative Fee and Disclosure Obligations.

In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee at the percentage rate of 0.5% on all contract product purchases (minus any returns or credits) made by MMCAP Participating Facilities that are subject to this contract and are made through MMCAP-Contracted Distributors or directly with the Vendor. The Vendor 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 fee must be paid no later than 45 days after the end of the Contract Quarter. MMCAP represents that any administrative fees payable by Vendor to MMCAP will qualify as vendor fees to a Group Purchasing

Organization as defined in Section 1128B(b) of the Social Security Act (the "Act") (42 U.S.C. 1320a-7b) and 42 C.F.R. Section 1001.952(j) subject to the safe harbor provision under 42 C.F.R. Sec. 1001.952. MMCAP represents and warrants that MMCAP is in compliance with the statute and regulations, as applicable. MMCAP represents and warrants that it will perform its obligations under or pursuant to this contract in compliance with all applicable laws including, without limitation, the federal Social Security Act and regulations thereunder relating to Medicare, Medicaid, and other Federal Health Care Programs (as defined in 42 U.S.C. Section 1320a-7b(f)). Without limiting the generality of the foregoing, MMCAP represents and warrants that it meets, and during the term of this contract will continue to meet, the definition of a "Group Purchasing Organization" under 42 CFR Section 1001.952(j), and that it is, and during the term of this contract will remain in compliance with the requirements of such regulation with respect to all payments made by Vendor to MMCAP pursuant to this contract. During the term of this contract, MMCAP must have a written agreement with each MMCAP Participating Facility that provides for either of the following: (i) The agreement states that participating vendors from which the MMCAP Participating Facility will purchase goods or services will pay a fee to the MMCAP of three (3) percent or less of the purchase price of the goods or services provided by that vendor; or (ii) In the event the fee paid to MMCAP is not fixed at three (3) percent or less of the purchase price of the goods or services, the agreement specifies the amount (or if not known, the maximum amount) MMCAP will be paid by each vendor (where such amount may be a fixed sum or a fixed percentage of the value of purchases made from the vendor by the members of the group under the contract between the vendor and MMCAP).

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 Vendor. Purchases by MMCAP Participating Facilities that are wholly owned by MMCAP or subsidiaries of a parent entity that wholly owns MMCAP (either directly or through another wholly owned entity) shall not be eligible for payment of administrative fees. MMCAP represents and warrants that it will accurately identify to Vendor those MMCAP facilities that are wholly owned by MMCAP or subsidiaries of a parent entity that wholly owns MMCAP (either directly or through another wholly owned entity) at the time such MMCAP facility is submitted to Vendor to be a MMCAP Participating Facility under the Contract and shall inform Vendor immediately in the event that a MMCAP Participating Facility's status changes such that it becomes wholly owned by MMCAP or a subsidiary of a parent entity that wholly owns MMCAP (either directly or through another wholly owned entity).

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.

MMCAP 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 Agreement. 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 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 Agreement 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 Vendor 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 MMCAP 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.

The Vendor must submit for each Contract Quarter, administrative fee data for both direct (sales made direct from Vendor to MMCAP Participating Facility) and indirect purchases (sales made through an MMCAP-Contracted Distributor). The quarterly administrative fee data must contain the following fields detailed below. All required administrative fee data files must be sent to: Mn.MMCAP@state.mn.us for each Contract Quarter no later than 45 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, Vendor 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)
- 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 (00076888888))
- Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- 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.)

Upon request, MMCAP will provide to Vendor the following data:

- MMCAP Participating Facilities' purchases through MMCAP-Contracted Distributors for all vaccines under any MMCAP contract

To the extent administrative fees are erroneously paid by Vendor, MMCAP shall immediately refund such administrative fees to Vendor. 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.

2.10 Returned Goods/Credits. Vendor agrees to accept the return of Products in accordance with Vendor's applicable published policy in effect at the time of order, 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. Full Terms & Conditions can be found at www.merckvaccines.com

2.11 Value-Added Programs. Deleted in its entirety.

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. 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 vaccines.

MMCAP hereby consents to release its Drug Enforcement Administration (DEA) registration number(s) to Merck & Co., Inc. 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 *Abbott Laboratories v. Portland Retail Druggists Association*, 425 U.S. 1 (1976) and will 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 purchased at a discount under this Agreement may not be transferred to entities that are not MMCAP Participating Facilities under this Agreement. This own use clause shall be interpreted as narrowing, not expanding, the permitted uses of Merck Product under this Agreement.

MMCAP Participating Facilities are on notice of restrictions on the resale of prescription pharmaceutical products (including vaccines) imposed by law, including without limitation the Prescription Drug Marketing Act, and especially 21 U.S.C. § 353(c).

2.14 Product Dating. All Products supplied must be usable on the date received by the MMCAP Participating Facility.

2.15 Deleted in its Entirety.

2.16 Customer Service.

2.16.1 Primary Account Representative. Vendor will assign a Primary Account Representative to MMCAP for this Contract and must provide 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 2.16.2

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.

2.16.2. 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 will include a review of sales to members,

pricing and contract terms, administrative fees, supply issues, outstanding contract issues, wholesaler and customer issues, as well as any other mutually agreed upon topics.

3 Authorized Agent. 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 Agent is the appropriate Public Sector Customer Manager, P.O. Box 4, WP97B-366, West Point, PA 19846.

Merck Vaccine Specialists and other 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 Vaccine Specialists and other 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 an 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 it shall 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.

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 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 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.

7.2. Intellectual Property Indemnification. Deleted in its entirety.

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. Merck will not use the MMCAP logo for publicity without MMCAP consent.

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 shall be deemed "goods" within the meaning of the UCC except when to do so is unreasonable. In the event of any dispute relating to the terms, conditions or performance of any obligation of this Agreement, 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.

10 Antitrust. Deleted in its entirety.

11 Force Majeure

Neither party to this Contract will be held responsible for delay or default caused by acts of God, including but not limited to: fire, flood, earthquake, storm, epidemic, national emergency, acts of terrorism fire, riot, natural disaster, war, raw material shortage, or labor dispute or acts of God.

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 party 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 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 Practice Regulations (CGMPR's) (Practices)" (cGMP) (as codified in 21 C.F.R. Parts 210§ 201-211) will be the

standard to be applied for manufacturing, processing and packaging of drugs, chemicals, biologicals, and reagents.the current United States Food, Drug, and Cosmetic Act.

Merck Products are all guaranteed to be true to label and to conform fully to the requirements of applicable federal laws and regulations at the time of shipment.

Because Merck 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 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

Vendor is self-insured.

17 Laws and Regulations. Both Parties shall comply with all applicable state and federal laws that apply to its performance under this Contract, including Minnesota Statutes Section 181.59, as applicable.

18 Confidential Information. 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

19 Exclusion.

MMCAP represents and warrants that prior to the effective date of this Agreement, it has screened itself, and its officers and directors against the Exclusions Lists and that it has informed Vendor if it, or any of its officers or directors has been in Violation. After the execution of the Agreement, 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 Agreement immediately in the event of any such Violation.

Vendor represents and warrants that prior to the effective date of this Agreement, it has screened itself, and its officers and directors against the Exclusions 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 Agreement, 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 Agreement 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 of 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/fraud/exclusions/authorities.asp>); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (<http://oig.hhs.gov/fraud/exclusions/listofexcluded.html>) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (<http://www.epis.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").

20 Authority. 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 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.

21 Duty To Warn.

- 1) MMCAP Participating Facilities must (a) take all appropriate steps to assure that all Vendor vaccine Products purchased by MMCAP Participating Facilities pursuant to this contract shall be administered to each patient on the basis of an individualized medical judgment by a physician, or (b) take all appropriate steps to provide to such patient (or to patient's parent or guardian) meaningful warnings relating the risks and benefits of vaccination, in form and language understandable to such patient, parent or guardian.
- 2) If any suit asserted against Merck by a third party is based in whole or in part on a claim for failure to properly discharge the responsibilities assumed by the MMCAP Participating Facility under paragraph 1 above, the MMCAP Participating Facility shall upon prompt written notice of such claim or action, either (a) seek to appear in each suit and defend on such issue or (b) not contest, in subsequent litigation brought by Merck against the MMCAP Participating Facility any factual determination made on that issue in the earlier litigation.
- 3) In the event of the MMCAP Participating Facility's breach of, or failure to carry out, its responsibilities under paragraph 1 above, any measure of resulting damages to Merck shall include, but need not be limited to, damages (including money judgments, reasonable attorneys' fees, and other cost) sustained in connection with claims against Merck for personal injuries caused by such breach or failure. This provision shall not limit any other right of Merck to obtain damages or other relief for any breach of this contract or for the settlement of any dispute arising under any award or agreement covered by this contract.
- 4) It is the policy of Merck to ship vaccine only to those persons or entities who are licensed by law to accept such shipments. In order to purchase any Merck vaccine Product under this Agreement an MMCAP Participating Facility must be authorized by state law to accept shipment of vaccines or must have designated such a person or entity to accept the shipment of vaccine product covered by this Agreement.

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).

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.

Disadvantaging activities would constitute placing any Product in a disadvantageous position including but not limited to:

- Establishing a formulary that excludes an individual Product, if the formulary includes a therapeutic category or categories in which such product competes.

If MMCAP engages in such disadvantaging activities as described above, Merck shall have the option of renegotiating the prices of such Product(s) with MMCAP. If after 60 days, no agreement is reached, Merck shall have the option of (1) immediately changing the prices of such Product to current Merck catalog prices, or (2) immediately deleting such individual Product from this Agreement.

23 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:

Kevin Agnew
Contract Manager
Customer Contract Management
P.O. Box 4
WP 97B-366
West Point, PA 19486-0004
(215) 652-4176
Kevin.Agnew@merck.com

For MMCAP:

MMCAP Contract Manager
Minnesota Multistate Contracting
Alliance for Pharmacy
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
(651) 201-2420
Mmcap.contracts@state.mn.us

24 Counterparts.

This contract may be executed in counterparts, all of which, taken together, shall form a single contract.

25 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 than 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.

26 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.

26.1 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.

26.2 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.

26.3 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.

(Balance of Page Intentionally Left Blank)

27 Cancellation. MMCAP or 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. MMCAP or Vendor 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.

1. MERCK SHARP & DOHME CORP.

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: [Signature]
Title: Michele Taylor, Director- Merck Vaccines
Date: 6-18-15

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: Pharmacy Analyst
Date: 6-24-15

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]
Title: Pharmacist Senior
Date: June 24, 2015

Merck Sharp & Dohme,
Corp.

Contract MMS15147

Amendments 1 - 2
are not posted for
viewing

AMENDMENT NO. 2 TO MMCAP CONTRACT NO. MMS15147 (00129233)

3/30/16

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., 770 Sumneytown Pike, P.O. Box 4, WP97-B366, West Point, PA 19486-0004 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS15147 (00129233) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

Revise the language in Section 2.4 Pricing (1) Definitions (Discount Guarantee) effective April 1st, 2016 provided this Amendment No. 2 is fully executed on or before such date.

Current Contract Language:

'Discount Guarantee(s)' means that when the Merck catalog price changes for a Product covered by this contract, the price of that Product will change, so the MMCAP Participating Facilities will receive the same percent discount off the new Merck catalog price, subject to the Vendor's right to change the discount percentage at the start of each Contract Year during the term of the Agreement, with thirty (30) days' prior written notice. For the **first thirty (30) calendar days** following a Merck catalog price increase, MMCAP Participating Facilities will be entitled to purchase the Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Participating Facility will be charged the prior (pre-increase) catalog price.

New Contract Language:

'Discount Guarantee(s)' means that when the Merck catalog price changes for a Product covered by this contract, the price of that Product will change, so the MMCAP Participating Facilities will receive the same percent discount off the new Merck catalog price, subject to the Vendor's right to change the discount percentage at the start of each Contract Year during the term of the Agreement, with thirty (30) days' prior written notice. For the **first ninety (90) calendar days** following a Merck catalog price increase, MMCAP Participating Facilities will be entitled to purchase the Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Participating Facility will be charged the prior (pre-increase) catalog price.

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

<p>1. MERCK SHARP & DOHME, CORP.</p> <p>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.</p>	<p>2. STATE OF MINNESOTA FOR MMCAP</p> <p>In accordance with Minn. Stat § 16C.03, subd. 3</p>
<p>By: <i>[Signature]</i></p>	<p>By: <i>[Signature]</i></p>
<p>Title: Michele Taylor, Director</p> <p>Customer Marketing – Merck Vaccines</p>	<p>Title: <i>SPA-P</i></p>
<p>Date: <i>3-30-16</i></p>	<p>Date: <i>3/30/2016</i></p>
	<p>3. COMMISSIONER OF ADMINISTRATION</p> <p>In accordance with Minn. Stat § 16C.05, subd. 2</p>
	<p>By: <i>[Signature]</i></p>
	<p>Title: <i>Pharmacist Sr.</i></p>
	<p>Date: <i>3-30-16</i></p>

AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS15147 (00129233)

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. (Vaccine Division), P.O. Box 4, WP97-B366, West Point, PA 19486 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS15147 (00129233) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

The State of Minnesota recently enacted legislation requiring Israel Anti-discrimination Language in all contracts valued over \$50,000. MMCAP and the Vendor are willing to amend the Original Contract as stated below

Contract Amendment

(MJ)

Revision 1: Effective when signed, Article 2.9 Administrative Fee, of the Original Contract, is amended to add the administrative fee remittance address to:

Financial Management & Reporting - MMCAP
50 Sherburne Avenue, Suite 309
St. Paul, MN 55155

Revision 2: Effective when fully signed, the following new contract article will be added to the Original Contract:

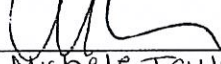
28 Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)

Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

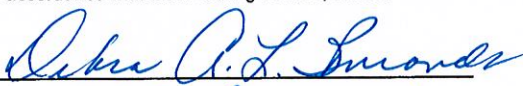
Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

**1. MERCK SHARP & DOHME CORP.
(VACCINE DIVISION)**

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.

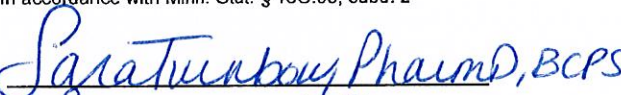
By: 
Michele Taylor
Title: Executive Director
Date: 1-5-18

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

By: 
Title: SPA Coordinator
Date: 1-5-2018

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

By: _____
Title: _____
Date: _____

By: 
Title: Pharmacist Sr.
Date: 1-5-18

**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, 2018, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later. *→ June 30 (M.F. 1-3-2018) M 1-3-18*

1.2 Expiration date: ~~December 31, 2019~~, or as cancelled pursuant to clause 20. 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. 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 2018-2019

Product Name	Container Type	Pack Size	Price Per Container (Prices do not include FET)	Max. Quantity to MMCAP
Fluzone Quadrivalent 49281-0629-15	Multi-Dose 5ml Vial; 6 months & older	1 vial	\$156.41	2.6M doses (all presentations combined)
Fluzone Quadrivalent 49281-0418-50	Single Dose Prefilled 0.5ml Syringes, No Preservative; 36 months & older	10 pk	\$168.85	
Fluzone Quadrivalent 49281-0418-10	Single Dose 0.5ml Vials, No Preservative; 36 months & older	10 pk	\$168.85	
Fluzone Pediatric 49281-0518-25	Single Dose Prefilled 0.25ml Syringes, No Preservative; 6-35 months	10 pk	\$168.85	
Fluzone High-Dose 49281-0403-65	Single Dose Prefilled 0.5ml Syringes, No Preservative; 65 years & older	10 pk	\$461.80	
Flublok 49281-0718-10	Single Dose Prefilled 0.5ml Syringes, No Preservative; 18 years & older	10 pk	\$461.80	

2.1.1 Contract Year. Products and pricing listed in Table 1 are for contract year one; otherwise defined as the 2018-2019 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. For the 2018-2019 influenza season, Vendor expects to make a partial shipment by August 31, 2018 of 25% or more of each Member's total Fluzone vaccine request received for package of ten 0.5mL pre-filled syringes, or package of ten 0.25mL pre-filled syringes, or Fluzone High Dose vaccine or Flublock Quadrivalent vaccine 0.5 mL syringe received and confirmed by Vendor under this Agreement. A second partial shipment of 50% or more of each Member's Fluzone vaccine confirmed request is expected by September 30, 2018, with the balance to be completed by October 31, 2018. Vendor reserves the right to schedule shipments and/or make partial shipments with prior notification.

In addition, for the 2018-2019 influenza season ONLY, Vendor expects to make partial shipment by August 31, 2018 of 25% or more of each Member's total 5mL multi-dose vials, or package of ten 0.5mL unit vials received and confirmed by Vendor under this Agreement with the balance to be completed by September 30, 2018. Vendor reserves the right to schedule shipments and/or make partial shipments with prior notification.

Shipping Guarantee Presentation	Shipping Guarantee Dates and Percentages of Total Confirmed Fluzone Vaccine Reservation by March 31, 2018
Fluzone Quadrivalent vaccine 0.5 mL syringe and Fluzone Quadrivalent vaccine 0.25 mL syringe and Fluzone High-Dose vaccine and Flublok Quadrivalent vaccine 0.5 mL syringe	August 31, 2018 = 25% September 30, 2018 = 50% October 31, 2018 = 100%
Fluzone Quadrivalent MDV vaccine and Fluzone Quadrivalent vaccine 0.5 mL unit vial	August 31, 2018 = 25% September 30, 2018 = 100%

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.

2.2.4.6 Purchase Orders.

MMCAP Members may use their own forms for Purchase Orders. To the extent that the terms of any form conflict with the terms of this Contract, the terms of this Contract supersede. Each MMCAP Member will be responsible for payment of goods and services provided by Vendor; and the MMCAP Office will have no liability for any unpaid invoice of any MMCAP Facility. Vendor agrees to invoice the MMCAP Member for all products shipped or services provided. Vendor will accept Electronic Funds Transfer (EFT) for payment. At time of new account set up, the MMCAP Member will initiate this process with its bank.

2.2.4.6 a. Funds available and authorized/non-appropriation.

By submitting a Purchase Order the MMCAP Member represents it has sufficient funds currently available and authorized for expenditure to finance the costs of the Purchase Order.

2.2.4.6 b. Termination of Individual Purchase Orders.

MMCAP Members may terminate individual Purchase Orders before product is scheduled to ship, in whole or in part, immediately upon notice to Vendor, or at such later date as the MMCAP Member may establish in such notice, upon the occurrence of any of the following events:

- (i) The MMCAP Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or the MMCAP Member is prohibited from paying for such goods from the planned funding source; or
- (iii) Vendor commits any material breach of this Contract or a Purchase Order.

Upon receipt of written notice of termination, Vendor will stop performance under the Purchase Order as directed by the MMCAP Member.

(iv) Termination of a standing Purchase Order does not extinguish or prejudice the MMCAP Member's right to enforce such Purchase Order with respect to Vendor's breach of any warranty or any defect in or default of Vendor's performance under such Purchase Order that has not been cured, including any right of the MMCAP Member to indemnification by Vendor or enforcement of a warranty. If a standing Purchase Order is terminated, the MMCAP

Member must pay Vendor in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Member.

2.2.4.6 c. Jurisdiction and Venue of Purchase Orders.

Upon completion of the Dispute Resolution process outlined in this Contract, and solely with the prior written consent of MMCAP and the State of Minnesota Attorney General's Office, the MMCAP Member may bring a claim, action, suit or proceeding against Vendor. The MMCAP Member's request to MMCAP to bring the claim, action, suit, or proceeding must state the initiating party's desired jurisdiction, venue and governing law.

Upon completion of the Dispute Resolution process outlined in this Contract, the Vendor may bring a claim, action, suit or proceeding against MMCAP Member, in Vendor's sole discretion.

As it applies to purchases made by a MMCAP Member, nothing in the Contract will be construed to deprive the MMCAP Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Contract or afforded by the MMCAP Member's law.

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 – Annual Pricing Updates

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.

2.8.6 Member-required Participation Agreement (MPA). In order to access this Contract some members require jurisdiction-specific additional paperwork or contract language. Vendor must not sign any member documents without prior MMCAP review and approval. If needed, MMCAP will issue a Member-requested Participation Agreement (MPA) that will be amended into this Contract. No other mechanism of modifying or "attaching to" MMCAP contracts is authorized. The MPA, which will only apply to the requesting Member and must be signed in the following order: Member, Vendor, then MMCAP. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA Vendor may be precluded from doing business with that Member. This Contract cannot be used as a vehicle by which the Vendor and MMCAP member enter in to their own stand-alone agreement.

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:

Financial Management & Reporting - MMCAP
Attn: Administrative Fee Coordinator
50 Sherburne Ave, Suite 309
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 a monthly sales report of the applicable influenza vaccine sales and a final sales report within 30 days of Vendor’s final shipment for the applicable influenza vaccine season. Vendor must submit to MMCAP a sales reports 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
Vendor Distribution Center Code (May be left blank)
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)
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
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)
Admin fee (9999.9999)
Credit Indicator (C for credit)
MMCAP Assigned Wholesaler Code
Manufacture Name (MFG Name)
Class of Trade (May be left blank)
340B Purchase (1=True, 0=False)

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
Vendor Distribution Center Code (May be left blank)	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MIMCAP 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
Quantity 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 (999999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
Type of transaction (MIMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocty	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	shiptocty	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
MIMCAP Contract Number (MIM5xxxx)	contractnumber	Alpha Numeric		10	1	400	409
Admin fee for not-on-contract items (9999.9999) (May be left blank)	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
MIMCAP Assigned Wholesaler Code	MfgName	Alpha Numeric		4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade (May be left blank)	Class of Trade	Alpha Numeric		4	1	464	467
340B Purchase (1=True, 0=False)	340B Purchase	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 (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 starting May 31, 2019, and must be received by July 31, 2019.

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.

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 Mackenzie Fetterman, Deputy Director, Government Accounts, 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. This clause extends to MMCAP Member Facilities as it relates to business conducted with and sales to the Member Facility.

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 to the extent caused by a Force Majeure event beyond Vendor's reasonable control including, but not limited to:

- (a) an actual or potential national shortage of any vaccine,
- (b) actions by federal or applicable 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 or similar civil commotion, embargoes, acts of terrorism or martial laws,

- (d) Vendor's inability to obtain necessary materials,
- (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 the extent caused by a Force Majeure event beyond Vendor's 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 terminate the Contract or any portion thereof, including any orders issued against the Contract. This remedy shall be in addition to any remedy provided by law or equity.

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, 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, and MMCAP Participating Facilities. 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 must maintain the following insurance (or a comparable program of self-insurance) in force and effect throughout the term of the Contract.

- A. Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies (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 and Completed Operations Liability
 MMCAP named as an Additional Insured

B. 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.

C. 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. Certifications

17.1 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.

17.2 DSCSA Vendor is in compliance with all currently applicable sections of the Drug Quality and Security Act Title II.

17.3 cGMP 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.

17.4 *Debarment and Suspension Certification* Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any MMCAP Member Facility; and has not been convicted of a criminal offense related to the subject of this Contract. Vendor further warrants that it will provide immediate written notice to the MMCAP Authorized Representative if this certification changes at any time.

17.5 *Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053)*

The following term applies to any contract for which the value, including all amendments, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is not limited to engaging in refusals to deal, terminating

business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

18. Human Rights/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.

(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.

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.

20. **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 on a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date.

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: *Jack King of Fotherman*
Title: *Deputy Director, Government accounts*
Date: *1/3/2018*

2. STATE OF MINNESOTA FOR MMCAP

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

By: *Sara Tenbow, PharmD, BCPS*
Title: *Pharmacist Sr.*
Date: *12-21-17*

3. COMMISSIONER OF ADMINISTRATION

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

By: _____
Title: _____
Date: _____

By: *[Signature]*
Title: *AMS Sr.*
Date: *12/21/2017*

February 6, 2018

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 #MMS17019
Sanofi Pasteur Inc. Contract # 429155

Dear Ms. VanderPlaats,

Please be advised that on the above referenced contract, the products below will experience a price decrease. The new pricing will be retroactive to January 1, 2018 (the effective date of the 2018-2019 Influenza Agreement). We will review all current Fluzone reservations for the 2018-2019 season and apply the revised pricing.

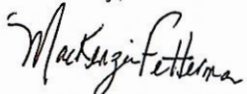
Influenza Vaccine Presentations and Pricing

Product	Product NDC Code	Contract Price	Federal Excise Tax (FET)	Contract Price w/FET
Fluzone Quadrivalent vaccine 5-ml multidose vial	49281-0629-15	\$151.84	\$7.50	\$159.34
Fluzone Quadrivalent vaccine 0.5-mL single dose vial	49281-0418-10	\$162.47	\$7.50	\$169.97
Fluzone Quadrivalent vaccine 0.5-mL prefilled syringe	49281-0418-50	\$162.47	\$7.50	\$169.97
Fluzone Quadrivalent vaccine 0.25-mL prefilled syringe (pediatric dose)	49281-0518-25	\$162.47	\$7.50	\$169.97
Fluzone High-Dose vaccine 0.5-mL prefilled syringe	49281-0403-65	\$444.01	\$7.50	\$451.51
Flublok Quadrivalent vaccine 0.5-mL prefilled syringe	49281-0718-10	\$444.01	\$7.50	\$451.51

All other terms and conditions as stated in our original agreement shall remain in effect. Please email (Mackenzie.Fetterman@sanofi.com) a signed copy of this letter, indicating your acknowledgment.

Accepted by: Jennifer VanderPlaats Title: SFA-C Date: 2/7/2018

Sincerely,



Mackenzie Fetterman
Deputy Director, Government Accounts

COMMISSIONER OF ADMINISTRATION

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

By: Lynn A. Klessig
Date: 2/8/2018

NWS17019
Amendment #1
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Addendum A

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #429155
FLUZONE® INFLUENZA VIRUS VACCINE 2018-2019 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
49281-0629-15	Quadrivalent 6 months and older, 5mL Multi-Dose Vial	\$151.84	\$147.28	\$142.90	\$7.50	\$150.40
49281-0418-50	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Pre-filled Syringes	\$162.47	\$157.60	\$152.90	\$7.50	\$160.40
49281-0418-10	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Vials	\$162.47	\$157.60	\$152.90	\$7.50	\$160.40
49281-0518-25	Quadrivalent - No Preservative: Pediatric Dose 6 - 35 months, 10-Pack 0.25mL Pre-filled Syringes	\$162.47	\$157.60	\$152.90	\$7.50	\$160.40
49281-0403-65	High-Dose 65 years of age and older, 10-Pack 0.5mL Syringes	\$444.01	\$444.01	\$430.78	\$7.50	\$438.28
49281-0718-10	Flublok 18 years of age and older, 10-Pack 0.5mL Single-dose prefilled syringes	\$444.01	\$444.01	\$430.78	\$7.50	\$438.28

Discount Opportunities Include:

^a Promotion Price: Save 3% on all presentations of Fluzone vaccine excluding: Fluzone High-Dose vaccine and Flublok
^b Available Discounts: 1% discount available for all reservations placed or confirmed 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 2018-2019 vaccines at a rate of \$0.75 per dose.

Mackenzie Fetterman
 Mackenzie Fetterman, Deputy Director, Government Accounts

Accepted by: *[Signature]* Title: *SAC* Date: *2/7/2018*

In order to ensure that you receive correct pricing, please return a signed copy of this page by email to Mackenzie.Fetterman@sanofi.com