Agenda Item No: 13.A

STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** August 20, 2020

Staff Contact: Carol Akers and Nicki Aaker, Health Director

Agenda Title: For Possible Action: Discussion and possible action regarding the purchase of vaccinations for the Carson City Health and Human Services Department (CCHHS) through joinder contracts with GlaxoSmithKline, Merck Sharp & Dohme Corp. and Sanofi Pasteur Inc. for a total amount not to exceed $319,974 for fiscal year (FY) 2021, and authorization for the Purchasing and Contracts Administrator to extend the Sanofi Pasteur Inc. joinder contract when it is renewed. (Carol Aakers; CAkers@carson.org and Nicki Aaker, naaker@carson.org)

Staff Summary: CCHHS would like to utilize current joinder contracts through the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) to purchase vaccinations for CCHHS clients.

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

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Proposed Motion

I move to approve the joinder contracts for the purchase of vaccinations, and to authorize the Purchasing and Contracts Administrator to extend the Sanofi Pasteur, Inc. joinder contract if the underlying contract is renewed and the terms do not substantively change.

Board's Strategic Goal

Efficient Government

Previous Action

The Board of Supervisors approved the purchase of vaccines from the same three vendors in FY 18 and FY 19. For FY 20, approval was given for GlaxoSmithKline and Sanofi Pasteur. The amount spent for Merck Sharp & Dohme Corp. did not exceed $50,000 in FY 20.

Background/Issues & Analysis

MMCAP Contracts being utilized:
1. GlaxoSmithKline No. MMS17016 (expires 12/31/22).
2. Merck Sharp & Dohme Corp. No. MMS2000315 (expires 6/30/24).
3. Sanofi Pasteur Inc. No. MMS17019 (expires 12/30/20), one renewal remaining.

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 and 332.195

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Grant Fund / Private Vaccine – G680020004 and Community Vaccine & Outreach – G6800200027

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Funding is provided by vaccine program revenue and restricted prior year funding from vaccine and clinic accounts. If approved, accounts will be reduced by up to $319,974; available budget for these two programs, after projected restricted roll-forward amounts, is $853,040.

Alternatives
Do not approve the joinder contracts and provide alternative direction to staff.

Attachments:
GSK-Merck-Sanofi funding sheet.pdf

FY21-Vaccines Back up Docs.pdf

Board Action Taken:

Motion: _____	1) _____	Aye/Nay
	2) _____	_____
		_____
		_____
		_____
		_____

_____
(Vote Recorded By)

VACCINE FUNDING (over $50K each)

		Joinder Contract Amounts	Current Available Funding	Revenue account #	
Program Revenue - Health Restricted Funds					
G680020004 G-SUPPLIES	Private Vaccine	$ 171,000.00	$ 306,333.00	2756080-445970	
				FY19 PV revenue carry forward	169365
				FY20 PV Revenue	203355
				FY20 PV Expenses	-215689
				FY21 YTD expenses	-698
				FY21 est revenue	150000
					306333
G680020027 G-SUPPLIES	Community Vaccine & Outreach (Private Vax)	$ 148,974.00	$ 546,707.00	2756081-465164	
				98% FY19 revenue CF (PV/SV split)	469123
				FY20 PV Revenue	123486
TOTAL		**$ 319,974.00**	**$ 853,040.00**	FY20 PV Expenses	-145823
				FY21 YTD expenses	-79
				FY21 est revenue	100000
					546707

ESTIMATED FY21 EXPENDITURES BY VENDOR

GlaxoSmithKline	$ 118,234.00
Merck	$ 62,000.00
Sanofi Pasteur Inc.	$ 139,740.00
TOTAL	**$ 319,974.00**

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 Section16C.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	0	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	billtocity	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocity	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (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 reimburser, 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

By: _____
Title: _____
Date: _____

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: Sara Turnbow, PharmD, BCPS
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.

- [1]**GSK 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.

GlaxoSmithKline

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? If so, name and location of hospital or hospital system _____	YES	NO
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)*

PLEASE FAX FORM BACK TO MEMBERSHIP SERVICES AT 215-933-3947
dana.x.latimer@gsk.com

AMENDMENT NO. 1 TO MMCAP CONTRACT NO. MMS17016

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 GlaxoSmithKline LLC, a Delaware corporation having places of business at One Franklin Plaza – 3F0605, 1600 Vine Street, Philadelphia, PA 19102 and Five Moore Drive, Research Triangle Park, NC 27709 5 Crescent Drive Philadelphia PA 19112, Philadelphia, PA 19102 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS17016 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment
(1875JV)

Effective when signed, Attachment B GSK MMCAP Declaration form is deleted and replaced with the attached revised Attachment B, GSK MMCAP Declaration form.

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. 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: B.A. Johnson II
Title: Contract Dev't/ Manager
Date: 10/1/18

By: _____
Title: _____
Date: _____

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

By: John VanderPlaat
Title: SPA-C
Date: 10/1/2018

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

By: Sara Turnbaw, PharmD, BCPS
Title: Pharmacist Sr.
Date: 10-1-18

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 or HIN # (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: _____

PRIMARY WHOLESALER (NAME, CITY, STATE)_____

TYPE OF BUSINESS:

- ☐ On-site hospital clinic
- ☐ Off-site satellite clinic (affiliated with _____Hospital)
- ☐ City County or State (CCS) funded health clinic
- ☐ Surgery Center
- ☐ HMO/Managed health care
- ☐ Intermediate Care Facilities for Mentally Retarded
- ☐ Outpatient Clinic in a Hospital
- ☐ Hospice In Patient
- ☐ Inpatient Psychiatric Facility
- ☐ Outpatient Mental Health Clinic
- ☐ Public Health Department
- ☐ Hospital owned and funded by government
- ☐ Correctional Facility
- ☐ Other (please describe:

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

PLEASE FAX FORM BACK TO 215-933-3947 OR EMAIL TO: iqq86213@gsk.com

MMS 17016
Amendment #2
pg. 1 of 4

November 1, 2018

Jennifer VanderPlaats
Vaccine and Emergency Preparedness Coordinator
Minnesota Multistate Contracting Alliance for Pharmacy
Materials Management Division
Room 112, Administration Building
50 Shelburne Ave
Saint Paul, MN 55155

Subject: Amendment to Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) Contract # 519070

Dear Ms. VanderPlaats,

Effective January 15 2019, the parties hereto agree to amend Contract # 519070 between GlaxoSmithKline LLC and Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP). The contract shall be amended by adding, deleting and/or replacing the following contract terms and/or Exhibits as follows:

Influenza Vaccines Contract #519070:

- Replace Exhibit A - 2018/2019 with Exhibit A – 2019/2020 Influenza Program

All other terms and conditions of the Agreement shall remain in full force and effect.

Please confirm your acceptance by signing both originals and return to:

GlaxoSmithKline
Attention: Babatunde Adedeji
Mailstop NY0300
5 Crescent Drive
Philadelphia, PA 19112

Once the Agreement has been fully executed by both parties we will send an original to you for your files.

We thank you for your interest in GlaxoSmithKline and for the opportunity to be of service to you

Accepted on behalf of **GlaxoSmithKline LLC**

Thomas Scales
Vice President – National Accounts

11-29-2018
Date

Accepted on behalf of **Minnesota Multistate Contracting Alliance for Pharmacy**

Title

Date

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

By: Jennifer VanderPlaats

Title: SPA-C

Date: 12/10/2018

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

By: Sara Iverson, Pharm.D, BCPS

Date: 12-12-18

Please return all pages with the signed Agreement.

Product Pricing Exhibit A
Influenza Vaccine Contract # 519070

NDC No.	Product Description	Contract Price (per vial/box)[1,2]	Minimum Order Requirement
19515-0897-11	FLULAVAL QUADRIVALENT 5ML Multi-Dose Vials 10s (Age: 6 months and older)	$145.69	100 Doses = 10 packs of 10 Dose Vials
19515-0906-52	FLULAVAL QUADRIVALENT 0.5ML Tip-Lok No Needle Syringes 10s (Age: 6 months and older)	$155.88	100 Doses = 10 Boxes of 10
58160-0896-52	FLUARIX QUADRIVALENT 0.5ML Tip-Lok No Needle Syringes 10s (Age: 6 months and older)	$155.88	100 Doses = 10 Boxes of 10

[1]Price for Fluarix®/FluLaval® 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 the Company
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 MDV, additional doses can be ordered by Vial/pack (10 doses).

Ordering Process

Direct Purchases:

Participating Members may purchase GSK Influenza Vaccines directly from GSK by placing a pre-book reservation with GSK at www.gskdirect.com. GSK's 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 Company or its Participating Members.

Once the Participating Member places their pre-book reservation, confirmation of their reservation 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. GSK Influenza Vaccine pre-book reservations will generally 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 1, 2019), 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.*** 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 product availability, GSK anticipates shipments of GSK Influenza Vaccines to begin in August 2019, with delivery of the total number of GSK Influenza Vaccine doses prebooked by Participating Member completed by September 30, 2019, provided Participating Members prebook their flu doses on or before April 1, 2019. 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 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 allocate available product quantities among Participating Members and other GSK customers in such a manner as GSK, in its sole discretion, deems appropriate.
Therefore, the parties understand and agree that this Agreement 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 1, 2019, and are shipped and invoiced after September 30, 2019. 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, 2019. The guarantee will not apply if Participating Member chooses to delay shipment past September 30, 2019. **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 2019 GSK Influenza Vaccines by confirming a recurring reservation or pre-booking influenza doses through www.gskdirect.com on or prior to **April 1, 2019. This discount is only available on doses pre-booked and purchased directly from GSK via www.gskdirect.com.**

Returns:

Unless otherwise specified by applicable state law, Participating Members may return up to 30% 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.

- Unless otherwise specified by state law, 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.

- [1]**GSK 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 terms (in which case these 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 Company, to increase the percentage of each branded presentation which is eligible for return.

- GSK reserves the right, upon written notice to Company, to increase the percentage of each branded presentation which is eligible for return.

AMENDENT NO 3 TO MMCAP CONTRACT NO. MMS17016

THIS AMENDMENT 3 is entered into as of 1/22/2019 or the date MMCAP obtains all required signatures within this document, whichever is later ("**Effective Date**") by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("**MMCAP**") and GlaxoSmithKline LLC, limited liability company with an address, a Delaware corporation having places of business at One Franklin Plaza – 3F0605, 1600 Vine Street, Philadelphia, PA 19102 and Five Moore Drive, Research Triangle Park, NC 27709 5 Crescent Drive Philadelphia PA 19112 ("**Vendor**").

RECITALS

WHEREAS, MMCAP and Vendor entered into a Contract MMS17016 on 1/1/2018("**Original Contract**");

WHEREAS, MMCAP and Vendor amended certain terms and conditions of the Original Contract by the way of the MMS17016 Amendment 1 on 10/1/2018 and Amendment 2 on 12/12/2018; together, Original Contract and Amendment 1and 2 will be referred to as "**Agreement**";

WHEREAS, MMCAP and Vendor have agreed to certain changes in the terms and conditions set forth in the Agreement and have agreed to amend the Agreement to reflect said changes;

WHEREAS, besides the terms and conditions of the Original Contract amended in this Amendment, the Agreement remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Original Contract shall be amended as follows:

Capitalized Terms; Definitions; Conditions. The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment which are defined in the Agreement will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP.

Article and Clause Addendums

REVISION 1:

Effective when signed, the following section ***2.2.4.8 Invoicing*** is added to Contract MMS17016.

2.2.4.8 Invoicing. Vendor agrees that MMCAP Participating Facilities will be invoiced at the MMCAP Contract price for MMCAP Contract products throughout the term of this Agreement. Invoices are subject to Terms of Net 30. Vendor will submit an invoice with each order. Invoices must be only for the amount of product delivered. Federal Excise Tax will be a separate line item on the invoice. At a minimum, the Vendor's invoice will contain the following fields:

Facility Name
Vendor-assigned account number for the MMCAP Participating Facility
Invoice number
MMCAP Participating Facility's purchase order number
Invoice date
Invoice due date
Product ID or NDC
Product Name/Description
Packaging as associated with Product ID or NDC number
Unit price
Quantity shipped

Extension (unit price multiplied by the quantity shipped)
Total invoice price
Bill to address
Ship to address
Applicable tax

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

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.

Name: Thomas Scalcs
Signature: [signature]
Title: VP, National Accounts
Date: 2/4/2019

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

Name: [illegible] VandeVlaarts
Signature: Jennifer VandeVlaarts
Date: 2/6/2019

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

Name: Sara Turnbow
Signature: Sara Turnbow, PharmD, BCPS
Date: 2-6-19

Minnesota Department of Administration
Office of State Procurement
50 Sherburne Avenue, Suite 112 Administration Building, St. Paul, MN 55155
Phone: 651.201.2420

Attention Confidentiality Protections in this Agreement:

Re: Merck Sharp & Dohme Corp. MMS2000315

The following agreement contains language that protects the terms and pricing found in this agreement. Please review Article 11.3 to ensure your compliance.

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

MMCAP INFUSE

Minnesota Department of Administration
Office of State Procurement
50 Sherburne Avenue, Suite 112 Administration Building, St. Paul, MN 55155
Phone: 651.201.2420

Merck Sharp & Dohme Corp.

Agreement Number: MMS2000315

Prepared on June 10, 2020

PREFIX A
Definitions and Acronyms
Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee**: As listed on ***Attachment A***.
2. **Agreement**: Means the resulting agreement that is reached between MMCAP Infuse and the Vendor.
3. **Authorized Wholesaler(s)**: For Pharma - AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC. For Vaccines - McKesson Medical-Surgical Government Solutions, LLC (vaccines only), For Nexplanon – CuraScript and Theracom.
4. **Class of Trade:** All Members are eligible for contract pricing.
5. **Contract Pricing**: Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership as set forth on ***Attachment A*** and any subsequent amendment to this Agreement.
   A. **Non-Fixed Pricing**: Means all Products identified as such on ***Attachment A*** or any subsequent amendment to this Agreement.
6. **Wholesale Acquisition Cost (WAC) Minus** - a percentage or dollar amount off WAC that changes by providing MMCAP Infuse written notice of the price change along with the new WAC and contract price. For Vaccines only, when the Merck catalog price changes for a Product covered by this Agreement, the price of that Product will change, so the MMCAP Infuse Members 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. For the first ninety (90) calendar days following a Merck catalog price increase, MMCAP Infuse Members will be entitled to purchase the affected Merck Product at a discount equal to the amount of the price increase, such that each MMCAP Infuse Member will be charged the prior (pre-increase) catalog price.
7. **Days**: (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
8. **Government Unit**: Any entity as defined by Minnesota Statute 471.59, that is wholly owned by a local, city, county, or state entity
9. **Member**: Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse and that has been approved as a Member by the Vendor. For the sake of clarity, and as set forth in Article V herein, only those facilities wholly owned by the government, (i.e., state, city, county, township, etc.) will be eligible to participate under this contract as a Member.
10. **Membership**: Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **Onboarding Date**: Means the Vendor must allow new Members to access the base Agreement. This shall occur on either the first day or the fifteenth day of the month beginning at least fifteen (15) days after Merck is made aware of Membership by MMCAP Infuse. Onboarding for VBC and/or Special Pricing Programs will adhere to the same processing times upon completion of the required paperwork *as defined in Article V and by the Terms & Conditions of the Vaccines Brand Choice and other Special Pricing Programs on* ***Attachment B-1****.*
12. **Onboarding Forms**: To access Vendor's base pricing and/or pricing through Special Pricing Programs will adhere to the required paperwork *as defined in Article V and by the Terms & Conditions of the Vaccines Brand Choice and other Special Pricing Programs on* ***Attachment B-1****.*
13. **Order Form**: Means the document or electronic platform Member utilizes to obtain Products from Vendor.
14. **Primary Account Representative**:

Pharmaceutical Contact Point:	Vaccines Contact Point:
John Durand, Sr. Acct. Mgr, Account Management	Kevin Agnew, Vaccines Customer Manager
john.durand@merck.com	kevin_agnew@merck.com
+1 (262) 8990909	+1 (267) 3050103

15. **Products**: Means all products offered by the Vendor in this Agreement, which are identified in ***Attachment A***.
16. **State**: Means one of the recognized fifty (50) states of the United States of America.

AGREEMENT FOR MMCAP INFUSE NO. MMS2000315

THIS Agreement is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of MMCAP Infuse ("**MMCAP Infuse**") and Merck Sharp & Dohme Corp., a corporation with an address of 351 N. Sumneytown Pike Mail Stop UG4AB-15 North Wales, PA 19454 ("**Vendor**" or "**Merck**"). Collectively, the MMCAP Infuse and Merck/Vendor will be referred to as "**Parties**".

Contract Term:

1. **Effective Date**: July 1, 2020, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date**: June 30, 2024.
3. The Contract Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

AGREEMENT COMPONENTS

The following components are the Agreement; all referenced Prefix and Attachments are attached and incorporated into this Agreement:

1. **Prefix A**: Definitions
2. **Attachment A**: Products and Pricing
3. **Attachment B**: Merck Special Pricing Product Programs
    a. Attachment B-1: Vaccine Brand Choice (VBC) Terms & Conditions
    b. Attachment B-2: Pharmaceutical Special Pricing Programs – Letter of Participation
        i. Schedule A: DOC Enrollment and/or Formulary commitment Form
            1. Appendix 1: Additions, Deletions, Disaggregation of Entities and/or GPO Affiliation Update
        ii. Schedule B: General Terms and Conditions
        iii. Schedule C: DOC Programs for Asmanex, Dulera, and Proventil
        iv. Schedule D: Section intentionally Omitted
        v. Schedule E: Discount program for Zepatier
4. **Attachment C**: MN Statutory Language

ARTICLE I
PRICING AND CHANGES

1.1 **Notices**. All notices under this Article must be sent to: MMCAP_Infuse.Contracts@state.mn.us. Notices shall be sent via email, registered or certified mail, overnight delivery, or other carrier with tracking capability, regular mail, facsimile with confirmed receipt to the individual signing this Agreement at the address set forth below (or such other address as a Party may from time to time designate in writing) and shall be deemed to have been given on the date of email, mailing by registered or certified mail, overnight delivery, regular mail or date of fax transmission if by facsimile. All Notices shall be sent to:

For Merck:	For MMCAP Infuse:
Customer Contract Management	Brandon Sis
Merck Sharp & Dohme Corp.	Contracting and Business Operations
351 N. Sumneytown Pike	50 Sherburne Ave
UG4AB-15	Suite 112
North Wales, PA 19454	St. Paul, MN 55155
(215) 616-9001 (fax)	MMCAP_Infuse.Contracts@state.mn.us
contractprocessing@merck.com	

1.2 **Pricing Structure:** Pricing for Products are listed on ***Attachment A*** and will remain in effect during the Contract Term. For clarity and notwithstanding any other provision of this Agreement, Members who do business in or compete with the retail class of trade or who serve the general public, are not eligible for Merck contract pricing for pharmaceutical products under the Agreement.

1.3 **Fixed Pricing**. Vendor must hold pricing firm for at least one (1) year from the Effective Date.

A. Price Reductions. After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must notify MMCAP Infuse before they can take effect.

B. Price Increases. Price increases will only be accepted with (i) at least 30 days' written notice; (ii) a force majeure condition can be established; (iii) and is approved by the MMCAP Infuse. Except as provided for in this Agreement, no fee, percentage, or other cost may be added to the products purchased under this Agreement unless the fee, percentage, or cost is defined and approved in writing by MMCAP Infuse.

1.4 **Non-Fixed Pricing**. All Non-Fixed Pricing requires notice of increases be submitted to MMCAP Infuse at least ninety (90) days before the requested increases may take effect. Vendor cannot increase prices until one hundred twenty (120) calendar days after the Effective Date of the Agreement. In the event of any price reductions, Vendor will advise MMCAP Infuse as set forth on *Paragraph 1.3(A)*.

A. For certain eligible Products that are Vaccines ("Merck Vaccines"), when a Catalog Price increase is affected, Merck will provide the Eligible Members with a ninety (90) day discount (the "Ninety Day Discount"), as of the catalog price increase effective date, for the eligible Merck Vaccine(s) affected. Merck will provide electronic Notice of the effective date for such price increase(s) (the "Price Increase Date") to Eligible Members who have opted-in to email notification of catalog pricing actions via www.merckvaccines.com/pricing-notification.

Starting as of the Price Increase Date, Eligible Members shall receive a discount on the price(s) for such vaccine product(s) that shall continue for ninety (90) calendar days thereafter (the "Ninety Day Discount"). The Ninety Day Discount will be equal to the amount of the price increase for the affected Merck Vaccines and will be provided at the time the order is placed during the ninety-day period as an on-invoice discount with the intent that the Eligible Member will be able to purchase such Merck Vaccines at the pre-increase price during such time period. The Ninety Day Discount only applies to products affected by a catalog price increase.

For example, if Merck increases the catalog price for VARIVAX (Varicella Virus Vaccine Live) by 3%, an Eligible Member's invoice for VARIVAX will include application of a 3% Ninety Day Discount (in addition to the Member's performance discounts, if earned) to the catalog price as of the Price Increase Date, and for ninety (90) calendar days thereafter.

1.5 **Wholesale Acquisition Cost (WAC) Minus Percentage or Dollar Pricing**. If specifically noted on ***Attachment A*** that the prices are a percentage or price off WAC, the price may be changed by providing MMCAP Infuse written notice of the price change along with the new WAC and pricing. Notices of WAC increases must be sent to MMCAP Infuse. In the event Vendor does not notify MMCAP Infuse of a WAC increase, Vendor must honor wholesalers' chargebacks for the most recent previous pricing until such time as MMCAP Infuse receives notice of the WAC increase.

1.6 **Notice to Authorized Wholesalers**. Vendor must notify all MMCAP Infuse-Authorized Wholesalers of price changes within (5) business days of notifying MMCAP Infuse.

1.7 **Competitive Pricing**. If MMCAP Infuse is made aware and determines during the Contract Term Vendor is offering better Contract Pricing and/or Products under Vaccine Brand Choice to another group purchasing organization or Government Unit, Vendor will have ten (10) days to work with MMCAP Infuse to amend this Agreement to provide MMCAP Infuse the same Contract Pricing and/or Products.

1.8 **Vendor's Right of First Refusal on Equivalent Products**. If an equivalent product's market price is less than the Contract Pricing, MMCAP Infuse will provide ten (10) days to the Vendor to match the price.

A. In the event Vendor increases the Contract Pricing, MMCAP Infuse reserves the right to obtain quotes from other vendors and to dual or re-award a Product to the vendor offering the best value.

B. For Vendor to receive right of first refusal on a post one hundred eighty (180) day new generic, the new generic must be a Product on this Agreement at least one-hundred fifty (150) consecutive days before the expiration of the one-hundred eighty (180) day exclusivity period; failure to do so waives Vendor's right of first refusal.

C. If Vendor submits an offer for a Product currently awarded to another vendor, each vendor will be permitted one best and final offer. If a Product is challenged by another vendor, each vendor will be provided one best and final offer.

1.9 **Product Dating**. All Products supplied must be usable on the date received by the MMCAP Infuse Member.

1.10 **Annual Bid Cycle.** Section Reserved

1.11 **Contract Changes**.

A. *Notifications.* Vendor shall advise MMCAP Infuse by Notification for the following items:

i. Change in Vendor's catalog price for a Product
ii. Change in the Discount percentage for a Product
iii. Increase in discount for a Product
iv. Removal of a Product at the NDC Level
v. 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.

B. *Amendments.* Vendor shall advise MMCAP Infuse by Amendment for the following items:

i. Addition of a Product at the NDC Level

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

i. MMCAP Contract Number
ii. Action (i.e., addition)
iii. NDC Number
iv. Product Description
v. Packaging
vi. Contract Price
vii. Amendment Effective Date
viii. Signature of an individual authorized to bind Vendor's offer

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

Upon written acceptance by MMCAP Infuse, Offer Letter will automatically amend ***Attachment A*** of this Agreement. If MMCAP Infuse indicates that aspects of the Offer Letter conflict with Agreement at that time, *Paragraph 11.9* will apply to any subsequent conflicts and/or issues that may arise subsequently. If MMCAP Infuse executes the Offer Letter and provides counters, the Vendor has thirty (30) days to object to MMCAP Infuse's counters before they are deemed as accepted by Vendor. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP Infuse will draft all amendments. Vendor must countersign the amendments drafted by MMCAP Infuse to be incorporated into the Agreement. Amendments must be countersigned by the Vendor by the earlier of the following (A): fifteen (15) days; or (B) the Expiration Date**.**

ARTICLE II
SUPPLYING AND AVAILABILITY

2.1 **Authorized Wholesaler Requirements**. Vendor will notify the Authorized Wholesalers of the initial Products and Contract Pricing and any subsequent changes.

A. All sales of Products to Members must be through the Authorized Wholesalers unless previously authorized in writing by MMCAP Infuse. Direct sales to Members are allowed under this Agreement for vaccine Products only. Vendor will abide by its standard Terms and Conditions of Sale for direct orders which can be found at: https://www.merckvaccines.com/wp-content/uploads/sites/8/2019/12/termsAndConditionsOfSale.pdf.

B. Vendor must establish and maintain chargeback agreement(s) with the Authorized Wholesalers.

C. Vendor must notify MMCAP Infuse immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect the Contract Products' availability. Notices must be sent to: MMCAP_Infuse.Contracts@state.mn.us.

2.2 **Dual Award**. MMCAP Infuse reserves the right to award or dual award Products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by Authorized Wholesalers, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by Members, recall situations, product availability and shortages, quality concerns, failure to supply situations, and in situations that are in the best interest of the MMCAP Infuse and its Members.

2.3 **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 Infuse Authorized Representative**.**

2.4 **Product Discontinuation**. With the exception of a recall, If the Vendor assigns, discontinues, or deletes a Product during the Agreement, Vendor must provide written notice to MMCAP Infuse and Authorized Wholesaler at least thirty (30) days prior. MMCAP Infuse will notify promptly MMCAP Infuse Members and MMCAP Infuse-Authorized Wholesalers. 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.

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

2.5 **Price Audits and Corrections**. In the event of a Contract Pricing or purchasing error that is attributable to either Party, Vendor agrees to accept credit/rebills for the past twelve (12) calendar months. If MMCAP Infuse discovers an error in pricing, it will notify Vendor.

2.6 **Product Recalls**. Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.

2.7 **Returned Goods/Credits.** The Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.

2.8 **Backorders**. Vendor will post information regarding product backorders online at www.merckorders.com for pharma and www.merckvaccines.com for vaccines.

2.9 **Failure to Supply (FTS).** Product actually delivered to MMCAP Infuse-Authorized Wholesalers and MMCAP Infuse Members shall be subject to Vendor's Returned Goods/Credits and Claims for Loss or Damage in Shipment policies and shall be in accordance with Vendor's applicable published Merchandise for Return policy for vaccines. 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 Infuse. MMCAP Infuse will promptly notify MMCAP Infuse Members. 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.

To receive supply status information, MMCAP Infuse may register for email alerts to receive the most current information regarding supply at: https://ordering.merckvaccines.com/supply-status .

ARTICLE III

Reserved for Future Use

ARTICLE IV
TERMINATION, CANCELLATION, AND REMEDIES

4.1 **Cancellation.** Either MMCAP Infuse or the Vendor may cancel this Agreement any time, without cause, upon thirty (30) days' written notice to the other party

4.2 **Termination for Cause**. Either party may terminate this Agreement at any time on the basis the other party breached this Agreement. The moving party must provide written notice to the other party, which upon the receiving party has thirty (30) days to cure the defects. Upon thirty (30) days, the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.

4.3 **Termination for Insufficient Funding**. MMCAP Infuse may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Products covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Products that are provided after notice and effective date of termination. However, the vendor will be entitled to payment, determined on a pro rata basis, for Products satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any costs, fees, or other charges if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP Infuse must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP Infuse receiving that notice.

A. For orders made by a Member, Vendor agrees to the applicable statutory terms of the applicable Member if the Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Products.

4.4 **Force Majeure**. Neither party to this Agreement 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 outside the control of Vendor, or labor shortages or acts of God.

4.5 **Breach**. In the event of a breach of this Agreement, MMCAP Infuse and Members reserve the right to pursue any other remedy available by law. Vendors may be removed from the Vendor's list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.

4.6 **Dispute Resolution**. Vendor and MMCAP Infuse will handle dispute resolution for unresolved issues using the following procedure.

A. Notification. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within thirty (30) days.

B. Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP Infuse or Vendor may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action.

C. Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.

D. No Waiver. This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE V
MEMBERSHIP

5.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Products**,** Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition. Vendor's documents and/or procedure for implementing and transitioning Members to this Agreement is set forth in *Paragraph 5.4*, below

5.2 **Membership Listing**. MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Contract Term.

5.3 **Membership Eligibility**.

A. The Vendor must extend the current prices to all Members accepted and approved by the Vendor as Members. The Vendor must allow qualified new state agencies and political subdivisions joining MMCAP Infuse to be added to the current participants' list of Members and access Contract Prices throughout the Term of this Agreement subject to the eligibility requirements below.

B. MMCAP Infuse 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 as a Member. 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 Infuse Members. MMCAP Infuse shall advise Vendor immediately.

5.4 **MEMBERSHIP PROCEDURES FOR MERCK**

The list of MMCAP Infuse Members eligible for Merck contract pricing on any Attachment may be amended by MMCAP Infuse or by Merck from time to time by following the procedures set forth in this section. Membership in the Special Pricing Programs is governed by the terms of the individual Special Pricing Program. For the purposes of this Agreement, "Special Pricing Program" means a program with enhanced offerings for Members in return for meeting certain performance requirements, as set forth in the terms and conditions of the applicable Special Pricing Program.

A Member will be eligible for Merck contract pricing set forth in the applicable Attachment(s) to this Agreement when: (i) MMCAP Infuse adds the Member to its "MMCAP Infuse Membership List"; (ii) MMCAP Infuse provides Merck with the list which includes a valid DEA and/or HIN number and proposed class of trade designation; and (iii) Merck, at its sole discretion, accepts the Member and determines the Member is eligible for Merck contract pricing set forth in the applicable Attachment(s) to this Agreement. In the event that a Member is a member of more than one GPO, prior to becoming a Member, the Member shall be required to designate in writing, through a letter of participation acceptable to Merck or otherwise, that MMCAP Infuse will be the GPO through which it will purchase the pharmaceutical Products available under this Agreement. MMCAP Infuse further represents and warrants that it shall provide Notice to Merck if it becomes aware that the Member is no longer eligible to receive pricing under this Agreement. A Member will cease to be eligible for specific Merck contract pricing set forth on the applicable Attachment(s) to this Agreement at the time either MMCAP Infuse or Merck: (i) determines that the Member is no longer eligible; (ii) determines that the Member is no longer in a class of trade eligible for specific Merck contract pricing set forth on the applicable Attachment; or (iii) the Member has notified MMCAP Infuse that it will no longer designate MMCAP Infuse as the GPO through which it will purchase the pharmaceutical Products available under this Agreement. Merck shall provide MMCAP Infuse with information about eligibility acceptance for specific Merck contract pricing upon request. Merck and MMCAP Infuse shall cooperate to resolve as promptly as possible any disagreement by MMCAP with respect to Merck's decision to accept or reject a Member as eligible.

For any changes to Merck's list of Members eligible for specific Merck contract pricing, Merck will reference the information provided on the MMCAP Infuse Membership List, notice provided to Merck (e.g. declaration letter), and/or enrollment form to determine the Merck eligible effective date for the Member. Discounts for Members will be effective as of the Member's first purchase under the Agreement. All determinations regarding a Member's class of trade designation and eligibility will be made at Merck's sole discretion. Merck and MMCAP Infuse shall cooperate to resolve as promptly as possible any disagreement by MMCAP Infuse with respect to decision of Merck as to the class of trade to which the Member belongs.

Membership communications to Merck can be directed to membershipupdates@merck.com.

Rebates and discounts for which third party data is needed (e.g. market share or volume) will be paid only upon those Member purchases for which the applicable third-party data has been received and the purchaser was a Member at the time of purchase of Products subject to rebates and/or discounts under this Agreement.

5.5 **Non-Solicitation**. During the term of this Agreement, Vendor will not solicit any Members or prospective Members to enter into or negotiate a separate contract or agreement for the same or substantially equivalent products and services offered in this Agreement without MMCAP Infuse's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and services covered by this Agreement.

5.6 **DEA License/HIN**. Unless the Member purchases a controlled substance, the Vendor may not require that a Member 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 Member. Even if a DEA number is not required, MMCAP Infuse agrees that the Member will ensure the receiving facility for an MMCAP Infuse Member must be in compliance with state and federal licensing requirements authorizing the handling of vaccines. MMCAP Infuse hereby consents to release its Drug Enforcement Administration (DEA) and Health Industry Number (HIN) registration number(s) to Merck & Co., Inc. and to MMCAP Infuse Authorized Wholesalers–in order to administer this Agreement and for Merck Sharp & Dohme Corp. to release its DEA registration number(s) to MMCAP Infuse Authorized Wholesalers in order to administer this Agreement.

5.7 **Eligible Membership for Special Pricing Programs.** Participation in Merck's Vaccine Brand Choice Pricing Program (VBC) is available to those MMCAP Infuse Members who are eligible to participate in VBC, consistent with the Terms and Conditions of VBC, including class of trade and other eligibility restrictions (including but not limited to performance-based eligibility and enrollment criteria).

5.8 **Membership Procedures for Special Pricing Programs.** Membership in Special Pricing Programs, such as VBC, will be governed by the procedures set forth in the Terms and Conditions of the applicable Special Pricing Program. Special Pricing Program Terms and Conditions will prevail except where noted.

5.9 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

ARTICLE VI
AGREEMENT MANAGEMENT

6.1 **Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP Infuse for this Agreement. Merck will provide a notice to MMCAP Infuse, if the Primary account representative is changed, as reasonably possible. The Primary Account Representative will be responsible for:

A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
B. Timely response to all MMCAP Infuse inquiries
C. Performance of the business review as described in *Paragraph 6.2*.
D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.

6.2 **Business Reviews**. Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

ARTICLE VII
WARRANTS, COVENANTS, AND DUTIES OF VENDOR

7.1 **Covenant of Laws**. Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.

7.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse.

7.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish Products that have not been 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.

7.4 ***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. If the Vendor receives a 483 or similar type warning letter for any Product, it must be provided to MMCAP Infuse within ten (10) days of receipt by Vendor.

7.5 **Debarment**. 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 Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide immediate written notice to MMCAP Infuse if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion: Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.

7.6 **Indemnification**. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor.

7.7 **Antitrust**. The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota, and/or the antitrust laws of any Member unless otherwise assigned directly to that Member by Vendor with MMCAP Infuse's approval.

ARTICLE VIII
ADMINISTRATIVE FEE

8.1 **Administrative Fee.** In consideration of the reports and services provided by MMCAP Infuse, Merck will pay an administrative fee at the percentage rate of 1% on all pharmaceutical product net sales purchases (minus any returns or credits) made by Members that are subject to this Agreement and are made through Authorized Wholesalers with the exception of the following products for which Merck will not pay an administrative fee: ISENTRESS, DELSTRIGO, PIFELTRO, NEXPLANON and ZEPATIER. Furthermore, Merck will pay an administrative fee at the respective rate identified in the ***Attachment A*** for the related net sales for vaccine purchases. For clarity, vaccine net sales made by Members participating in Vaccine Brand Choice (VBC) are also subject to an Administrative Fee payment as identified on ***Attachment A***.

A. Vendor must provide Administrative Fee and the relevant data to MMCAP Infuse 60 days after close of the quarter. The Vendor will submit a check or ACH payment payable to:

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

B. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.

C. To the extent there are errors in the administrative fee payments discovered by either Merck or MMCAP Infuse, the erroneous party shall reconcile such administrative fees to the other party in a timely manner, not to exceed one hundred twenty (120) days from the time written notice of the error is provided. A request by either party 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.

8.2 **Reporting**. The Vendor must submit a quarterly Administrative Fee Data Report that includes both direct (sales made direct from Vendor to Member) and indirect purchases (sales made through an Authorized Wholesaler). The quarterly Administrative Fee Data Report must contain the fields detailed below. Vendor agrees that for indirect sales, chargeback or sales data received from Authorized Wholesalers will be utilized to create the Administration Fee Data Report and if additional reports are needed to support creation of the Administration Fee Data Report, Vendor agrees to bear the cost of any special reporting that may be required by the Vendor in its relationship with the Authorized Wholesalers. All Administrative Fee Data Reports must be sent to: mmcap.infuse@state.mn.us at the end of each quarter, but no later than sixty (60) days after the end of the quarter. The required items for the reporting of direct and indirect sales are found below. Without limitation to the foregoing, Member is specifically prohibited from selling the information provided by Vendor and from retaining, using, or disclosing such information for a commercial purpose other than provided in the Agreement or in any manner outside of the direct business relationship between MMCAP Infuse and Vendor.

A. Administrative Fee Data Report fields:

i. MMCAP Infuse Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)- May be left blank, but point of sale will be identified somehow
ii. MMCAP Infuse Assigned Manufacturer Number – May be left blank
iii. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
iv. Invoice Date (Point of Sale Date)
v. Invoice Number-May be left blank
vi. MMCAP Infuse Member Name
vii. Vendor's Account Number for the MMCAP Infuse Member
viii. MMCAP Infuse Member DEA Number, if applicable
ix. MMCAP Infuse Member HIN Number, if applicable
x. MMCAP Infuse Member Address
xi. MMCAP Infuse Member City
xii. MMCAP Infuse Member State
xiii. Product's NDC (Use all 11 digits (00076888888))
xiv. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
xv. Credit Indicator (C = credit)-May be left blank, but credits will be denoted by negative values
xvi. Contracted Units (The number of units purchased on contract.)
xvii. MMCAP Infuse Contracted Unit Price
xviii. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number.
xix. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
xx. Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)

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

ARTICLE IX
INTELLECTUAL PROPERTY

9.1 **MMCAP Infuse Ownership**. MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IMS Health and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP Infuse or a Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.

9.2 **Vendor Ownership**. Vendor owns all rights, title, and interest to any aggregated data not identifiable as arising from this Agreement and any other intellectual property created for or presented to MMCAP Infuse. Vendor grants to MMCAP Infuse an unlimited, non-revocable, non-transferable, fully paid, license, for the term of this Agreement, to use all intellectual property created for or presented to MMCAP Infuse under this Agreement.

9.3 **Pre-Existing Intellectual Property**. MMCAP Infuse and Vendor will each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. The Vendor grants Minnesota a perpetual, irrevocable, non-exclusive, royalty free license for Vendor's pre-existing intellectual property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Agreement. The aforementioned license is solely for use by Members, and their agents related to an internal business or governmental purposes.

9.4 **Vendor Obligations**. The Vendor must perform all acts, and take all steps necessary to ensure that all intellectual property rights created for MMCAP Infuse or Member are the sole property of the MMCAP Infuse or Member, and that neither Vendor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Vendor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities.

9.5 **Intellectual Property Indemnification**. The Vendor will to the extent permitted by the Attorney General, hold harmless MMCAP Infuse, from any action or claim brought against MMCAP infuse to the extent that it is based on a claim of an infringement upon the intellectual property rights of others.

9.6 **Publicity and Endorsement**. Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. 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 Agreement.

A. Marketing. Any direct advertising, marketing, or direct offers with Members must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.

B. Endorsement. The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

ARTICLE X
INSURANCE

10.1 **Notice**. Vendor warrants that it is self-insured at levels sufficient to support the obligations herein. Vendor will notify MMCAP Infuse if Vendor determines it will not continue to be self-insured and obtains insurance from a third-party MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor In the event that a court of competent jurisdiction orders Vendor to disclose its insurance information in connection with discovery during litigation brought as a result of a dispute between the parties, Vendor agrees to adhere to such court's order with respect to disclosure of such information.

10.2 **Workers' Compensation Insurance**: If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, it must notify MMCAP Infuse if during the course of the Agreement, the Vendor' becomes eligible for Workers' Compensation requirements, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.

ARTICLE XI
GENERAL TERMS

11.1 **Notices**. If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.

11.2 **Audits**. Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of three (3 years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales a Member.

A. Invoice and Pricing Audit. MMCAP Infuse may periodically audit validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.

B. Costs. Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.

11.3 **Confidentiality.** MMCAP Infuse and Merck, for themselves and their respective affiliates agree to keep confidential the terms and conditions of this Agreement, including but not limited to the net prices, discount levels, performance requirements (e.g. market share, volume, formulary status), Special Pricing Program Terms (as described in ***Exhibit A of Attachment B-1***), and administrative fees for the Products provided for hereunder ("**Confidential Information**"), except when such disclosure is required by applicable law, or to permit Merck, MMCAP Infuse and/or

the MMCAP Infuse Eligible Members to comply with their disclosure and other obligations under this Agreement. The Parties agree to use reasonable care to avoid unauthorized disclosure or use of Confidential Information, provided, however that: (1) MMCAP Infuse and Merck are authorized, as a matter of reasonable business practice, to disclose the Agreement and its terms to Eligible Members and any subcontractors reasonably involved in the implementation of the Agreement, subject to an appropriate non-disclosure agreement with such Eligible Members and such subcontractors, providing for protections equal to those afforded by the Agreement for the benefit of the other Party, and (2) Merck is authorized to disclose the Agreement and its terms to Authorized Wholesalers to the extent necessary to implement the Agreement. If MMCAP Infuse believes that a disclosure of Merck's Confidential Information is required by law or legal process, except as specifically required for MMCAP Infuse and/or Eligible Members to meet the disclosure obligations set forth in this Agreement, MMCAP Infuse shall inform Merck sufficiently in advance of such disclosure to permit Merck to take such action necessary to protect its rights in such Confidential Information. The obligations in this Section shall not apply to any information, knowledge, or data already known to either Party before the start of this Agreement which was not subject to confidentiality protection, or which, prior to the time of disclosure or thereafter, is properly in the public domain.

Neither Party may make any public announcement concerning the existence of this Agreement or its terms without the prior written approval of the other Party, provided however that MMCAP Infuse is entitled to disclose relevant information to potential members for the purpose of demonstrating Product availability or cost savings to the potential member.

The terms of this confidentiality provision survive any termination or expiration of this Agreement for a period of five (5) years.

11.4 **Excluded Entities**. MMCAP Infuse 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 Merck if it, or any of its officers or directors has been in Violation. After the execution of the Agreement, MMCAP Infuse shall notify Merck in writing immediately if any such Violation occurs or comes to its attention. Merck shall 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 MMCAP Infuse, 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/ exclusions/authorities.asp); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (https://oig.hhs.gov/exclusions/index.asp) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (https://www.sam.gov/portal/SAM/#1) 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”).

11.5 **Denied Parties.** MMCAP Infuse represents and warrants that neither MMCAP Infuse nor any of its legal representatives, as applicable, are listed on any of the U.S. or EU denied parties lists, or any other denied parties list issued by another jurisdiction that is applicable to the Merck Products contracted under this Agreement, as notified by Merck to MMCAP Infuse from time to time, all of the foregoing collectively referred to as “Denied Parties Lists”. As of the date of this Agreement, the Denied Parties Lists consist of the U.S. Treasury Department’s List of Specially Designated Nationals and Blocked Persons (the “SDN List”) (https://www.treasury.gov/ofac/downloads/sdnlist.pdf), the U.S. Treasury Department’s Office of Foreign Asset Controls “OFAC” Consolidated Sanctions List (the “OFAC Consolidated List”) https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx, the U.S. Commerce Department’s Denied Persons List (http://www.bis.doc.gov/dpl/thedeniallist.asp) and Entity List (http://www.bis.doc.gov/entities/default.htm), and the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions (http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm). MMCAP Infuse further represents and warrants that it is not directly owned by 50% or more by a person listed on the SDN List or the OFAC Consolidated List. MMCAP Infuse further represents and warrants that MMCAP Infuse shall notify Merck in writing immediately if MMCAP Infuse or any of its legal representatives become listed on any of the U.S. or EU denied parties lists or if MMCAP Infuse becomes owned by 50% or more by a person or entity listed on the SDN List or OFAC Consolidated List. In case of an inaccuracy in or a breach of the representations and warranties provided for in this subsection, Merck has the right, in its sole discretion, to terminate this Agreement immediately and without penalty to Merck. MMCAP Infuse agrees to indemnify and hold harmless Merck for any inaccuracy or breach of the representations and warranties provided for in this subsection. This provision shall survive termination of this Agreement.

11.6 **Own Use.** No Member 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 Merck product purchased at a discount not be resold by a MMCAP Infuse Member. If Merck Product purchased under this Agreement is not dispensed consistent with this Section, such Member 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 Infuse Member from participation in this Agreement. Return of discounts is a non-exclusive remedy for violation of this "own use" provision and supplements other available legal and equitable remedies to which Merck may be entitled. Notwithstanding institution's "own use" policies, Merck products purchases at a discount under this Agreement may not be transferred to entities that are not MMCAP Infuse Members under this Agreement. If ***Attachment A*** provides that discounted pricing is available only for dispensing for inpatient use or otherwise provides a specific limitation on the permitted utilization of discounted product, this "own use" clause shall not be interpreted as expanding the permitted use or dispensing of the Product under this Agreement. MMCAP Infuse Members are on notice of restrictions on the resale of prescription pharmaceutical products imposed by law, including without limitation the Prescription Drug Marketing Act, and especially 21 U.S.C. *§* 353(c).

11.7 **Assignment**. The Vendor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP Infuse and a fully executed assignment agreement.

11.8 **Amendments**. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

11.9 **Order of Precedence**. Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, order forms, website use of terms, Offer Letters, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. For the purposes of clarity, the terms and conditions (Articles I though XI will supersede the Attachments unless otherwise stated). If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this section, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.

11.10 **Counterparts and Electronic Signature**. The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.

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

11.12 **Waiver**. If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

11.13 **Governing Law, Jurisdiction, and Venue**. Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

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

11.15 **Duty to Warn**

A. MMCAP Infuse Members must (a) take all appropriate steps to assure that all Vendor vaccine Products purchased by MMCAP Infuse Members pursuant to this Agreement shall be administered to each patient on the basis of an individualized medical judgment by a prescriber, or (b) take all appropriate steps to provide to such patient (or to patient's parent or guardian) meaningful warnings relating to the risks and benefits of vaccination, in form and language understandable to such patient, parent or guardian.

B. 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 Member under *Paragraph 11.15(A)* above, the MMCAP Infuse Member shall upon prompt written notice of such claim or action and to the extent allowable by law, 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 Infuse Member any factual determination made on that issue in the earlier litigation.

C. In the event of the MMCAP Infuse Member's breach of, or failure to carry out, its responsibilities under *Paragraph 11.15(A)* above, any measure of resulting damages to Merck shall include, but need not be limited

to (and if allowable by law), 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 light 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.

D. 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 Infuse Member 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.

11.16 **Contract Complete**. This Agreement, including all Attachments hereto, constitutes the entire contract and understanding of the parties, subject to subsequent amendments pursuant to *Paragraph 11.8* and supersedes all prior agreements, written or oral, between the parties.

VENDOR: Merck Sharp & Dohme Corp.
The Vendor certified that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: James Curotto
Signature: _____
Title: VP, Integrated Account Management
Date: 06/12/2020

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

Name: Jennifer Vanderplaats
Signature: DocuSigned by: Jennifer Vanderplaats CD83E8166C064D1...
Date: 6/15/2020

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

Name: Sara Turnbow
Signature: DocuSigned by: Sara Turnbow 694A6F1D2CF64DE...
Date: 6/15/2020

Attachment B

Merck Special Pricing Programs

Eligible Membership for Special Pricing Programs. Participation in the Special Pricing Programs is available to those MMCAP Eligible Members participating in MMCAP Infuse pharmacy program who are eligible to participate in the applicable individual Special Pricing Program consistent with the Terms and Conditions of the individual Special Pricing Program, including class of trade and other eligibility restrictions (a: including but not limited to performance-based eligibility and enrollment criteria). For clarity and notwithstanding any other provision of this Agreement or Exhibit, Members who do business in or compete with the retail class of trade or who serve the general public, are not eligible to be MMCAP Infuse Eligible Members and are not eligible for Merck contract pricing under the Agreement, including but not limited to Special Pricing Programs.

Membership Procedures for Special Pricing Programs. Membership in the Special Pricing Program will be governed by the procedures set forth in the Terms and Conditions of the applicable individual Special Pricing Program.

Terms and Conditions for Special Pricing Programs. The current Terms and Conditions of the Special Pricing Programs, including eligibility and performance requirements necessary to obtain pricing under such Special Pricing Programs, are appended to this Exhibit. MMCAP Infuse Eligible Members eligible for Special Pricing Programs pricing must comply with all applicable Terms and Conditions to obtain such pricing. For avoidance of doubt, the Terms and Conditions of an individual Special Pricing Program include all attachments, exhibits, and schedules thereto. New Special Pricing Programs may be added to this Exhibit after the Effective Date of this Agreement only by written agreement of the Parties. Merck may modify or terminate any Special Pricing Program, at any time, at its sole discretion, upon Notice by Merck to MMCAP Infuse. In the event of any conflict between Special Pricing Program Terms and Conditions and the Agreement, the Special Pricing Program Terms and Conditions shall control.

Communication of Special Pricing Program Terms and Conditions.

Initial Communication of Special Pricing Programs. Within 15 days of the Effective Date of the Agreement, MMCAP Infuse shall provide the Terms and Conditions of the Special Pricing Programs appended to this Exhibit to those MMCAP Infuse Members who are eligible to participate in the applicable Special Pricing Programs according to the individual Special Pricing Program Terms and Conditions.

Communication of New Special Pricing Programs. Within 15 days of the addition of a new Special Pricing Program to this Exhibit, MMCAP Infuse shall provide the Terms and Conditions of the new Special Pricing Program to those MMCAP Infuse Members who are eligible to participate in the Special Pricing Program according to the individual Special Pricing Program Terms and Conditions.

Communication of Termination of Special Pricing Programs. Upon Notice by Merck to MMCAP Infuse of the termination of a Special Pricing Program, MMCAP Infuse shall: (1) immediately inform those MMCAP Infuse Members participating in the Special Pricing Program of the Program's termination; and (2) cease making the Terms and Conditions of such Special Pricing Program available to MMCAP Infuse Members as of the date of program termination except as necessary for the MMCAP Infuse Member to meet its disclosure obligations.

Communication of Modifications to Special Pricing Programs. Upon Notice by Merck to MMCAP Infuse of the modification of a Special Pricing Program, MMCAP Infuse shall immediately: (1) provide the modified Terms and Conditions of such Special Pricing Program to MMCAP Infuse Members who are eligible to participate in the Special Pricing Programs according to the individual Special Pricing Program Terms and Conditions; and (2) inform those MMCAP Infuse Members participating in the Special Pricing Program of the modification to the Special Pricing Program.

Vaccine Brand Choice (VBC) Terms & Conditions – Attachment B-1

1. Program Description and Definitions

Vaccine Brand Choice (the "**Program**") provides to an Eligible Facility (defined below) the opportunity to earn discounts on the Merck vaccines listed in Exhibit A (hereinafter "Merck Vaccines") commensurate with Eligible Facility's ability to achieve the required performance for the designated performance products in accordance with "Product Performance Calculation and Requirements" below. Unless explicitly authorized by Merck, discounts offered under the Program may not be combined with any other discounts or rebates. By accepting discounts under the Program, the Eligible Facility is agreeing to be bound by the Terms and Conditions of the Program including any modifications to the Program. Merck reserves the right to modify or discontinue the Program, including prices and discounts, in its sole discretion. In the event that Merck modifies the Program, the new Terms and Conditions will automatically apply to the Eligible Facility as of the effective date of the modification. Except to the extent otherwise specifically provided herein, Merck's Terms and Conditions of Sale in effect at the time of purchase for the Product shall govern purchases under this Program.

Vaccine Brand Choice Definitions

"Aggregate Purchases" are valued at (1) wholesale acquisition cost for all formulations of VAQTA® (Hepatitis A Vaccine, Inactivated) 25U/0.5 mL , and RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) and where applicable using the 10-pack vial, prefilled syringe, or tube price per dose (2) wholesale acquisition cost for all formulations of HAVRIX®, and ROTARIX®.

"Calendar Quarter" means January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Depot Location” is a central storage facility that is under the control of a “Health Care Provider Organization” and is approved by Merck for this Program to acquire and store Merck Refrigerated Vaccines for (1) its own use and/or (2) re-distribution to Eligible Facilities for their own use. Any Eligible Facilities to which the Depot Location re-distributes Refrigerated Merck Vaccines must be wholly owned under a common Health Care Provider Organization.

"Eligible Facility" includes:

Acute Care Facilities (acute care, psychiatric, and rehabilitation hospitals)

Non-Acute Care Facilities (non-acute care long-term care facilities (nursing home facilities – on-site pharmacy, nursing home facilities – off-site pharmacy, retirement centers, skilled nursing facilities, sub-acute care facilities), home health care providers, home infusion providers, hospice providers, ambulatory care providers (outpatient centers, surgery centers, oncology centers, dialysis centers, immediate care centers, postsurgical recovery centers), prisons, staff/group model HMOs, Health Care Provider Organization Retail Pharmacy Location, clinics/medical groups, health departments, and physician practices), and

Depot Location, as defined above.

- These Eligible Facilities may participate in the Program as members of a GPO, if they are participating in a GPO's pharmacy program and they meet the membership eligibility criteria in the member's GPO agreement with Merck.

- Eligible Facilities may also participate in the Program if they are not GPO members.

Eligibility may also be contingent on the availability of data necessary to measure performance (eg, market share) in the Program consistent with the Program Terms and Conditions. Eligibility is evaluated and determined at the location level (eg, the physical site to which product is shipped). Final determination of the Eligible Facility's eligibility to participate in the Program will be made by Merck, in its sole discretion.

“Health Care Provider Organization” means an integrated health system/delivery network, hospital, clinic/medical group, or physician practice that owns Eligible Facilities approved by Merck for participation in this Program.

“Health Care Provider Organization Retail Pharmacy Location" means an outpatient pharmacy that is owned and operated by the Health Care Provider Organization (as defined above), is located within one of the Health Care Provider

Organization medical system buildings or within the Health Care Provider Organization campus, and services outpatients and employees of the Health Care Provider Organization system. Please see Section 10 "Miscellaneous" for information regarding eligibility requirements.

-All other outpatient pharmacy locations of a Health Care Provider Organization, including affiliated pharmacies, are excluded under this definition.

"Hepatitis A Pediatric Vaccine Market," whether or not capitalized means all pediatric formulations of VAQTA, HAVRIX, and any new pediatric, monovalent vaccine containing a hepatitis A antigen.

"IQVIA Quarter" means the quarterly reporting interval of IQVIA data as supplied by IQVIA (formerly known as IMS Health, Inc.) ("IQVIA").

"Measurement Review Period" ("MRP") means the IQVIA Quarter used for measuring the product performance of an Eligible Facility for Program Base Level Price or Discount Level placement in the Program. Product performance (ie, market share) in the MRP determines Discount Level placement in the Program two (2) Calendar Quarters later.

"Other Product Discounts" includes the following Merck Vaccines: VAQTA® (Hepatitis A Vaccine, Inactivated) 50U/1 mL

"Percent Discount Off Catalog" means that, subject to the terms of the Ninety (90) Day Discount (as defined in Section 3), when the Merck Catalog price changes for a product under the Program, the price of that product will also change, so the Eligible Facility will receive the same percent discount off the new Merck Catalog price.

"Preferred Rotavirus Vaccine" means that RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) is designated as a preferred agent in the Rotavirus Vaccine Market for use in medically appropriate patients.

"Preferred Hepatitis A Pediatric Vaccine" means that the pediatric formulations of VAQTA are designated as a preferred agent in the Hepatitis A Pediatric Vaccine Market for use in medically appropriate patients.

"Product Group 1" includes the following Merck Vaccines: GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant), M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live), PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)], ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live), RotaTeq, and ZOSTAVAX® (Zoster Vaccine Live).

"Product Group 2" includes the following Merck Vaccines: PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent), RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)] 5 mcg/0.5 mL, RECOMBIVAX HB 10 mcg/1 mL, RECOMBIVAX HB 40 mcg/1 mL, VAQTA 25U/0.5 mL, and VARIVAX® (Varicella Virus Vaccine Live).

"Refrigerated Vaccine Product" means a Vaccine Product stored in refrigerated temperatures of between 2°C to 8°C (36°−46°F) per the Manufacturer's Prescribing Information.

"Rotavirus Vaccine Market", whether or not capitalized, means all formulations of RotaTeq, ROTARIX, and any new vaccine containing a rotavirus antigen.

"Vaccine Authorized Prime Vendor"

− For acute facilities, means those wholesalers that act in the capacity as prime vendor for Eligible Facility's Group Purchasing Organization (GPO) and may be listed in the agreement between Merck and Eligible Facility's GPO.

− For non-acute facilities that are members of a GPO and non-acute members of a Merck-approved system, means wholesalers and distributors that act in the capacity as prime vendor for Eligible Facility's GPO and may be listed in the agreement between Merck and Eligible Facility's GPO.

− For non-acute facilities that are not members of a GPO, means distributors for whom Merck has an agreement to act as Merck Vaccine Prime Distributors to administer Program pricing to Eligible Facilities when purchasing a Merck vaccine. The list of Merck Vaccines Prime Distributors may be found on www.merckvaccines.com/Order-Products/Pages/PrimeDistributors.

2. Enrollment in the Program

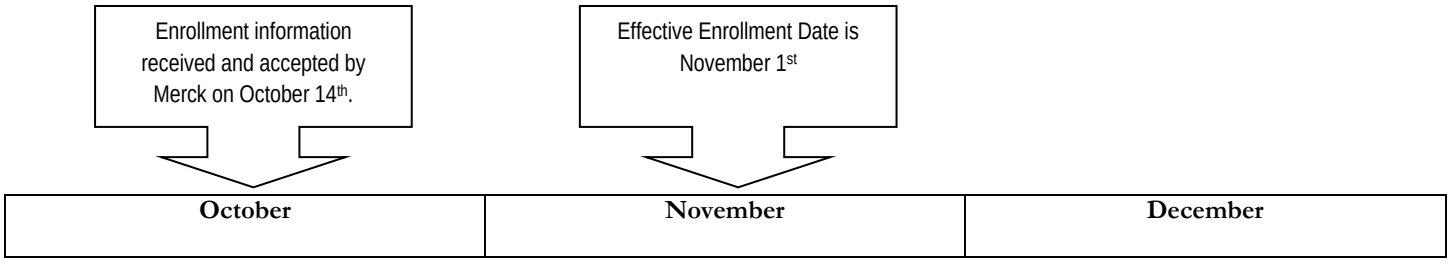
Enrollment information about the Eligible Facility must be submitted to Merck, via Merck's electronic method of enrollment, by the appropriate personnel with authority to manage Program enrollment on behalf of the Eligible Facility.

− Eligible Facility will be enrolled and eligible for the discounts available through the Program on the first (1st) day of the following month, provided the enrollment information is received and accepted by Merck on or before the fifteenth (15th) day of the month in which the enrollment information was submitted.

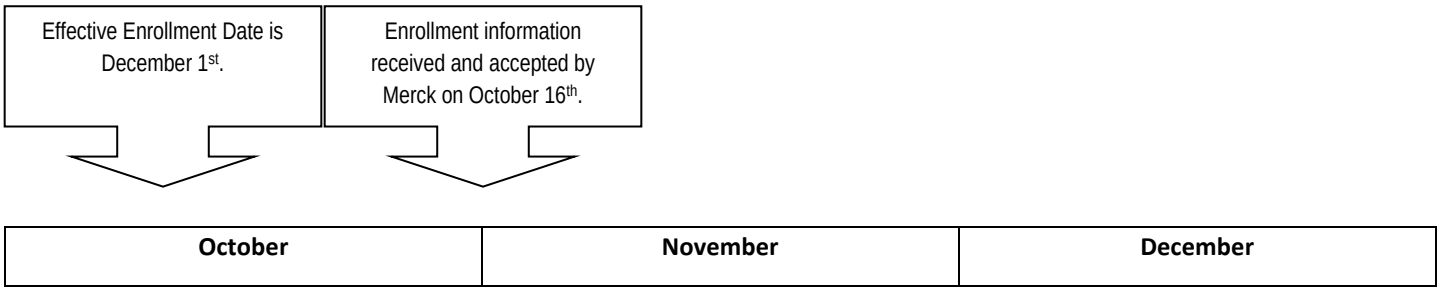
− If the enrollment information is received and accepted after the fifteenth (15th) day of the month, Merck will make reasonable efforts to make the Eligible Facility eligible to receive discounts on purchases the first (1st) day of the following month, at its sole discretion. Otherwise, Eligible Facility shall be enrolled in the Program on the first day of the subsequent month.

Merck's acceptance of the submitted enrollment information is dependent on its accuracy and completeness. The date the program pricing goes into effect is referred to as the Enrollment Date.

For example, if the Eligible Facility submits completed enrollment information on October 14th and Merck receives and accepts the submission, then that facility will have an Enrollment Date of November 1st.



If this facility had, instead, submitted their enrollment information on October 16th to Merck (further assuming that the submission was received and accepted by Merck), then the Eligible Facility would have an Enrollment Date of December 1st.



3. Program Discounts

Product Performance Calculation and Requirements

Merck Vaccine performance (i.e., market share) shall be calculated for an Eligible Facility as further described herein. Market share calculations shall be rounded using standard rounding rules (ie, 0.5% and higher rounds up to the next whole decimal; 0.49% and below rounds down to the whole decimal). As an example, 14.5% rounds to 15%; 14.49% rounds down to 14%.

"Hepatitis A Pediatric Vaccine Market Share" will be calculated for the applicable IQVIA Quarter as follows: the Aggregate Purchases (minus returns) of all pediatric formulations of VAQTA® (Hepatitis A Vaccine, Inactivated) in the Hepatitis A Pediatric Vaccine Market made by the Eligible Facility divided by the Aggregate Purchases (minus returns) of all products in the Hepatitis A Pediatric Vaccine Market made by the Eligible Facility.

"Rotavirus Vaccine Market Share" will be calculated for the applicable IQVIA Quarter as follows: the Aggregate Purchases (minus returns) of all formulations of RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) made by the Eligible Facility divided by the Aggregate Purchases (minus returns) of all products in the Rotavirus Vaccine Market made by the Eligible Facility.

For example, if the Eligible Facility's Aggregate Purchases of VAQTA total $700, and their Aggregate Purchases of HAVRIX total $100, the total Hepatitis A Pediatric Vaccine Market would be $800 ($700+$100). The Hepatitis A Pediatric Vaccine Market Share would be calculated by dividing $700 by $800 and would be 88%. If qualified, the Eligible Facility will be placed in one of the available Program Discount Levels as described below.

Product Group 1 Discount Levels

(Eligible Facility can only participate on one Discount Level in Product Group 1 during a Calendar Quarter):

- To qualify for the Product Group 1 Discount Level, the Eligible Facility must make RotaTeq the Preferred Rotavirus Vaccine at the Eligible Facility and if a formulary exists at the Eligible Facility, such vaccine shall be listed therein as Preferred. An Eligible Facility's Preferred Rotavirus Vaccine will be confirmed as RotaTeq if the facility achieves at least an 80% market share for RotaTeq in the Rotavirus Vaccine Market OR is eligible for the Performance Requirement Exemption as defined below for the applicable IQVIA Quarter. If Eligible Facility qualifies for placement in such level, Eligible Facility will receive the discounts or pricing set forth in Table 1b for the Merck Vaccines in the Product Group 1 Discount Level. Merck reserves the right to audit an Eligible Facility's formulary preferences.

Product Group 2 Discount Levels

(Eligible Facility can only participate on one Discount Level in Product Group 2 during a Calendar Quarter):

To qualify for the Product Group 2 Discount Level, the Eligible Facility must make the pediatric formulation of VAQTA®(Hepatitis A Vaccine, Inactivated) the Preferred Hepatitis A Pediatric Vaccine available to physicians at the Eligible Facility, and if a formulary exists at the Eligible Facility, such vaccine shall be listed as Preferred. An Eligible Facility's Preferred Hepatitis A Pediatric Vaccine will be confirmed as VAQTA if the facility achieves **at least an 80% market share** for the pediatric formulation of VAQTA in the Hepatitis A Pediatric Vaccine Market OR is eligible for the Performance Requirement Exemption for the applicable IQVIA Quarter for the respective product outlined above. If Eligible Facility qualifies for placement in such level, Eligible Facility will receive the discounts or pricing set forth in Table 1 for the Merck Vaccines in the Product Group 2 Discount Level. Merck reserves the right to audit an Eligible Facility's formulary preferences.

For example, if an Eligible Facility's market share during a MRP is as follows: 94% for RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent), and 70% for the pediatric formulation of VAQTA, the customer would qualify for the Product Group 1 Discount Level, and Product Group 2 Base Level discounts set forth in Table 1.

Performance Requirement Exemption: If Eligible Facility does not have any vaccine purchases in a relevant Vaccine Market during the applicable IQVIA Quarter, then the Eligible Facility will be considered as having met the performance requirement for the Merck Vaccine in determining Discount Level placement for the associated Calendar Quarter ("Performance Requirement Exemption").

For example, if a facility does not purchase any vaccine in the Hepatitis A Pediatric Vaccine Market during the applicable MRP, the facility will be considered as having met the performance requirement for VAQTA in the Hepatitis A Pediatric Vaccine Market and would qualify for Product Group 2 Discount Level discounts.

Notwithstanding any provision to the contrary set forth herein, it is the intention of the parties that each individual Merck Vaccine, excluding Merck Vaccines within each Group, shall be treated separately and independently for the purposes of determining the parties' respective rights and obligations in the Program, such that discounts on the Merck Vaccines within an individual Group shall not be contingent upon the product performance achieved for Merck Vaccines within any other Group or other individual Merck Vaccine not within a Group set forth in this Agreement.

In the event that the Eligible Facility does not satisfy the performance requirements in the respective Product Group to qualify for a Discount Level (or does not qualify for a Performance Requirement Exemption for the Merck Vaccine(s)), the

Eligible Facility will remain enrolled in the Program and will receive the Program Base Level price for the applicable Merck Vaccines.

Percent Discount Off Catalog

The Percent Discount Off Catalog (listed in Table 1) is used to determine pricing as set forth in Exhibit A (Vaccine Brand Choice Price Grid). The Merck Catalog Prices listed in Exhibit A are for convenience only; Merck retains the right, in its sole discretion, to increase or otherwise change the Catalog Price for any Merck Vaccine at any time.

Purchases of GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant), M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live), PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)], PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent), ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live), RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)] 5 mcg/0.5 mL, RECOMBIVAX HB 10 mcg/1 mL, RECOMBIVAX HB 40 mcg/1 mL, RotaTeq, VAQTA 25U/0.5 mL, VARIVAX® (Varicella Virus Vaccine Live), and ZOSTAVAX® (Zoster Vaccine Live) by Eligible Facility under the Program shall receive the Percent Discount Off Catalog listed in Table 1 below:

Exhibit A: Table 1

On-Invoice Discount Off Catalog for Product Group 1 Discount Level & Product Group 2 Discount Level

Table 1
On-Invoice Discount Off Catalog for Product Group 1 Discount Level & Product Group 2 Discount Level†

Product Group 1	Program Base Level	Discount Level Meet Performance Requirement for RotaTeq
Product	**On-Invoice Discount**	**On-Invoice Discount**
RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent)	$.05	8%
GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant)	$.05	3%
M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live)	$.05	5%
ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live)	$.05	5%
PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)]	$.05	5%
ZOSTAVAX® (Zoster Vaccine Live)	$.05	2%
Product Group 2	**Program Base Level**	Discount Level Meet Performance Requirement for VAQTA 25U/0.5 mL
Product	**On-Invoice Discount**	**On-Invoice Discount**
VAQTA® (Hepatitis A Vaccine, Inactivated) 25U/0.5 mL	9.62%	25.89%
RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)] 5 mcg/0.5 mL	35.90%	47.44%
RECOMBIVAX HB 10 mcg/1 mL	17.5%	30.7%
RECOMBIVAX HB 40 mcg/1 mL	39.50%	39.50%
PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent)	$.05	3%
VARIVAX® (Varicella Virus Vaccine Live)	$.05	5%

† On-Invoice Discount is based on 10-pack vial or tube price.

Purchases of VAQTA 50U/1 mL by Eligible Facility under the Program shall receive the Percent Discount Off Catalog listed in Table 2 below.

Table 2

On-Invoice Discount Off Catalog for products in the “Other Product Discounts” group

Table 2
On-Invoice Discount Off Catalog for products in the "Other Product Discounts" group

Product	On-Invoice Discount
VAQTA 50U/1 mL	12%*

* Percent Discount Off Catalog is based on 10-pack vial.

Ninety Day Discount

For certain eligible Merck Vaccines, when a Catalog Price increase is affected, Merck will provide the Eligible Facility with a ninety (90) day discount (the "Ninety Day Discount"), as of the catalog price increase effective date, for the eligible Merck Vaccine(s) affected.

Merck will provide electronic Notice of the effective date for such price increase(s) (the "Price Increase Date") to Eligible Facilities who have opted-in to email notification of catalog pricing actions via www.merckvaccines.com/pricing-notification.

Starting as of the Price Increase Date, Eligible Facilities shall receive a discount on the price(s) for such vaccine product(s) that shall continue for ninety (90) calendar days thereafter (the "Ninety Day Discount"). The Ninety Day Discount will be equal to the amount of the price increase for the affected vaccine product(s) and will be provided at the time the order is placed during the ninety-day period as an on-invoice discount with the intent that the Eligible Facility will be able to purchase such vaccine product(s) at the pre-increase price during such time period. The Ninety Day Discount only applies to products affected by a catalog price increase.

For example, if Merck increases the catalog price for VARIVAX® (Varicella Virus Vaccine Live) by 3%, an Eligible Facility's invoice for VARIVAX will include application of a 3% Ninety Day Discount (in addition to the facility's performance discounts, if earned) to the catalog price as of the Price Increase Date, and for ninety (90) calendar days thereafter.

4. Measurement Review Period (MRP)

The Eligible Facility's performance for each of the Merck Vaccines with a performance requirement in the Program in the MRP (ie, market share achieved) will determine the Eligible Facility's Discount Level Placement on purchases placed two (2) Calendar Quarters later. (see Table 3 for example).

Table 3

Eligible Facility's Discount Level will be determined by its performance during the applicable MRP. The following is an example of the event timeline for discounts for an Eligible Facility enrolled in the Program:

1st Quarter of 2019	2nd Quarter of 2019	3rd Quarter of 2019	4th Quarter of 2019
Q1 2019Program Discounts based on Q3 2018 as the MRP (Discount Structure in Table 1a)	Q2 2019 Program Discounts based on Q4 2018 as the MRP (Discount Structure in Table 1a)	Q3 2019 Program Discounts based on Q1 2019 as the MRP (Discount Structure in Table 1b)	Q4 2019 Program Discounts based on Q2 2019 as the MRP (Discount Structure in Table 1b)

An enrolled Eligible Facility will be subject to adjustment of its Program status based on IQVIA Quarter Reconciliations ("Quarterly Reconciliation"). Depending on actual performance achieved, there may be no adjustment required or Eligible Facility may not be eligible for Program discounts. Any changes that may be necessary as a result of the Quarterly Reconciliation review will be made effective on the first day of the second Calendar Quarter after the MRP in which the difference occurred (the "Quarterly Reconciliation Date").

For acute and non-acute care facilities, Merck will use product performance (eg, market share) information derived from IQVIA data to determine whether a Quarterly Reconciliation is required.

The Commitment Letter is available for the Program and represents a one-time opportunity for Eligible Facility to receive the highest Discount Level for Product Group 1 and/or Product Group 2 regardless of whether the Eligible Facility meets the market share requirements for that Discount Level in the respective Product Group. The Eligible Facility can choose to submit a Commitment Letter for each of the Products Groups as separate requests or for both Product Groups in the same request. Regardless to the timing of the submission, each Product Group can only be selected and submitted once during the Eligible Facility's participation in the Program and eligibility for discounts pursuant to the Commitment Letter shall not be renewed or extended. Contact your Eligible Facility's GPO and/or Merck representative for the Commitment Letter. The Commitment Letter is also available from the Merck Vaccine Customer Center 1-877-VAX-MERCK (1-877-829-6372).

5. Program Data

For acute and non-acute care facilities:

Eligible Facility agrees to authorize Merck to utilize IQVIA Holdings, Inc. ("IQVIA") data to verify product performance information. Eligible Facility also agrees that it will authorize or continue to authorize distributor(s) and other suppliers of IQVIA data to supply IQVIA with information on all its purchases of products within the Rotavirus Vaccine Market and Hepatitis A Pediatric Vaccine Market. Eligible Facility understands and agrees that such data are required in order for Merck to determine product performance and achievement of discounts hereunder. Discounts will only be paid upon those Eligible Facility purchases for which such data have been received and accepted by Merck. Neither Merck nor Eligible Facility will issue any demand, process, subpoena, or other legal means for the appearance or production of information, witnesses, documents, or testimony of any of IQVIA's data sources for any purpose arising from or relating to the IQVIA data relevant to the Program. Failure of Eligible Facility to authorize release of IQVIA data shall be grounds for termination by Merck of Eligible Facility's participation in the Program.

Data Disputes:

Should Eligible Facility dispute its performance, Program status, or any discounted price extended under the Program, such claims must be made to Merck. The time-period included in any potential data dispute will not exceed 1 year from the date of notification. Final determination of performance, Program Status, or any discounted price extended under the Program will be made by Merck in its sole discretion.

6. Failure to Supply

With respect to Merck Vaccine Products that are used to measure performance in the Program (the "Performance Products"), in the event Merck determines in its sole discretion that (a) Merck has failed, or will be unable, to supply any Performance Product, directly to an Vaccine Authorized Prime Vendor and (b) that such failure to supply has directly caused an Eligible Facility not to receive such affected Performance Product for a period of fifteen (15) or more business days (each a "Failure to Supply"), Merck will notify Eligible Facility and/or the GPO in writing of such affected Performance Product and the effective start date and end date of the Failure to Supply of such affected Performance Product. For the Performance Product in Failure to Supply, the applicable market share requirement in the affected MRP shall be determined based on the purchase data for the MRP immediately preceding the Calendar Quarter in which the Performance Product is placed in Failure to Supply by Merck. If during the period the Performance Product in Failure to Supply qualifies as having met the performance requirement, then the Performance Product in Failure to Supply will be considered as having met the market share requirement for the remainder of the Failure to Supply period.

For example, if a Performance Product is placed under Failure to Supply effective in the 2nd Calendar Quarter of 2019, Merck shall evaluate the Eligible Facility's data from the first Calendar Quarter of 2019 to determine whether the Eligible Facility has achieved the applicable market share requirement for the Performance Product in Failure to Supply for the fourth Calendar Quarter of 2019and each Calendar Quarter thereafter until the performance product is no longer under Failure to Supply. If the Eligible Facility did not qualify as having met the market share during the first Calendar Quarter of 2019 but it achieves the market share requirement for the Performance Product in Failure to Supply during any future quarter in the Failure to Supply period, then that Eligible Facility will be considered as having met the market share requirement for the Performance Product in Failure to Supply for all subsequent Calendar Quarters in the Failure to Supply period.

During the time period the Performance Product is in Failure to Supply, Eligible Facility must use its best efforts to continue to purchase any affected Performance Product, utilizing alternative Merck Vaccine Products (eg, a monovalent vaccine that is a component of a multivalent vaccine) and package configurations (if applicable). During a Failure to Supply situation, Merck reserves the right to modify the performance requirements of the affected Group in the Program at its sole discretion. Additionally, Merck reserves the right to discontinue the affected Group in the Program until further notice immediately upon written notification to the Eligible Facility or its GPO. Nothing in this term shall permit an Eligible Facility to receive discounts in the event that a Failure to Supply results in whole or in part from the fault or negligence of Eligible Facility.

7. Reporting Discounts

Eligible Facility is aware of and will comply with Section 1128(B) of the Act (42 U.S.C. 1320a-7b) and 42 C.F.R. § 1001.952(h) when seeking reimbursement from any government or other entity for products supplied under this Agreement. Specifically, Eligible Facility acknowledges that the Act requires proper disclosure of any discounts, rebates, credits, reimbursement, and other like programs provided for herein and warrant that Eligible Facility will comply with such disclosure requirements.

By enrolling in the Program or by accepting discounts under the Program if automatically enrolled, Eligible Facility represents and warrants that it will comply with all applicable laws and that it is aware of and will comply with Section 1128B(b) of the Social Security Act (“the Act”) (42 U.S.C. §1320a-7b) and 42 C.F.R. § 1001.952(h) with respect to Merck Vaccines purchased at a discount under the Program. Specifically, Eligible Facility acknowledges that the Act requires proper disclosure of any discounts, rebates, administrative fees, credits, reimbursements, and other like programs provided for herein and represents and warrants that Eligible Facility will comply with such disclosure requirements.

Eligible Facility represents and warrants that it will accurately report the net effective discount price and any other information that must be disclosed under applicable law, for each Merck Vaccine for which a discount has been paid under the Program to the US Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, other Federal and State health care programs, enrollees, and other individuals to the extent required under applicable federal or state law. Without limitation of the foregoing, all discounts and other remuneration paid by Merck under the Program and any other information that must be disclosed under applicable law, shall be disclosed by Eligible Facility to the Centers for Medicare and Medicaid Services (CMS) in accordance with (1) CMS guidance (as it may be revised from time to time), (2) any disclosure requirements in Eligible Facility’s pharmacy contracts with Medicare Part D plans or other third parties; and (3) 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.

8. Excluded Entities

Eligible Facility represents and warrants that prior to accepting discounts under the Program, it has screened itself, and its officers and directors against the Exclusion Lists and that it has informed Merck whether it, or any of its officers or directors has been in Violation. After participation in the Program begins, Eligible Facility shall notify Merck in writing immediately if any such Violation occurs or comes to its attention. Merck shall also have the right, in its sole discretion, to terminate Eligible Facility’s enrollment immediately in the event of any such Violation.

For the purpose of this section the term Violation shall mean that either Eligible Facility, or any of its officers or directors has been: convicted of any of the felonies identified among the exclusion authorities listed on the US 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.epls.gov); or (3) listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or nonprocurement 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”).

9. Term and Termination

a. Term

Participation in the Program begins the date the Eligible Facility is enrolled. Participation will continue until terminated by Merck or enrolled Eligible Facility.

b. Termination of the Program

Merck may, at its sole discretion, terminate the Program or modify the Program Terms and Conditions for any reason or no reason with prior written notice to Eligible Facility or its GPO. Merck shall have the right, at any time during the term of the Eligible Facility's participation in the Program and at its sole discretion, to immediately increase the prices for any Merck product under the Program. This includes situations where the current contract prices are forecast by Merck to set a new Federal Supply Schedule Price, set a new Medicaid Best Price, or set a price lower than the price of the relevant Merck vaccine(s) under Merck's contract with the US Centers for Disease Control and Prevention (CDC).

c. Termination for Cause

Merck may terminate the Eligible Facility's participation in the Program immediately upon a breach by Eligible Facility of these Program Terms and Conditions.

d. Termination by Eligible Facility

Eligible Facility may terminate its participation in the Program for any reason with thirty (30) days prior written notice to Merck.

10. Miscellaneous

Health Care Provider Organization Retail Pharmacy Location

Health Care Provider Organization represents and warrants that the Health Care Provider Organization and its Retail Pharmacy Locations administer vaccines in accordance with state law. Health Care Provider Organization further represents and warrants that its Retail Pharmacy Locations are (1) owned and operated by the Health Care Provider Organization; (2) located within the Health Care Provider Organization medical system, buildings or campus; and (3) greater than or equal to seventy percent (≥70%) of patients served at the Health Care Provider Organization Retail Pharmacy Location are Health Care Provider Organization system patients or employees.

Ordering Procedures

Acute care facilities: An Eligible Facility must place its individual orders with a Vaccine Authorized Prime Vendor.

Non-acute care facilities: An Eligible Facility may elect to place its individual orders directly with the Merck Order Management Center in accordance with the Merck Terms and Conditions of Sale for Pharmaceuticals and Vaccine Products in effect at the time of purchase or with a Vaccine Authorized Prime Vendor. or the purposes of administering Section 5 of the Program Terms & Conditions, Health Care Provider Organization and Eligible Facility using an Eligible Depot Location represent and warrant that all refrigerated vaccines (competitive vaccines and Merck Refrigerated Vaccines) are shipped directly to the Eligible Depot Location by Merck, other manufacturers, Vaccine Authorized Prime. Vendor, or other distributors/wholesalers. The Eligible Facility receiving such Refrigerated Vaccine Products from an Eligible Depot Location also represents and warrants that it shall comply with all applicable laws, statutes, ordinances, regulations and product specific storage and handling requirements set forth in the applicable Merck Vaccine's package insert.

"Own Use"

Eligible Facility agrees that all product purchases under the Program are for Eligible Facility's "own use" and shall be dispensed in accordance with the requirements of Abbott Laboratories v. Portland Retail Druggists Ass'n., 425 U.S. 1 (1976). Health Care Provider Organization and Eligible Facilities represent and warrant that Merck Refrigerated Vaccines will only be redistributed to Eligible Facilities as authorized and described under this Program. The redistribution of any Merck Refrigerated Vaccines distributed to the Eligible Depot Location shall be strictly limited to Eligible Facilities as authorized and described under this Program for administration of such vaccine to patients of the Eligible Facility. If product purchased under the Program is not dispensed consistent with Eligible Facility's "own use," Eligible 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." Product used for purposes other than Eligible Facility's "own use" is not eligible for discounts under the Program. Violation of this "own use" provision shall be a material breach of these Terms and Conditions. Return of discounts is a nonexclusive remedy for violation of this "own use" provision and supplements other legal and equitable remedies to which Merck may be entitled.

Confidentiality

Eligible Facility agrees that it will maintain as confidential the negotiations, existence, pricing, and terms of these Terms and Conditions of the Program for the duration of Eligible Facility's enrollment in the Program and for twelve (12) months thereafter. Breach by Eligible Facility of this confidentiality provision shall be a material breach of these Terms and Conditions. If Eligible Facility is required to disclose information relating to these Terms and Conditions of the Program that is within the scope of this provision by order of court or pursuant to a subpoena or other legally enforceable process, Eligible Facility shall provide Merck with notice of such order, subpoena, or process sufficiently in advance for Merck to protect its interests.

Audit

Merck shall have the right, upon written notice, to review and audit data and other documentation of Eligible Facility, as necessary to verify Eligible Facility’s compliance with its obligations under Vaccine Brand Choice. An independent third-party auditor may, at Merck’s sole discretion, conduct such review and audit, provided that such auditor shall agree to maintain the confidentiality of Eligible Facility confidential data and documentation. The terms of this audit section shall survive termination of Vaccine Brand Choice for a period of three (3) years. If Merck reasonably determines as a result of an audit or otherwise that Eligible Facility received discounts to which it was not entitled under the terms of Vaccine Brand Choice, Eligible Facility shall return such discounts to Merck within thirty (30) days of notification of Eligible Facility by Merck.

Merck's Discretion

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

Disputes

Any dispute arising out of or related to these Terms and Conditions and any subsequent modifications of these Terms and Conditions, or the breach, interpretation, enforcement, construction, termination, or validity thereof, including disputes as to the scope of this Disputes clause and disputes arising under the federal or state antitrust laws, shall be settled by mandatory, confidential binding arbitration. The arbitration panel shall consist of three (3) independent and impartial arbitrators, of whom each party shall appoint one arbitrator within ninety (90) days after a demand for arbitration is made; the third arbitrator shall be selected by the two arbitrators so appointed within ninety (90) days after the expiration of the time period for appointment of such two (2) arbitrators. In the event that any arbitrator is not appointed within the prescribed time period, either party may apply to the President of the American Arbitration Association for the appointment of such arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. to the exclusion of all state laws and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Philadelphia, Pennsylvania. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association or such other rules for alternative dispute resolution as the parties agree. Each party shall pay for all attorneys’ fees and costs it incurs in connection with the arbitration. Each party shall share equally in the costs of the arbitration. Any and all submissions, materials, exhibits, testimony, decisions, awards, or other materials related to the arbitration process or the underlying dispute shall be treated as confidential in accordance with these Terms and Conditions. These Terms and Conditions shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, exclusive of its choice of law and arbitration provisions. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute within the scope of this clause.

The following are registered trademarks of Merck Sharp & Dohme Corp.: GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant), M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live), PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)], PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent), ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live), RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)], RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent), VAQTA® (Hepatitis A Vaccine, Inactivated), VARIVAX® (Varicella Virus Vaccine Live), and ZOSTAVAX® (Zoster Vaccine Live).

Trademark registrations of other products listed are as follows: ROTARIX (GlaxoSmithKline), and HAVRIX (GlaxoSmithKline).

Merck Special Pricing Product Programs
Letter of Participation

Merck Sharp & Dohme Corp. ("Merck"), a subsidiary of Merck & Co., Inc., presents this Special Pricing Product Program Letter of Participation ("LOP"). This LOP specifies the terms and conditions necessary to receive specific discounts on certain Products through Merck Special Pricing Product Programs (individually, "Product Program," collectively, "Programs"). It also serves as a mechanism for enrollment in those Programs. Eligibility criteria, including class of trade and performance requirements, for each Product Program is governed by the Terms and Conditions of that Product Program. For clarity, no entity that does business in or competes with the retail class of trade or serves the general public is eligible to participate in a Product Program.

To participate in any Product Program, an entity must sign and agree to the terms of the LOP (including the applicable General Terms and Conditions in Schedule B and the specific Product Program Terms and Conditions in Schedule C attached hereto) and must be accepted by Merck, in its sole discretion, as eligible to participate in the Product Program. An entity that has applied for and been accepted by Merck to participate in a Product Program shall be deemed a "Participant" in that Product Program. Entities that have been accepted to participate as a group in a Product Program, and to be measured in the aggregate for purposes of the Product Program performance requirements, shall be deemed a "Participant System" for purposes of that Product Program. Unless otherwise stated herein, "Participants" will refer to a Participant and/or Participant System. Merck shall determine, in its sole discretion, whether to accept a group of entities as a Participant System eligible to participate in a Product Program. All changes to Participant System membership (e.g., additions, deletions, and/or disaggregation of entities in a Participant System) shall be through the submission of the membership forms attached as Appendix 1 to Schedule A.

Participants enrolled in a Product Program may be automatically enrolled by Merck into an updated Product Program for the same Product(s) (without signing a new LOP) upon notice to Participants. By participating in the updated Product Program and accepting discounts under such replacement Product Program, Participants shall be deemed to have agreed to the terms of the updated Product Program.

Participants' Selected Group Purchasing Organization (GPO) for Pharmaceutical Purchases

Merck will communicate the applicable Product Program pricing to the authorized wholesalers and/or distributors for the applicable GPO contract the Participants are purchasing under as eligible members. Participants' GPO contract with Merck must include the applicable Product Program for the Participants to have access to that Product Program.

Return all enrollment, participant identification, or membership forms (attached hereto in Schedule A) via tracked overnight courier, email, or other approved electronic submission to Merck Customer Contract Management, unless otherwise specified for a specific Product Program in the Product Program Terms and Conditions attached hereto in Schedule C.

Merck Customer Contract Management Return Information:

Address:
Merck Sharp & Dohme Corp.
Customer Contract Management
351 N. Sumneytown Pike UG4AB-15
North Wales, PA 19454

Email: lopprocessingcenter@merck.com

Schedules:

Schedule A: Department of Corrections Enrollment and/or Formulary Commitment Form
Appendix 1 – Additions, Deletions, Disaggregation of Entities, and/or GPO Affiliation Update
Schedule B: General Terms and Conditions
Schedule C: DOC programs for Asmanex, Dulera, and Proventil
Schedule D: THIS SECTION INTENTIONALLY OMITTED
Schedule E: Discount program for Zepatier

Schedule A: Department of Corrections Enrollment and/or Formulary Commitment Form

(Updated: MMCAP Infuse LOP June 2020)

Please contact your Merck Representative or lopprocessingcenter@merck.com to determine your facility's current program enrollment or whether your facility is eligible for new Formulary Commitment Discounts. Refer to Schedules B and C for complete details of the enrollment requirements. Participant System and GPO Affiliation changes are made through the forms in Appendix 1 to Schedule A.

		Check Box For:			
Department of Corrections ("DOC") Programs	**Enrollment Requirement**	**Enrollment of Individual Facilities Measured Separately**	**Enrollment of Multiple Facilities for Aggregate Measurement (Participant System)**		**New Formulary Commitment (Grace Period) Request**
DOC Committed Program for Asmanex	Formulary status; prisons class of trade only	☐	☐		☐
DOC Committed Program for Dulera	Formulary status; prisons class of trade only	☐	**N/A**		**N/A**
DOC Committed Program for Proventil HFA	Formulary status; prisons class of trade only	☐	☐		☐
DOC Committed Program for Zepatier	Formulary status; correctional institutions and Mental Health class of trade	**See separate Enrollment Form attached**	**N/A**		**N/A**

Sign Below to Certify Enrollment(s) and/or Requests

Facility or System Name: (please also complete Participant Identification Form)	
Signature:	**Date:**
Printed Name:	
Title:	

Return with Participant Identification Form to: **lopprocessingcenter@merck.com**

Schedule A – Participant Identification Form

Submit this form with the Enrollment and/or Formulary Commitment Form. Please submit an Excel Document with all required information below if multiple copies of this page are required to complete this form. Incomplete or missing information can cause delay to effective dates.

Facility Name:		
*DEA Number: (or other appropriate number as agreed to by Merck)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
340B Facility? ☐ Yes ☐ No	340B ID Number (For DSH and 340B Eligible Facility Programs Only)	
Merck Account Manager or Representative:	Main address for the facility must match the address associated with the 340B ID Number above	

Facility Name:		
*DEA Number: (or other appropriate number as agreed to by Merck)	Participant System Name: (if signing up individually, none)	
Main Address:		
City:	State:	Zip Code:
Director of Pharmacy:		
E-Mail:	Phone:	
340B Facility? ☐ Yes ☐ No	340B ID Number (For DSH and 340B Eligible Facility Programs Only)	
Merck Account Manager or Representative:	Main address for the facility must match the address associated with the 340B ID Number above	

*Facility hereby consents to the release of its DEA Number to Merck for the limited purpose of administering these Product Program(s).

If submitting an Excel Document, below is an example of the required information and format to be submitted.

ENTITY /LOCATION NAME	COMPLETE ADDRESS (STREET ADDRESS, CITY, ST, ZIP)	DIRECTOR OF PHARMACY	DEA OR HIN NUMBER	NAME OF MERCK REPRESENTATIVE	DSH FACILITIY (YES OR NO)	340B ID NUMBER (DSH ONLY)

SCHEDULE B – General Terms and Conditions

1. Applicability of General Terms and Conditions The General Terms and Conditions presented in this Schedule B shall apply to all Programs, unless specifically stated otherwise in the individual Product Program in Schedule C. Terms and Conditions applicable to an individual Product Program are set forth in the applicable Product Program in Schedule C.

Except where otherwise specifically noted, entities can choose to participate or not participate in any Product Program and the discounts available through each Product Program are independent of the discounts available through all other individual Programs.

2. Effective Dates for Enrollment and Changes

The effective dates for enrollment, Participant System membership changes, new Formulary Commitment Discounts, removal of Formulary Commitment Discounts, accelerated market share adjudication requests, and updates to GPO affiliation for Participants will be based on: 1) the date Merck receives the appropriate form or notice (as applicable) in the correct format with all the required information accurately and completely filled in via tracked overnight courier, email, or other approved electronic submission and accepts the requested action (i.e., enrollment, addition to a Participant System, etc.) for the Product Program and 2) the status of each individual Participant in Merck's contract eligibility system. Merck reserves the right to deny any Participants inclusion in any Product Program and/or inclusion in any Product Program as part of a Participant System if the appropriate form or notice (as applicable) does not contain the required information or if the form or notice is not in the correct format. For Participants that are currently present in Merck's contract eligibility system, requests received and accepted by Merck in the first fifteen days of a calendar month will result in an effective date of the first day of the following calendar month. Requests received and accepted by Merck after the fifteenth day of a calendar month and before the first day of the following calendar month, will result in an effective date of the fifteenth day of the following calendar month.

For requests submitted by Participants that are currently not present in Merck's contract eligibility system, the Participant will work with its Merck Account Executive to determine the effective date of the request. In these instances, please note that processing times can vary depending on specific circumstances, needs and resources of the Participant and Merck, and may require more days than the above stated first or fifteenth of the month.

3. Performance Criteria and Adjudication

A. Sources of Program Performance Data: For Programs with a market share and/or volume performance requirement, market share and/or volume shall be calculated by Merck based on data supplied through IQVIA. Participants acknowledge and agree that they must submit all required product purchase data, or allow all required product purchase data to be submitted on their behalf, after the end of each calendar quarter to this third party vendor as a condition of participation in any Product Program that has a market share and/or volume requirement.

Should Participants fail to provide the market basket purchase data to the third party vendor referenced above for any given Measurement Period within the prescribed time frame, Participants shall remain enrolled in the Product Program but will not be eligible for any discounts under the Product Program that are based on market share and/or volume performance for which data is required. Merck shall have the right, at any time and in its sole discretion, to change the source of Product Program performance data for any or all Programs.

B. Market Share Adjudication

i. Market Baskets: For those Programs that have a market share performance requirement, the market baskets used for calculation of market share are as set forth in the applicable Product Program Terms and Conditions. Merck may modify the Terms and Conditions of any Product Program by adding or deleting products from the applicable market basket at any time in its sole discretion.

ii. Semi-Annual Market Share Adjudication Cycle: For those Programs that have a market share performance requirement, Market Share Adjudications are performed semi-annually for the previous six-month Measurement Period. Each year, the First Adjudication Calculation is performed during the first quarter and reviews the Participants performance from the Second Measurement Period of the previous year (third and fourth quarter). Any tier movement and discount changes become effective on the First Discount Adjustment Date of the year, April 1.

Each year, the Second Adjudication Calculation is performed during the third quarter and reviews Participant performance from the First Measurement Period of the same year (first and second quarter). Any tier movement and discount changes become effective on the Second Discount Adjustment Date of the year, October 1.

There are no "off cycle" measurement periods regardless of Participants' enrollment effective date. All adjudications will be based on market share data from January-June and July-December. The cycle will continue throughout the duration of the applicable Product Program.

iii. Market Share Calculation: Market share calculations shall be rounded using standard rounding rules (i.e. .5% and higher rounds up to the next whole decimal; .49% and below rounds down to the whole decimal). As an example, 14.5% rounds to 15%; 14.49% rounds down to 14%.

Market share for Participant Systems shall be calculated in the aggregate for all entities in a Participant System.

If Participants do not make purchases of any product within a market basket during a given semi-annual Measurement Period, Participants' market share from the immediately previous semi-annual Measurement Period shall be used. If Participants also did not make any purchases within the immediately previous semi-annual Measurement Period, the Participants' most recent market share from a semi-annual Measurement Period in which purchases were made will apply. Provided, however, that market share shall not be used from any previous semi-annual Measurement Period in which Participants were receiving discounts under the applicable Product Program due to formulary status designation (i.e., Formulary Commitment Discounts for the Product Program). In such event, no pricing will be available to Participants under the Product Program for the applicable semi-annual pricing period. Participants may still be eligible for GPO base pricing, if any, on the applicable Product consistent with the terms of the agreement between Participants' GPO and Merck.

iv. Failure to Supply: For Programs with a market share performance requirement, in the event Merck determines in its sole discretion that (a) Merck has failed, or will be unable, to supply any Merck Product, directly to an authorized distributor and (b) that such failure to supply has directly caused a Participant not to receive such Merck Product for a period of fifteen (15) or more business days (each a "Failure to Supply"), Merck will notify Participant or the GPO in writing of such affected Merck Product and of the effective start date and end date of the Failure to Supply of the Merck Product. For a Merck Product in Failure to Supply, the applicable market share requirement in the affected Measurement Period shall be determined based on the IQVIA data for the Measurement Period immediately preceding the Measurement Period in which the Merck Product is placed in Failure to Supply by Merck. If the Participant qualifies as having met the market share performance requirement during the Measurement Period immediately preceding the Measurement Period in which the Merck Product was placed in Failure to Supply, then the Participant will be considered as having met the market share requirement for the reminder of the Failure to Supply period.

For example, if a Merck Product is placed under Failure to Supply effective in the Second Measurement Period of 2018 (third and fourth quarter), then Merck shall evaluate the Participant's IQVIA data from the First Measurement Period of 2018 (first and second quarter) to determine whether the Participant has achieved the applicable market share requirement for the Merck Product for the First Adjudication Calculation of 2019. The market share achieved for the Merck Product in the First Measurement Period shall remain in place for each Measurement Period thereafter until the Merck Product is no longer under Failure to Supply. If the Participant did not qualify as having met the market share during the First Measurement Period of 2018 but it achieves the market share requirement for the Merck Product in Failure to Supply during any future Measurement Period in the Failure to Supply period, then that Participant will be considered as having met the market share requirement for the Merck Product in Failure to Supply for all subsequent Measurement Periods in the Failure to Supply period.

C. Volume Adjudication: For Programs with a volume requirement, volume will be assessed based upon the most recent six months of data available to Merck. If volume is required upon enrollment, Participants will be measured upon submission of the forms required in Schedule A to determine eligibility consistent with the Product Program Terms and Conditions. If Participants do not meet the minimum volume requirement for initial eligibility, Participants will not be enrolled in the selected Product Program. Participants may be enrolled in an alternate Product Program if such alternate enrollment is specified in the Product Program Terms and Conditions. If after the initial enrollment in a Product Program, Participants are required to meet a volume requirement to receive discounts, volume will be measured twice per year based upon the most recent six months of data available to Merck, with discount adjustments made each April 1 and October 1. (Examples: the April 1, 2014, discount adjustment will measure volume from July- December 2013; the October 1, 2014, discount adjustment will measure volume from January 2014-June 2014). Volume for Participant Systems shall be calculated in aggregate for all entities in a Participant System.

D. Formulary Commitment Discounts (Grace Period)

i. Formulary Commitment Discount Availability Upon Enrollment: During an initial period, Participants newly enrolling in a Product Program with a formulary status requirement may receive Formulary Commitment Discounts in any individual calendar quarter in which they meet the formulary requirements listed in the applicable Product Program in that calendar quarter. This initial period during which quarterly Formulary Commitment Discounts may be earned lasts from the Participants' enrollment effective date in the Product Program until the first Discount Adjustment Date after the first full semi-annual Measurement Period. (If the enrollment effective date is on the first day of a semi-annual Measurement Period, that period will count as a full semi-annual Measurement Period.). Formulary requirements in any Product Program refer only to those NDCs listed as

"Covered Products" in that Product Program. Participants enrolling in a Product Program and receiving Formulary Commitment Discounts will be initially measured (consistent with the terms of the Product Program) in the first full semi-annual Measurement Period after the Participants' enrollment effective date. Entities newly enrolling in a Product Program as part of a Participant System may not receive Formulary Commitment Discounts unless the remainder of the Participant System is also receiving Formulary Commitment Discounts.

ii. Effect of Removal From Formulary: In the event that Participants no longer meet the formulary requirements listed in the applicable Product Program during any period in which they are receiving Formulary Commitment Discounts, Participants agree to notify Merck in writing within five (5) business days. Participants shall remain enrolled in the Product Program but will lose Formulary Commitment Discounts. Merck has the right to request verification and documentation of the formulary availability of the applicable Product at any time during which Participants are receiving Formulary Commitment Discounts.

Participants losing Formulary Commitment Discounts due to a failure to meet the formulary requirements listed in a Product Program shall remain enrolled in the applicable Product Program and shall be adjudicated based upon market share and/or volume data as required for receipt of (non-Formulary Commitment) discounts under the applicable Product Program from the most recent semi-annual Measurement Period available to Merck. Participants shall be eligible to receive discounts based on market share and/or volume performance under the terms of the applicable Product Program beginning on the date Participants lose Formulary Commitment Discounts.

If fewer than all entities in a Participant System no longer meet the formulary requirements listed in a Product Program, such entity or entities removing the Product from formulary (a) shall lose Formulary Commitment Discounts (effective based on receipt and acceptance of notice of formulary status change, as set forth in Section 3.D.ii), and (b) shall be disaggregated from the remainder of the Participant System as of the date of the loss of Formulary Commitment Discounts.

There shall be no change to the discounts received by the remainder of the Participant System based on the removal of the applicable Product from formulary by fewer than all entities in the Participant System.

iii. Accelerated Market Share Adjudication Requests: Participants receiving Formulary Commitment Discounts may, with written notice to Merck, opt out of receipt of Formulary Commitment Discounts and instead choose to be measured and to receive discounts consistent with market share and/or volume achieved under the terms and conditions of the applicable Product Program prior to the first Discount Adjustment Date after the first full semi-annual Measurement Period. Entities in a Participant System may not individually opt to be measured unless they disaggregate from the remainder of the Participant System. The effective date of the loss of Formulary Commitment Discounts and the beginning of performance-based discounts shall be based on the date of receipt and acceptance of notification of Participants' opt out request (as set forth in Section 3.D.ii).

iv. Additional Formulary Commitment Discount Periods: For those Programs for which Formulary Commitment Discounts are available, Participants (a) automatically enrolled in a updated Product Program, (b) re-enrolling in a Product Program that is the same as or substantially similar to one in which they previously received Formulary Commitment Discounts (through any GPO or agreement), or (c) remaining continuously enrolled in the Product Program in which they previously received Formulary Commitment Discounts shall not be eligible for additional Formulary Commitment Discounts unless the following conditions are met:

(A) Participants must not have received any discounts greater than five cents off of Merck published catalog price on the applicable Product under the Product Program or a substantially similar or predecessor Product Program for a minimum of four consecutive calendar quarters; and

(B) Participants shall complete and sign an Enrollment and/or Formulary Commitment Form requesting additional Formulary Commitment Discounts

and provide documentation to Merck of formulary availability of the applicable Product.

The effective date of the additional Formulary Commitment Discounts shall be based on the date of receipt and acceptance of the required form by Merck (as set forth in Section 3.D.iv.B). Additional Formulary Commitment Discounts in a calendar quarter will be based on Participants meeting the formulary requirements listed in the applicable Product Program in that calendar quarter from the effective date of the Additional Formulary Commitment Discount period until the next Discount Adjustment Date after the first full semi-annual Measurement Period occurring thereafter. Program performance for the receipt of (non-Formulary Commitment) discounts will be measured in the first full semi-annual Measurement Period following the effective date of the Additional Formulary Commitment Discount Period. Entities enrolled in a Product Program as part of a Participant System may not receive Additional Formulary Commitment Discounts unless the entire Participant System is also receiving Formulary Commitment Discounts. Section 3.D.ii applies to Additional Formulary Commitment Discount Periods.

4. Additional Terms for Participant Systems

A. Eligibility and Participation: Entities that are part of a system may elect to be recognized collectively as a Participant System for purposes of Product Program(s). A Participant System must be comprised of two (2) or more participants linked by common ownership, management, or other means of effective control, and must also include a centralized pharmacy control structure that is responsible for system-wide formulary decisions. Determination of any entities' eligibility to participate in Product Program(s), including eligibility to participate in the Product Program(s) as part of a Participant System, is made by Merck, in its sole discretion. No entity can be accepted for inclusion in more than one Participant System for a Product Program. Entities must be identified as members of a Participant System for a specific Product Program via the enrollment process. Entities enrolling as a Participant System may enroll in multiple Programs on a single Enrollment and/or Formulary Commitment Form if every selected Product Program will have the exact same group of entities in the Participant System. If the Participant System will vary by Product Program, submit separate enrollment and participant identification requests for each Product Program, accurately identifying the entities proposing to be a Participant System for that Product Program.
By submitting a request for enrollment of a Participant System, the person submitting the enrollment request is representing and warranting that he or she has authority to enroll each entity in the Participant System in the selected Product Program and to agree to the General Terms and Conditions and the applicable Product Program Terms and Conditions on behalf of each entity included in the Participant System.

Only single, uniform discounts will be offered to all entities in a Participant System, based upon the overall aggregate performance (e.g., volume and/or market share performance) for the applicable Product Program of all entities included in the Participant System. If a formulary status is required for participation in a Product Program, all entities in the Participant System must have placed the applicable Product on formulary at the required formulary status. For certain Programs, "Disproportionate Share Hospital," "Non-Profit Teaching Hospital," or other specific entity status is required to enroll. Where such status is required, each enrolling entity must have the required status for that entity to enroll in the Product Program.

B. Addition of Entities to a Participant System: If a new entity is accepted for addition to a Participant System for a Product Program, the new entity will begin receiving the same discounts as the Participant System immediately upon the effective date of the entities' addition to the Participant System. The new entity will be included in the Participant System's aggregate performance (market share and/or volume depending on the applicable Product Program) in the Participant System's next discount adjudication after the effective date of the new entities' addition to the Participant System.

Entities can only be added to a Participant System receiving Formulary Commitment Discounts if the entity also would be individually eligible for Formulary Commitment Discounts under the same Product Program. If a new entity is accepted to be added to a Participant System receiving Formulary Commitment Discounts in a Product Program, the new entity will receive the same discounts as the Participant System immediately upon the effective date of the entities' addition to the Participant System.

If an entity that would be eligible individually for Formulary Commitment Discounts, or is receiving Formulary Commitment Discounts under a Product Program, is added to a Participant System not receiving Formulary Commitment Discounts in that Product Program, that entity will receive the same discounts as the Participant System upon the effective date of its addition to the Participant System, and will forfeit its eligibility for

Formulary Commitment Discounts upon its addition to the Participant System.

C. Deletion of Entities from a Participant System: An entity may only be deleted from a Participant System if the entity no longer meets the criteria for inclusion in a Participant System (linked by common ownership, management, or other means of effective control, including a centralized pharmacy control structure that is responsible for system-wide formulary decisions). The deleted entity will stop receiving Participant System discounts under the applicable Product Program as of the effective date of the entity's deletion from the Participant System.

The deleted entity must submit a new request for enrollment and be accepted to continue its enrollment in the applicable Product Program. The deleted entity may only receive discounts, including Formulary Commitment Discounts, if it meets the criteria for such discounts defined in these General Terms and Conditions and the terms and conditions of the applicable Product Program. The Participant System will not have its aggregate performance re-adjudicated to remove the deleted entity's performance until the next discount adjudication.

D. Dissolution/Disaggregation of a Participant System: A Participant System may request to "disaggregate" and dissolve its aggregate measurement for any Product Program by submitting a request on the applicable form in Appendix 1 to Schedule A. By submitting a request to disaggregate on the form in Appendix 1 to Schedule A, the person submitting on behalf of the Participant System represents and warrants that he/she has the authority to request to dissolve the Participant System aggregation and to request that the entities of the former Participant System remain enrolled in the applicable Product Program(s) and eligible to receive discounts based upon individual performance (market share and/or volume) under the terms of the Product Program. The effective date of the disaggregation of the Participant System and loss of discounts based on Participant System performance will be based on when Merck receives and accepts the request to disaggregate from Schedule A as described above. Entities of a disaggregated Participant System will have their performance (e.g. market share and/or volume) under the terms of the applicable Product Program measured and will receive discounts consistent with their performance as of the effective date of the disaggregation. No new Formulary Commitment Discounts will be provided to entities of a disaggregated system unless such entities meet the requirements set forth above in Section 3.D.iv of these General Terms and Conditions applicable to the Programs.

Once a Participant System has been disaggregated, its entities cannot enroll together (in whole or in part) as a Participant System for the same or a substantially similar Product Program until one year has passed. Entities from a disaggregated Participant System may enroll as part of a new Participant System, comprised of completely different members, if they meet the Participant System criteria. Combinations of Participant Systems will not be interpreted as a disaggregation of those Participant Systems.

5. Term, Termination, and Modification of Program Terms

A. Termination of a Product Program; Discontinuance of Product: Merck may terminate any or all Programs for any reason or no reason with fifteen (15) days written notice to Participants, which shall be provided through the Participants' GPO. Merck shall provide the written notice to the Participants' GPO, and the GPO will then inform the Participants. Merck may terminate any or all Programs immediately upon a determination or opinion by any court or any governmental agency that the arrangements and transactions required or contemplated under a Product Program constitute a violation of any law or regulation.

Nothing in these General Terms and Conditions or any Product Program shall be construed to limit or restrict Merck's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of any product at any time.

B. Termination of Participants from Participation in a Product Program: Merck may terminate the enrollment of any Participant or Participant System (including any entity in a Participant System) in any Product Program (or all Programs in which Participants are enrolled) immediately upon a breach by Participants of the General Terms and Conditions or the Terms and Conditions of a Product Program in which the Participants are enrolled. In the event of a breach of any Terms and Conditions by Participants, the Participants shall return to Merck any discounts received during the time Participants were not in compliance with the applicable Terms and Conditions. Return of discounts is a non-exclusive remedy for violation of the Product Program Terms and Conditions and supplements other available legal and equitable remedies to which Merck may be entitled.

C. Termination of Enrollment in a Product Program by Participants: Participants may terminate their enrollment in a Product Program or all Programs for any reason or no reason at all with fifteen (15) days written notice to Merck.

D. Modification of General and Product Program Terms and Conditions: Merck reserves the right to modify these General Terms and Conditions and/or the Terms and Conditions of any of the Programs in its sole discretion with fifteen (15) days written notice to Participants, which shall be provided through the Participants' GPO. In the event that Merck modifies the General Terms and Conditions, the updated General Terms and Conditions will automatically apply to all Participants enrolled in a Product Program as of the effective date of the modification. In the event that Merck modifies the Terms and Conditions of any Product Program, the updated Terms and Conditions will automatically apply to all Participants then enrolled in the applicable Product Program as of the effective date of the modification. By submitting the required requests from Schedule A to be enrolled in a Product Program, and/or by accepting discounts under a Product Program, Participants are agreeing to be bound by the Terms and Conditions of that Product Program, including any modifications to such General and Product Program Terms and Conditions.

6. Medicaid Best Price/Federal Supply Schedule Price

Merck shall have the right to immediately increase the prices for any Product if the current contract prices are forecasted or deemed by Merck to set a new Medicaid Best Price or Federal Supply Schedule Price. Notwithstanding anything herein to the contrary, to the extent that, in the reasonable judgment of Merck, any discount otherwise payable under a Product Program would, alone or together with any other price reduction to Participants, establish a new Best Price for Merck, as defined by Section 1927 of the Act (42 U.S.C. §1396r-8) the amount of such discount shall be adjusted to the extent necessary in the reasonable judgment of Merck such that a new Best Price not be established with respect to such Product, provided Merck shall provide to Participants documentation establishing the need and basis for such adjustment. This adjustment can be applied for a given quarter, up to three years after the end of the quarter. Participants agree to return any discounts received under the Product Program to the extent necessary to prevent Merck from establishing a new Best Price for any Product.

7. No Additional Discounts

Unless explicitly authorized by Merck, discounts offered under any Product Program may not be combined with any other discounts or rebates.

8. Compliance with Applicable Law and Reporting of Discounts

By submitting the required forms from Schedule A and enrolling in a Product Program, or by accepting discounts under a Product Program, if automatically enrolled, Participants represent and warrant that they will comply with all applicable laws and that they are aware of and will comply with Section 1128B(b) of the Social Security Act ("the Act") (42 U.S.C. §1320a-7b) and 42 C.F.R. § 1001.952(h) with respect to Products purchased at a discount under the Programs. Specifically, Participants 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 Participants will comply with such disclosure requirements.

Participants 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 a Product Program to the U.S. Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, other Federal and State health care programs, enrollees, and other individuals, to the extent required under applicable federal or state law. Without limitation of the foregoing, all discounts and other remuneration paid by Merck under a Product Program and any other information that must be disclosed under applicable law, shall be disclosed by Participants 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 Participants' 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.

9. Own Use

No Participants shall purchase any Product under any Product Program except Product for the institution's "own use" in accordance with *Abbott Laboratories v. Portland Retail Druggists Association*, 425 U.S. 1 (1976). If Product purchased under any Product Program is not dispensed consistent with "own use," such Participants 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." Return of discounts is a non-exclusive remedy for violation of this "own use" provision and supplements other legal and equitable remedies to which Merck may be entitled. Notwithstanding institution's "own use" policies, except for reasons of medical emergency, Products purchased at

a discount under any Product Program may not be transferred by Participants to other entities. If a Product Program provides that discounted pricing is available only for dispensing for inpatient use or otherwise provides a specific limitation on the permitted utilization of discounted product, this own use clause shall be not be interpreted as expanding the permitted use or dispensing of such Product. Participants are on notice of restrictions on the resale of prescription pharmaceutical products imposed by law, including without limitation the Prescription Drug Marketing Act, 21 U.S.C. § 353(c).

10. Audit

Participants acknowledge and agree that Merck shall have the right to conduct inspections and/or audits of Participants' books, records, and files from time to time to ensure that actual purchasing of Products under the Programs complies with these General Terms and Conditions and the applicable Product Program Terms and Conditions and that Participants have accurately reported market basket, volume, and any other required data. Audits shall be conducted at dates and times mutually acceptable to both parties and subject to the requirements of state and federal law regarding the confidentiality of medical and prescription records. Participants expressly agree and acknowledge that if Merck reasonably determines, as a result of an inspection, audit, or through other information, that Participants purchased Product through any Product Program at discount pricing greater than it was entitled to receive pursuant to these General Terms and Conditions or the Terms and Conditions of the applicable Product Program, Participants shall remit payment to Merck in the amount of the underpayment no later than thirty (30) days after receiving written notification of the underpayment.

11. Disputes

Should Participants dispute their market share or volume performance, program tier, or any discounted price extended under any Product Program, such claims must be made in writing to Customer Contract Management, Merck Sharp & Dohme Corp., 351 N. Sumneytown Pike UG4AB-15, North Wales, PA 19454 by the end of the Calendar Quarter in which the disputed program tier, performance, or price was in effect. Final determination of market share performance, volume performance, program tier, and discounts will be made by Merck in its sole discretion. In the event a correction is required due to a discrepancy in market share or volume performance, such correction shall be made for all affected purchases made during the Discount Adjustment semi-annual period in which the discrepancy was reported. For clarity, if a discrepancy is identified in January, an adjustment will be completed for purchases dated no earlier than October 1st of the prior year (i.e. the Second Discount Adjustment Date). Please refer to Section 3B. ii. Semi-Annual Market Share Adjudication Cycle, for specifics regarding timing of the First and Second Discount Adjustment Dates. In the event a correction is required due to a discrepancy in program tier or discount price, such correction shall be made at a time determined by Merck in its sole discretion. All corrections are made only due to cases of incorrect market share, volume, program tier or discounted price extended and are independent of Sections 9. Own Use and/or Section 10. Audit.

Any dispute arising out of or relating to these General Terms and Conditions or any Product Program, or the breach, interpretation, enforcement, construction, termination, or validity thereof, including disputes as to the scope of this Arbitration clause and disputes arising under the federal or state antitrust laws, shall be settled by confidential, mandatory, binding arbitration. The arbitration panel shall consist of three independent and impartial arbitrators, of whom each party shall appoint one; the third arbitrator shall be selected by the two arbitrators so appointed within ninety (90) days after the expiration of the time period for appointment of such two arbitrators. In the event that any arbitrator is not appointed within the prescribed time period, either party may apply to the President of the American Arbitration Association for the appointment of such arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 to the exclusion of all state laws and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association or such other rules for alternative dispute resolution as the parties agree. The parties shall share equally in the costs of the arbitration proceeding. Each party shall pay for all attorney fees and costs it incurs in connection with the arbitration. Any and all submissions, materials, exhibits, testimony, decisions, awards or other material related to the arbitration process or the underlying dispute shall be treated as confidential. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute within the scope of this clause. This LOP (including all Programs) shall be construed in accordance with the laws of the Commonwealth of Pennsylvania exclusive of its choice of law and arbitration provisions. In the event Participants are specifically precluded by law from agreeing to binding arbitration or the laws of the Commonwealth of Pennsylvania, dispute resolution shall be in accordance with the law applicable to Participants.

12. Confidentiality

Participants agree that they will maintain as confidential the negotiations, existence, pricing, and terms of this LOP and each Product Program in Schedule C for the duration of the Program and for twelve (12) months after its expiration or termination. Breach by Participants of this Confidentiality provision shall be a material breach of these General Terms and Conditions. In the event that Participants are required to disclose information relating to the Programs that is within the scope of this provision by order of court or pursuant to a subpoena or other legally enforceable process,
Participants shall provide Merck with notice of such order, subpoena or process sufficiently in advance for Merck to protect its interests. Nothing in this section shall preclude Participants from complying with its legal obligations to accurately report discounts received under the Programs. Nothing in this section shall preclude Participants from disclosing information relating to these Terms and Conditions to its GPO.

13. Excluded Entities

Participant represents and warrants that prior to accepting discounts under any Product Program through this LOP, it has screened itself, and its officers and directors against the Exclusion Lists and that it has informed Merck whether it, or any of its officers or directors has been in Violation. After participation begins, Participant shall notify Merck in writing immediately if any such Violation occurs or comes to its attention. Merck shall also have the right, in its sole discretion, to terminate any Participant's enrollment immediately in the event of any such Violation.

For the purpose of this Section the term Violation shall mean that either Participant, 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/exclusions/authorities.asp); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (http://oig.hhs.gov/exclusions/index.asp) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (http://www.epls.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").

14. Product Distribution and Utilization Representations

Purchasing through Participant Purchasing Entities. "Participant Purchasing Entity" means an entity that 1) is part of or wholly owned by Participant, and 2) purchases Product pursuant to Product Programs for exclusive distribution to Participant. Participating Purchasing Entity shall not purchase Products pursuant to any Product Program except for purposes of a) its Own Use, or b) the exclusive distribution to and use by Participant.

1. Participant represents and warrants that any Participant Purchasing Entity shall comply with all federal, state, and local laws and regulations applicable to the distribution of Products to Participant, including, without limitation: (i) the Federal Food, Drug and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 301 et seq. and its implementing regulations; (ii) the DSCSA (21 U.S.C. §§ 360eee-1 et seq.) and its implementing regulations and applicable FDA guidance; (iii) the Prescription Drug Marketing Act ("PDMA"), 21 U.S.C. § 353 (21 CFR Parts 203 and 205); and (iv) applicable state wholesale drug and device distributor licensure and pedigree laws and regulations. Participant further represents and warrants that Participant Purchasing Entity has all necessary licenses as required by federal, state, and local law to store and distribute Product to Participant.

2. Participant represents and warrants that all Product purchases made by Participant Purchasing Entity will be either 1) for the Participant Purchasing Entity's Own Use, or 2) exclusively distributed to and used by the Participant. If Products purchased pursuant to Product Programs by the Participant Purchasing Entity (1) are transferred to any entity other than the Participant, or (2) are dispensed in any manner inconsistent with the terms of the Product Programs or this LOP, Participant will provide Merck with an accounting for all such dispensing and shall return all discounts attributable to such dispensing to Merck within 30 days of such dispensing.

3. Participant represents and warrants that Participant Purchasing Entity will only distribute Product to Participant facilities that satisfy the eligibility requirements, including Class of Trade requirements, for the specific Product Program.

MERCK

Product Program Letter of Participation – Appendix 1 to Schedule A

REQUEST for GPO Affiliation Update

The purpose of this form is to request an update of the selected Group Purchasing Organization (GPO) for Product Programs. Terms and Conditions, including effective date of GPO affiliation updates, will be determined as set forth in Schedule B to the LOP. This form should be completed in its entirety and emailed to Merck Customer Contract Management (lopprocessingcenter@merck.com) or submitted via other approved electronic means. Incomplete requests cannot be processed. If more space is required, please submit a list in MS Excel, formatted as below.

The newly selected GPO will be effective for all enrolled Product Programs. For entities in a Participant System, the newly selected GPO will be effective for all entities in the Participant System and for all enrolled Product Programs.

Participant/Participant System Name:_____New GPO Name: _____

Please update the GPO affiliation for the following entities/locations:

Entity/Location Name	Complete Address (Street address, City, State, Zip)	Director of Pharmacy	DEA or HIN	Name of Merck Representative

By signing below, you are representing and warranting that you have authority to change the GPO affiliation for all entities/locations or Participant Systems listed:

Authorized Signature:	Printed Name:	Title:	Email address:	Date:
For Merck CCM Use only	Accepted and Approved by:	Date:	Merck Internal System Name:	Merck Internal System ID:

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Product Program Letter of Participation – Appendix 1 to Schedule A

REQUEST for Additions to Existing Participant Systems

The purpose of this form is to request additions to an established Participant System for Product Program(s). Terms and Conditions, including effective date of additions, will be determined as set forth in Schedule B to the LOP. This form should be completed in its entirety and emailed to Merck Customer Contract Management (lopprocessingcenter@merck.com) or submitted via other approved electronic means. Incomplete requests cannot be processed. If more space is required, please submit a list in MS Excel, formatted as below.

Participant System Name:_____GPO Name: _____

Please add the following entities/locations to the Product Program Participant System

Entity/Location Name	Complete Address (Street address, City, State, Zip)	Director of Pharmacy	DEA or HIN	Name of Merck Representative	DSH Facility (Y/N)	340B ID Number (DSH Only)

Check boxes to indicate which Product Program(s) addition(s) will apply	DOC Committed Program for ASMANEX	DOC Committed Program for PROVENTIL HFA
	☐	☐

By signing below, you are agreeing to: (1) the General Terms and Conditions in Schedule B, and (2) the individual Product Program Terms and Conditions for the Product Program(s) selected on behalf of each enrolling entity. In addition, you are representing and warranting that you have authority to enroll each entity/location listed on this form in the selected Product Program(s) and to agree to the General Terms and Conditions and the applicable Product Program Terms and Conditions for each enrolling entity/location. Determination of any entity's eligibility to participate in the individual Product Program(s) as part of a Participant System is made by Merck, in its sole discretion.

Authorized Signature:	Printed Name:	Title:	Email address:	Date:
For Merck CCM Use only	Accepted and Approved by:	Date:	Merck Internal System Name:	Merck Internal System ID:

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Product Program Letter of Participation – Appendix 1 to Schedule A

REQUEST for Disaggregation of a Participant System

The purpose of this form is to request disaggregation of a Participant System for Product Program(s). Terms and Conditions, including effective date of disaggregation, will be determined as set forth in Schedule B to the LOP. This form should be completed in its entirety and emailed to Merck Customer Contract Management (lopprocessingcenter@merck.com) or submitted via other approved electronic means. Incomplete requests cannot be processed.

Participant System Name:_____GPO Name: _____

Please disaggregate the above listed Participant System in the Product Program(s) indicated below.

Check boxes to indicate which Product Program(s) disaggregation will apply	DOC Committed Program for ASMANEX	DOC Committed Program for PROVENTIL HFA
	☐	☐

By signing below, you are representing and warranting that you have authority to disaggregate the Participant System for the Product Program(s) listed on this form.

Authorized Signature:	Printed Name:	Title:	Email address:	Date:

For Merck CCM Use only	Accepted and Approved by:	Date:	Merck Internal System Name:	Merck Internal System ID:

SCHEDULE C

DEPARTMENT OF CORRECTIONS COMMITTED PROGRAM FOR ASMANEX®

Product Program Specific Terms and Conditions Effective January 1, 2014 (Updated: August 1, 2014)

Covered Products

NDC	Product
00085-1341-01	ASMANEX TWISTHALER 220 MCG 120 DOSE INHALER
00085-1341-02	ASMANEX TWISTHALER 220 MCG 60 DOSE INHALER
00085-1341-03	ASMANEX TWISTHALER 220 MCG 30 DOSE INHALER
00085-1461-02	ASMANEX TWISTHALER 110 MCG 30 DOSE INHALER
00085-1341-07	ASMANEX TWISTHALER 220 MCG 30 DOSE INHALER
00085-4333-01	ASMANEX HFA 100 MCG 120 DOSE INHALER
00085-4334-01	ASMANEX HFA 200 MCG 120 DOSE INHALER

For purposes of the Department of Corrections ("DOC") Committed Program for ASMANEX® Terms and Conditions, the above Covered Products are collectively referred to as "ASMANEX."

Discount Structure

To qualify for the discounts set forth below on purchases of ASMANEX, Participant must achieve the Participation Requirements set forth below. Participant's Market Share for ASMANEX is calculated as set forth below. All discounts are based off the Merck published Catalog Price at the time of purchase. Merck reserves the right to adjust Catalog Price at any time.

Discount	Participation Requirements
40%	• 70% or greater market share for ASMANEX • ASMANEX must be listed on the Participant's formulary • Participant must be an eligible Prisons class of trade as determined by Merck for dispensing to Eligible Inmates

Market Share Calculation

Market Basket Products	Unit of Measure	Calculation
ASMANEX, Aerobid, Aerobid M, Alvesco, Azmacort, Flovent, Flovent HFA, Pulmicort (Pulmicort respules excluded), QVAR, and any other non-Merck ICS products approved by the FDA, provided however, that fixed dose combination products are excluded from the Market Basket.	Inhalers/Inhalation Devices	Market Share = ASMANEX Inhalers/Inhalation Devices ÷ Market Basket Products Inhalers/Inhalation Devices

Eligibility and Enrollment

Eligibility to be a Participant in the DOC Committed Program for ASMANEX is limited to the Prisons class of trade (as determined by Merck) that (1) purchase ASMANEX for use in the treatment of "Eligible Inmates," and (2) list ASMANEX on formulary (e.g., exclusive, preferred, unrestricted, available, etc.). Eligible Inmate means an individual incarcerated at a Participant, provided, however, that Eligible Inmates shall not include individuals (i) enrolled in other organizations that purchase ASMANEX other than pursuant to this Product Program, (ii) for whom entities, organizations, or governmental programs other than the Participant are responsible for paying the cost of pharmaceutical products administered or dispensed to such individual, or (iii) parolees, with the exception of parolees who may receive a limited and reasonable supply of pharmaceutical products they have already been prescribed when leaving the Participant's facility. The term "Participant" as set forth in these Terms and Conditions may also mean a Participant System of Prisons. Product purchased under this Product Program may only be purchased by a Participant for its own use for the treatment of Eligible Inmates. By purchasing through the DOC Committed Program for ASMANEX, Participant is agreeing to be bound by the Terms and Conditions of the DOC Committed Program for ASMANEX (including the applicable General Terms and Conditions set forth on Schedule B).

SCHEDULE C

DEPARTMENT OF CORRECTIONS COMMITTED PROGRAM FOR ASMANEX®

Product Program Specific Terms and Conditions Effective January 1, 2014 (Updated: August 1, 2014)

Newly Enrolling Participants: Prisons may elect to enroll in the DOC Committed Program for ASMANEX by submitting the enrollment form in Schedule A and following the required enrollment procedures. By submitting the enrollment form, newly enrolling Participants in the DOC Committed Program for ASMANEX are representing and warranting that they have placed ASMANEX on formulary. ASMANEX must be on formulary for a Participant to receive quarterly Formulary Commitment Discounts at the forty percent (40%) discount level on ASMANEX as set forth in the General Terms and Conditions in Schedule B.

For clarity, a Participant enrolled in the DOC Committed Program for ASMANEX as of December 31, 2013, will continue to be enrolled in the DOC Committed Program for ASMANEX and governed by these Terms and Conditions effective January 1, 2014; no new enrollment documents are needed. For the avoidance of doubt, Participant's discounts for ASMANEX under this Product Program, adjudicated as of the October 1, 2013, Discount Adjustment Date, will continue until March 31, 2014; Participant will not be re-adjudicated until April 1, 2014.

General Terms and Conditions

All General Terms and Conditions presented in Schedule B of the Letter of Participation shall apply to this Product Program.

SCHEDULE C

DEPARTMENT OF CORRECTIONS COMMITTED PROGRAM FOR DULERA®

Product Program Specific Terms and Conditions Effective January 1, 2014

Covered Products

NDC	Product
00085-4610-01	DULERA 200 mcg/5 mcg Inhaler 120 inhalation units
00085-7206-01	DULERA 100 mcg/5 mcg Inhaler 120 inhalation units

For purposes of the Department of Corrections ("DOC") Committed Program for DULERA® Terms and Conditions, the above Covered Products are collectively referred to as "DULERA."

Discount Structure

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

Discount	Participation Requirements
25%	• DULERA must be designated as the exclusive fixed dose inhaled corticosteroid combination product on formulary • Participant must be an eligible Prisons class of trade as determined by Merck for dispensing to Eligible Inmates

Exclusive fixed dose inhaled corticosteroid product on formulary means the only fixed dose inhaled corticosteroid combination product on formulary for all approved indications for medically appropriate patients. In addition, designating DULERA as the exclusive fixed dose inhaled corticosteroid combination product on formulary means that the Participant will:

- List DULERA as the exclusive fixed dose inhaled corticosteroid combination product on formulary for all approved indications on all communications regarding fixed dose inhaled corticosteroid combination products to the Participant's physicians, pharmacists, and other appropriate parties; and
- Not prefer, either directly or indirectly, any of the competing fixed dose inhaled corticosteroid combination products in the "Fixed Dose Inhaled Corticosteroid Combination Competitive Products" market basket below over DULERA for use in its approved indications except for reasons of individual patient medical appropriateness (for clarity, Participant may have other fixed dose inhaled corticosteroids on formulary for (1) patients diagnosed with COPD by a prescriber, (2) patients under the age of 12, and (3) other individual patients for whom DULERA has been determined not to be medically appropriate by a prescriber).

Fixed Dose Inhaled Corticosteroid Combination Competitive Products
Advair, Advair HFA, Symbicort, and any other branded or generic non-Merck inhaled corticosteroid combination products approved by the FDA

Eligibility and Enrollment

Eligibility to be a Participant in the DOC Committed Program for DULERA is limited to the Prisons class of trade (as determined by Merck) that (1) purchase DULERA for use in the treatment of "Eligible Inmates," and (2) designate DULERA as the exclusive fixed dose inhaled corticosteroid combination product on formulary. Eligible Inmate means an individual incarcerated at a Participant, provided, however, that Eligible Inmates shall not include individuals (i) enrolled in other organizations that purchase DULERA other than pursuant to this Product Program, (ii) for whom entities, organizations, or governmental programs other than the Participant are responsible for paying the cost of pharmaceutical products administered or dispensed to such individual, or (iii) parolees, with the exception of parolees who may receive a limited and reasonable supply of pharmaceutical products they have already been prescribed when leaving the Participant's facility. A Participant in the DOC Committed Program for DULERA may only enroll individually; enrollment in the DOC Committed Program for DULERA as a Participant System is not available. Product purchased under this Product Program may only be purchased by a Participant for its own use for the treatment of Eligible Inmates. By purchasing through the DOC Committed Program for DULERA, Participant is

SCHEDULE C

DEPARTMENT OF CORRECTIONS COMMITTED PROGRAM FOR DULERA®

Product Program Specific Terms and Conditions Effective January 1, 2014

agreeing to be bound by the Terms and Conditions of the DOC Committed Program for DULERA (including the applicable General Terms and Conditions set forth on Schedule B).

In the event that a Participant no longer lists DULERA as the exclusive fixed dose inhaled corticosteroid combination product on formulary, Participant agrees to notify Merck (through Merck Customer Contract Management) in writing within five (5) business days. Notifications received by Merck in the first fifteen days of a calendar month will result in termination of participation in the Product Program and termination of discounts effective on the first day of the following calendar month. Notifications received by Merck after the fifteenth day of a calendar month and before the first day of the next calendar month will result in termination of participation in the Product Program and termination of discounts effective on the fifteenth day of the following calendar month. Participant may still be eligible for GPO base pricing, if any, on DULERA consistent with the terms of the agreement between Participant's GPO and Merck.

Newly Enrolling Participants: Prisons may elect to enroll in the DOC Committed Program for DULERA by submitting the enrollment form in Schedule A and following the required enrollment procedures. By submitting the enrollment form, newly enrolling Participants in the DOC Committed Program for DULERA are representing and warranting that they have designated DULERA as the exclusive fixed dose inhaled corticosteroid combination product on formulary.

For clarity, a Participant enrolled in the DOC Committed Program for DULERA as of December 31, 2013, will continue to be enrolled in the DOC Committed Program for DULERA and governed by these Terms and Conditions effective January 1, 2014; no new enrollment documents are needed. For the avoidance of doubt, Participant's discounts for DULERA under this Product Program, adjudicated as of the October 1, 2013, Discount Adjustment Date, will continue until March 31, 2014; Participant will not be re-adjudicated until April 1, 2014.

General Terms and Conditions

The following sections of the General Terms and Conditions presented in Schedule B of the Letter of Participation ("LOP") do not apply to this Product Program:

Section 3: Performance Criteria and Adjudication
Section 4: Additional Terms for Participant Systems

All other General Terms and Conditions presented in Schedule B of the LOP shall apply to this Product Program.

SCHEDULE C

DEPARTMENT OF CORRECTIONS COMMITTED PROGRAM FOR PROVENTIL® HFA

Product Program Specific Terms and Conditions Effective April 15, 2019

Covered Products

NDC	Product
00085-1132-01	PROVENTIL HFA 90MCG INHALER
00085-1132-04	PROVENTIL HFA 90MCG INHALER

For purposes of the Department of Corrections ("DOC") Committed Program for PROVENTIL® HFA Terms and Conditions, the above Covered Products are referred to as "PROVENTIL HFA."

Discount Structure

To qualify for the discounts set forth below on purchases of PROVENTIL HFA, Participant must achieve the Participation Requirements set forth below. Participant's Market Share for PROVENTIL HFA is calculated as set forth below. All discounts are based off the Merck published Catalog Price at the time of purchase. Merck reserves the right to adjust the Catalog Price at any time.

Discount	Participation Requirements
60%	• PROVENTIL HFA must be designated as the preferred albuterol HFA product on formulary • 70% or greater market share for PROVENTIL HFA • Participant must be an eligible Prisons class of trade as determined by Merck for dispensing to Eligible Inmates

Preferred albuterol HFA product on formulary means the only albuterol HFA on formulary for all approved indications for medically appropriate patients. In addition, designating PROVENTIL HFA as the preferred albuterol HFA product on formulary means the Participant will:

- List PROVENTIL HFA as the preferred albuterol HFA on formulary for all approved indications on all communications regarding non-combination inhaled corticosteroids to Participant's physicians, pharmacists, and other appropriate parties; and
- Not prefer, either directly or indirectly, any of the competing albuterol HFA products in the market basket below over PROVENTIL HFA for use in its approved indications except for reasons of individual patient medical appropriateness (for clarity, Participants may have other albuterol HFA products on formulary and may prefer such products for individual patients for whom PROVENTIL HFA has been determined not to be medically appropriate by a prescriber).

Market Share Calculation

Market Basket Products	Unit of Measure	Calculation
PROVENTIL HFA, Ventolin HFA, Proair HFA, Xopenex HFA, and any other branded or generic albuterol HFA approved by the FDA	Catalog Sales Dollars	Market Share = the purchases in Catalog Sales Dollars of PROVENTIL HFA ÷ by the purchases in Catalog Sales Dollars of the Market Basket Products

Eligibility and Enrollment

Eligibility to be a Participant in the DOC Committed Program for PROVENTIL HFA is limited to the Prisons class of trade (as determined by Merck) that (1) purchase PROVENTIL HFA for use in the treatment of "Eligible Inmates," and (2) list PROVENTIL HFA as the preferred albuterol HFA product on formulary. Eligible Inmate means an individual incarcerated at a Participant, provided, however, that Eligible Inmates shall not include individuals (i) enrolled in other organizations that purchase PROVENTIL HFA other than pursuant to this Product Program, (ii) for whom entities, organizations, or governmental programs other than the Participant are responsible for paying the cost of pharmaceutical products administered or dispensed to such individual, or (iii) parolees, with the exception of parolees who may receive a limited and reasonable supply of pharmaceutical products they have already been prescribed when leaving the Participant's facility. The

SCHEDULE C

DEPARTMENT OF CORRECTIONS COMMITTED PROGRAM FOR PROVENTIL® HFA

Product Program Specific Terms and Conditions Effective April 15, 2019

term "Participant" as set forth in these Terms and Conditions may also mean a Participant System of Prisons. Product purchased under this Product Program may only be purchased by a Participant for its own use for the treatment of Eligible Inmates. By purchasing through the DOC Committed Program for PROVENTIL HFA, Participant is agreeing to be bound by the Terms and Conditions of the DOC Committed Program for PROVENTIL HFA (including the applicable General Terms and Conditions set forth on Schedule B).

In the event that a Participant no longer lists PROVENTIL HFA as the preferred albuterol HFA on formulary, Participant agrees to notify Merck (through Merck Customer Contract Management) in writing within five (5) business days. Notifications received by Merck in the first fifteen days of a calendar month will result in termination of participation in the Product Program and termination of discounts effective on the first day of the following calendar month. Notifications received by Merck after the fifteenth day of a calendar month and before the first day of the next calendar month will result in termination of participation in the Product Program and termination of discounts effective on the fifteenth day of the following calendar month. Participant may still be eligible for GPO base pricing, if any, on PROVENTIL HFA consistent with the terms of the agreement between Participant's GPO and Merck.

Newly Enrolling Participants: Prisons may elect to enroll in the DOC Committed Program for PROVENTIL HFA by submitting the enrollment form in Schedule A and following the required enrollment procedures. By submitting the enrollment form, newly enrolling Participants in the DOC Committed Program for PROVENTIL HFA are representing and warranting that they have designated PROVENTIL HFA as the preferred albuterol HFA on formulary. PROVENTIL HFA must be designated the preferred albuterol HFA product on formulary for a Participant to receive quarterly Formulary Commitment Discounts at the forty percent (40%) discount level on PROVENTIL HFA as set forth in the General Terms and Conditions in Schedule B.

For clarity, a Participant enrolled in the DOC Committed Program for PROVENTIL HFA as of December 31, 2013, will continue to be enrolled in the DOC Committed Program for PROVENTIL HFA and governed by these Terms and Conditions effective January 1, 2014; no new enrollment documents are needed. For the avoidance of doubt, Participant's discounts for PROVENTIL HFA under this Product Program, adjudicated as of the October 1, 2013, Discount Adjustment Date, will continue until March 31, 2014; Participant will not be re- adjudicated until April 1, 2014.

General Terms and Conditions

All General Terms and Conditions presented in Schedule B of the Letter of Participation shall apply to this Product Program.

SCHEDULE E: ENROLLMENT FORM
DISCOUNT PROGRAM FOR ZEPATIER™

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

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

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

Current GPO Affiliation:_____
New GPO Affiliation: **MMCAP Infuse ("MMCAP")**

Signature:_____ Date:_____

Name/Title:_____

Covered Products

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

For purposes of the Discount Program for Zepatier™ (the "Program"), the above Covered Product is referred to as "ZEPATIER." Capitalized terms not herein defined shall have such meanings as set forth in MMCAP Contract Number: MMS2000315, effective July 1, 2020, by and between MMCAP and Merck (the "Agreement"). The Member Facility agrees that it has read and fully understands the terms and conditions of the Agreement and agrees to be bound by the terms and conditions set forth in the Agreement.

Discount Structure

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

Discount	Member **Facility's Requirements**
37.5%	• ZEPATIER is not disadvantaged and receives the same preferences, if any, as to other Direct Acting Antiviral ("DAA") products in the Correctional Institution or Mental Health Facility setting. • Member Facility must be in the Correctional Institutions class of trade or a Mental Health Facility as determined by Merck for dispensing to Eligible Patients (as such term is defined below)

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

SCHEDULE E: ENROLLMENT FORM
DISCOUNT PROGRAM FOR ZEPATIER™

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

Eligibility and Enrollment

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

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

In the event that a Member Facility no longer lists ZEPATIER as not disadvantaged and receiving the same preferences, if any, as to other DAA products for the treatment of Eligible Patients, Member Facility agrees to notify Merck (through Merck Customer Contract Management) in writing within five (5) business days. Notifications received by Merck in the first fifteen days of a calendar month will result in termination of participation in the Program and termination of discounts effective on the first day of the following calendar month. Notifications received by Merck after the fifteenth day of a calendar month and before the first day of the next calendar month will result in termination of participation in the Program and termination of discounts effective on the fifteenth day of the following calendar month. After delivery of such notice, the Member Facility shall remain enrolled in the Program but will lose Formulary Commitment Discounts. The Member Facility may still be eligible for GPO base pricing, if any, on ZEPATIER consistent with the terms of the agreement between the Member Facility's GPO and Merck.

Newly Enrolling Participants: Participating Facilities that are in the Correctional Institutions or Mental Health Facilities class of trade may elect to enroll in the Program for ZEPATIER by submitting this enrollment form and following the required enrollment procedures. By submitting the enrollment form, newly enrolling Participating Facilities in the Program for ZEPATIER are representing and warranting that they have designated ZEPATIER as not disadvantaged and as receiving the same preferences, if any, as to other DAA products for the treatment of Eligible Patients.

General Terms and Conditions

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

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

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

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

SCHEDULE E: ENROLLMENT FORM
DISCOUNT PROGRAM FOR ZEPATIER™

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

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

Merck Sharp & Dohme Corp.
Customer Contract Management
351 N. Sumneytown Pike UG4AB-15
North Wales, PA 19454
Email: lopprocessingcenter@merck.com
Fax: 215-616-1770

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

SCHEDULE E: ENROLLMENT FORM

DISCOUNT PROGRAM FOR ZEPATIER™

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

Participant Identification

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

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

ATTACHMENT C

Minnesota Statutory Procurement Language

1. **Government Data Practices**. Parties to this Agreement must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (**Data Practices Act**), as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Vendor or MMCAP Infuse.
   A. Notification. If the Vendor receives a request to release the data referred to in statute, the Vendor must immediately notify and consult with MMCAP Infuse as to how the Vendor should respond to the request.
   B. Release of MMCAP Infuse Data. Except as may be required by Data Practices Act, Vendor will not release to any third party any MMCAP Infuse customer data, sales transaction data, DEA/HIN information, contract pricing, EDI transaction data, reverse distribution data, or payment data.
2. **Data Disclosure.** Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Vendor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the MMCAP Infuse, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
3. **Non-discrimination**. The Vendor will comply with the provisions of Minn. Stat. § 181.59.
4. **Affirmative Action Requirements**.
   A. Covered contracts and vendors. If the Agreement exceeds $100,000 and the Vendor employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principal place of business, then the Vendor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
   B. Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the 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.
   C. Minn. R. 5000.3400-5000.3600.
      i. General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 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 a 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 Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
      ii. Disabled Workers. The Vendor must comply with the following affirmative action requirements for disabled workers.
         a. The 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. The 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.
         b. The 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.
         c. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

d. The 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 the 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.

e. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minn. Stat. § 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.

iii. Consequences. The consequences for the 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 Agreement by the Commissioner or Minnesota.

iv. Certification. The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075)**. For services valued in excess of $50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.

6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053**). The following term applies to any contract for which the value, including all extensions, 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 section, "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.

7. **Contingency Fees Prohibited**. Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

8. **Diverse Spend Reporting**. If the total value of this Agreement may exceed $500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.

9. **Retainage for Minnesota Government Units**. Under Minn. Stat. § 16C.08, subd. 2 (10), no more than ninety percent (90%) of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by a Minnesota agency head. The balance due will be paid when the Minnesota agency head determines that the Vendor has satisfactorily fulfilled all the terms of this Agreement.

10. **Payment to Subcontractors.** To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the Vendor must pay all subcontractors, less any retainage, within ten (10) calendar days of the Vendor's receipt of payment from a Member for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).Vendor pays all Subcontractors pursuant to its federal Subcontracting plan; therefore, this provision is not applicable to the Vendor.

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 Section16C.05, subdivision 2, whichever is later. → June 30 (M.F. 1.3.2018) AT 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	1vial	$156.41	
Fluzone Quadrivalent 49281-0418-50	Single Dose Prefilled 0.5ml Syringes, No Preservative; 36 months & older	10 pk	$168.85	2.6M doses (all presentations combined)
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; 6-35months	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

2.7.1Amendments. 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 MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	InvoiceDate	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack_Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case_Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantiy shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
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	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocity	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocity	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxxx)	contractnumber	Alpha Numeric		10	1	400	409
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
MMCAP Assigned Wholesaler Code				4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade (May be left blank)		Alpha Numeric		4	1	464	467
340B Purchase (1=True, 0=False)		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 Maggio-Peterson

Title: Deputy Director, Government Accounts

Date: 1/3/2018

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

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

By: Sara Turnbow, PharmD, BCPS

Title: Pharmacist Sr.

Date: 12-21-17

3. COMMISSIONER OF ADMINISTRATION

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

By: _____

Title: AMS Sr.

Date: 12/21/2017

SANOFI PASTEUR

MMS17019
Amendment # 1
Pg 1 of 2

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: Lyn VanderPlaats Title: SA-C Date: 8/7/2018

Sincerely,

MacKenzie Fetterman

Mackenzie Fetterman
Deputy Director, Government Accounts

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

By: Lynn A. Kessig

Date: 2/8/2018

MMS17019 Amendment #1 Pg 2 of 2

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: _____ Title: SPA-C Date: 2/7/2019

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

Sanofi Pasteur Inc

MMS17019

Amendment 2

Not posted for viewing

SANOFI PASTEUR

MMS17019
Amendment # 3

October 30, 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 #430182

Dear Ms. VanderPlaats:

Sanofi Pasteur Inc. is pleased to offer the following Fluzone® contract terms for the 2019-2020 season:

Reservations may be placed against the awarded contract amount until March 31, 2019. After March 31, 2019, reservation requests will be accepted subject to product availability.

Pricing: The attached Addendum A provides the 2019-2020 vaccine formulations, prices, and discounts. Payment terms will remain at 2% 30, Net 31 days.

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

Shipping Commitment Presentation	Shipping Commitment Dates and Percentages of Total Confirmed Fluzone Vaccine Reservation by March 31, 2019
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 and Fluzone Quadrivalent MDV vaccine and Fluzone Quadrivalent vaccine 0.5 mL unit vial	August 31, 2019 = 25% September 30, 2019 = 75% October 31, 2019 = 100%

Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This shipping commitment only applies to each Member's confirmed request for the 2019-2020 influenza season and must be confirmed by March 31, 2019. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2019 will be excluded from the shipping commitments above.

MMS17019
Amendment # 3

Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses (by presentation) and receive full credit of the net purchase price, less excise tax. Credit may be applied to any Sanofi Pasteur vaccine purchased directly from Sanofi Pasteur. Returns will be accepted after May 31, 2020, and must be received by July 31, 2020.

Expiration Date: Sanofi Pasteur Inc. also proposes to exercise the 1st extension option, which shall extend the contract through December 31, 2019.

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

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2019-2020 season. Should you have any questions, please contact me at (570) 957-3381.

Regards,

MacKenzie Fetterman

Mackenzie Fetterman
Deputy Director, Government Accounts

pg 2 of 3

MMS 17019
Amendment # 3

Addendum A

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #430182
FLUZONE® INFLUENZA VIRUS VACCINE 2019-2020 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
49281-0631-15	Quadrivalent 6 months and older, 5mL Multi-Dose Vial	$154.93	$150.28	$145.80	$7.50	$153.30
49281-0419-50	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Pre-filled Syringes	$165.76	$160.79	$156.00	$7.50	$163.50
49281-0419-10	Quadrivalent - No Preservative 36 months and older, 10-Pack 0.5mL Vials	$165.76	$160.79	$156.00	$7.50	$163.50
49281-0519-25	Quadrivalent - No Preservative: Pediatric Dose 6 - 35 months, 10-Pack 0.25mL Pre-filled Syringes	$165.76	$160.79	$156.00	$7.50	$163.50
49281-0405-65	High-Dose 65 years of age and older, 10-Pack 0.5mL Syringes	$456.61	$456.61	$443.00	$7.50	$450.50
49281-0719-10	Flublok 18 years of age and older, 10-Pack 0.5mL Single-dose prefilled syringes	$456.61	$456.61	$443.00	$7.50	$450.50

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 2019-2020 vaccines at a rate of $0.75 per dose.

Mackenzie Fetterman 10/30/18

Mackenzie Fetterman, Deputy Director, Government Accounts

Accepted by: SW - DT Title: SW - DT Date: SW - 11/7/2018 11-7-18

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

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

By: Jon VanHaats
Title: SDA-C
Date: 11/7/2018

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

By: Sara Unnebrink, Pharm.D, BCPS
Date: 11-9-18

pg 3 of 3

AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS17019

THIS AMENDMENT NO. 4 ("**Amendment**") is entered into as of the date MMCAP obtains all required signatures within this document, ("**Effective Date**") by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("**MMCAP**") and Sanofi Pasteur Inc, a corporation with an address of Discovery Drive, Swiftwater, PA 18370 ("**Vendor**").

RECITALS

WHEREAS, MMCAP and Vendor entered into a Contract MMS17019 on 1/1/2018 ("**Original Contract**");

WHEREAS, MMCAP and Vendor amended certain terms and conditions of the Original Contract by the way of the Amendment 1 on February 6, 2018 and Amendment 3 on November 9, 2018; together, Original Contract and Amendment 1 and 3 will be referred to as "**Agreement**";

WHEREAS, MMCAP and Vendor have agreed to certain changes in the terms and conditions set forth in the Agreement and have agreed to amend the Agreement to reflect said changes;

WHEREAS, besides the terms and conditions of the Original Contract amended in this Amendment, the Agreement remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Original Contract shall be amended as follows:

Capitalized Terms; Definitions; Conditions. The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment which are defined in the Agreement will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP.

Article and Clause Addendums

REVISION 1: Effective when signed, the following section *2.2.4.7 **Invoicing*** is added to the Agreement.

2.2.4.7 Invoicing. Vendor agrees that MMCAP Participating Facilities will be invoiced at the MMCAP Contract price for MMCAP Contract products throughout the term of this Agreement. Invoices are subject to Terms of 2%- 30/Net 31. Vendor will submit an invoice with each order. Invoices must be only for the amount of product delivered. Federal Excise Tax will be a separate line item on the invoice. At a minimum, the Vendor's invoice will contain the following fields:

- Facility Name
- Vendor-assigned customer number for the MMCAP Participating Facility
- Invoice number
- MMCAP Participating Facility's purchase order number
- Invoice date
- Invoice due date
- NDC or Product Number
- Product Name/Description

- Packaging as associated with NDC number
- Unit price
- Quantity
- Extension (unit price multiplied by the quantity)
- Total invoice price
- Bill to address
- Ship to address
- Applicable tax

Except as herein amended, the provisions of the Agreement between the parties hereby expressly reaffirmed and remain in full force and effect.

VENDOR: Sanofi Pasteur Inc.,
The Vendor certified that the appropriate person(s) have executed this Original Contract on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: MacKenzie Fetterman
Signature: MacKenzie Fetterman
Title: Deputy Director, Government Accounts
Date: 1/16/2019

STATE OF MINNESOTA FOR MMCAP
In accordance with Minn. State. 16C.03, Subd.3

Name: Lori VanHecke
Signature: SPA-C
Date: 1/18/2019

COMISSIONER OF ADMINSTRATION
In accordance with Minn. Stat. 16C, Subd. 2

Name: Sara Turnbow, Pharm.D., BCPS
Signature: Sara Turnbow
Date: 1-22-19

SIGNATURE PAGE

AMENDMENT NO. 5 TO MMCAP INFUSE CONTRACT NO. MMS17019

THIS AMENDMENT NO. 5 ("**Amendment**") is entered into on the date all required signatures are obtained for this document by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of the MMCAP Infuse ("**MMCAP Infuse**") and Sanofi Pasteur, Inc., a corporation with an address of Discovery Drive, Swiftwater, Pennsylvania 18370 ("**Vendor**").

RECITALS

WHEREAS, MMCAP Infuse and Vendor entered into MMS17019 on January 1, 2018 ("**Original Contract**");

WHEREAS, MMCAP Infuse and Vendor amended certain terms and conditions of the Original Contract by the way of Amendment 1 on February 6, 2018; Amendment 3, on November 9, 2018; and Amendment 4 on January 22, 2019; together, Original Contract and Amendment 1, 3, and 4 will be referred to as "**Agreement**";

WHEREAS, MMCAP Infuse and Vendor wish to extend the Expiration Date of the Agreement and will release the 2020-2021 influenza seasonal terms in a future amendment;

WHEREAS, MMCAP Infuse and Vendor have agreed to certain changes in the terms and conditions set forth in the Agreement and have agreed to amend the Agreement to reflect said changes;

WHEREAS, besides the terms and conditions of the Agreement amended in this Amendment, the Agreement remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Agreement shall be amended as follows:

Capitalized Terms; Definitions; Conditions. The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment that are defined in the Agreement will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted, or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP Infuse.

Modifications

Revision 1: Parties agree to amend the Agreement, specifically Amendment 3, as follows:

Expiration Date: December 31, 2020 or as canceled pursuant to clause 20 of the Original Contract.

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

VENDOR: Sanofi Pasteur, Inc.
The Vendor certified that the appropriate person(s) have executed this Amendment on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: MacKenzie Fetterman
Signature: MacKenzie Fetterman
Title: Deputy Director, Government Accounts
Date: 7/10/2019

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

Name: [illegible]
Signature:
Date: July 10, 2019

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. 16C, Subd. 2

Name: Sara Turnbow
Signature: Sara Turnbow, PharmD, BCPS
Date: 7-10-19

SANOFI PASTEUR

MMS17019
Amendment # 6
pg 1 of 3

October 30, 2020

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 #431525

Dear Ms. VanderPlaats:

Sanofi Pasteur Inc. is pleased to offer the following Fluzone® contract terms for the 2020-2021 season:

Reservations may be placed against the awarded contract amount until March 31, 2020. After March 31, 2020, reservation requests will be accepted subject to product availability.

Pricing: The attached Addendum A provides the 2020-2021 vaccine formulations, prices, and discounts. Payment terms will remain at 2% 30, Net 31 days.

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

Shipping Commitment Presentation	Shipping Commitment Dates and Percentages of Total Confirmed Fluzone Vaccine Reservation by March 31, 2020
Fluzone Quadrivalent 5mL Multi-Dose Vial Fluzone Quadrivalent 10-Pack 0.5mL Vials Fluzone Quadrivalent 10-Pack 0.5mL Syringes Fluzone High-Dose 10-Pack 0.5mL Syringes Flublok 10-Pack 0.5mL Syringes	August 31, 2020 = 25% September 30, 2020 = 75% October 31, 2020 = 100%

Sanofi Pasteur Inc. reserves the right to schedule shipments and/or make partial shipments with prior notification. This shipping commitment only applies to each Member's confirmed request for the 2020-2021 influenza season and must be confirmed by March 31, 2020. Any doses confirmed or any modification to the Fluzone vaccine request by Members after March 31, 2020 will be excluded from the shipping commitments above.

MM1517019
Amendment #6
pg 2 of 3

Return Policy: Upon expiration, MMCAP Participating Facilities may return 25% of unused doses (by presentation) and receive full credit of the net purchase price, less excise tax. Credit may be applied to any Sanofi Pasteur vaccine purchased directly from Sanofi Pasteur. Returns will be accepted after May 31, 2021, and must be received by July 31, 2021.

Expiration Date: Sanofi Pasteur Inc. also proposes to exercise the 2nd extension option, which shall extend the contract through December 30, 2020.

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

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2020-2021 season. Should you have any questions, please contact me at (570) 957-3381.

Regards,

Mackenzie Fetterman

Mackenzie Fetterman
Deputy Director, Government Accounts

State of Minnesota for MMCAP Infuse
In accordance with Minn. Stat. 16C.03, Subd.3

Name: Jana Bubbert
Signature:
Date: Nov 6, 2019

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. 16C, Subd. 2

Name: David VanderPlaats
Signature: David VanderPlaats
Date: 11/12/2019

Addendum A

Minnesota Multistate Contracting Alliance for Pharmacy - Contract #431525
FLUZONE® INFLUENZA VIRUS VACCINE 2020-2021 SEASON

NDC #	DESCRIPTION	2020-2021 CONTRACT PRICE	MemberSavings Discount	VSh Web Discount	MMCAP Upfront Pricing with Included Discounts	*VSh Discount	*VSh Pricing	Prompt Pay Discount	Pricing with Prompt Pay Discount Included	Federal Excise Tax (FET)	Price w/all available discounts & FET
49281-0633-15	Quadrivalent 6 months and older, 5mL Multi-Dose Vial	$156.42	2%	1%	**$151.76**			2%	$148.72	$7.50	$156.22
49281-0420-50	Quadrivalent - No Preservative 6 months and older, 10-Pack 0.5mL Pre-filled Syringes	$167.35	2%	1%	**$162.36**			2%	$159.11	$7.50	$166.61
49281-0420-10	Quadrivalent - No Preservative 6 months and older, 10-Pack 0.5mL Vials	$167.35	2%	1%	**$162.36**			2%	$159.11	$7.50	$166.61
49281-0120-65	High-Dose 65 years of age and older, 10-Pack 0.5mL Syringes	$497.70	0%	0%	**$497.70**	1%	$492.72	2%	$482.87	$7.50	$490.37
49281-0720-10	Flublok 18 years of age and older, 10-Pack 0.5mL Single-dose prefilled syringes	$497.70	0%	0%	**$497.70**	1%	$492.72	2%	$482.87	$7.50	$490.37

Discount Breakdown:

QIV presentations will include the Member Savings and VSh Web Discount in final pricing.
HD and Flublok do not receive the Member Savings Discount
**Customers will receive VSh Web Discount for HD and Flublok when order is placed on line. Discount is not included in the price.*
Customers can receive 2% Prompt Pay Discount on all presentations

MNS/7019
Amendment 4
pg 3 of 3
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SANOFI PASTEUR

MMS17019
Amendment # 7

February 7, 2020

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 #431525

Dear Ms. VanderPlaats:

With the additional influenza strain in the High-Dose Quadrivalent presentation, the dosage has increased from 0.5mL to 0.7mL.

Modifications within the 2020-2021 Fluzone Amendment (Amendment #6) will be changed to the following:

- Fluzone High-Dose Quadrivalent 10-Pack 0.7mL Syringes

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

Thank you for the opportunity to serve your Fluzone vaccine needs again in the 2020-2021 season. Should you have any questions, please contact me at (570) 957-3381.

Regards,

Mackenzie Fetterman

Mackenzie Fetterman
Deputy Director, Government Accounts

State of Minnesota for MMCAP Infuse
In accordance with Minn. Stat. 16C.03, Subd.3

Name: Jennifer VanderPlaats
Signature: Jennifer VanderPlaats
Date: 2/18/2020

COMMISSIONER OF ADMINISTRATION
In accordance with Minn. Stat. 16C, Subd. 2

Name: Debra A.L. Burandt
Signature: Debra A.L. Burandt
Date: 2-13-2020