Agenda Item No: 10.I

STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** July 1, 2021

Staff Contact: Carol Akers, Purchasing & Contracts Administrator and Nicki Aaker, Health & Human Services Director

Agenda Title: For Possible Action: Discussion and possible action regarding authorization to purchase vaccines utilizing the Minnesota Multistate Contract Alliance for Pharmacy ("MMCAP") joinder contract with Merck Sharp & Dohme Corp. ("Merck") for a not to exceed amount of $65,000 through June 30, 2022. (Carol Akers, CAkers@carson.org and Nicki Aaker, naaker@carson.org)

Staff Summary: The Carson City Health and Human Services Department utilizes MMCAP Contract # MMS2000315 to purchase vaccinations and immunization supplies from Merck for vaccination through Clinical Services and Public Health Preparedness Community Vaccination efforts. This will be funded from the Health and Human Services Private Vaccine and Community Vaccine & Outreach revenue accounts through June 30, 2022.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

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Proposed Motion
I move to approve the purchase authority as requested.

Board's Strategic Goal
Efficient Government

Previous Action
None

Background/Issues & Analysis
This is an annual request. The purchase amount exceeds $50,000 and therefore requires Board of Supervisors approval pursuant to City policy.

Contract being utilized: (Joinder) MMCAP Contract# MMS2000315 (expires 6/30/24).

Applicable Statute, Code, Policy, Rule or Regulation
NRS 332.195

Financial Information
Is there a fiscal impact? Yes

If yes, account name/number: Grant Fund, Operating Supplies - 2756800-501225 Private Vaccine Program - G680020004|G-SUPPLIES|
Grant Fund, Operating Supplies - 2756800-501225 Community Vaccine & Outreach Program - G680020027|G-SUPPLIES|

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Funding is provided by the Private Vaccine and Community Vaccine & Outreach program income accounts which is revenue from patients and insurance reimbursements. If approved the account will be reduced by the $65,000. The available budget for FY 22 is $739,035, see Vaccines Funding Worksheet attached.

Alternatives
Do not approve purchases and provide alternative direction to staff.

Attachments:
FY22_BOS_Vaccines_funding_worksheet.pdf

Merck MMCAP contract 7.1.20 to 6.30.24.pdf

Board Action Taken:

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

_____
(Vote Recorded By)

		Joinder Contract Amounts		Current Available Funding
Program Revenue - Health Restricted Funds				
G680020004 G-SUPPLIES	Private Vaccine	$ 168,000		$ 262,990
G680020027 G-SUPPLIES	Community Vaccine &	$ 70,375		$ 476,045
TOTAL		**$ 238,375**		**$ 739,035**

FY22 EXPENDITURES BY VENDOR	
GlaxoSmithKline	$ 102,100
Merck	$ 65,000
Sanofi Pasteur Inc.	$ 71,275
TOTAL	**$ 238,375**

Revenue Account Fund Availability

2756080-445970 - Private Vaccine Revenue	
FY21 Budget (carry forward)	$ 151,437
FY21 YTD expenses	($ 163,423)
FY21 encumbrances	($ 36,139)
FY21 YTD revenue	$ 161,115
FY22 est revenue	$ 150,000
Total	**$ 262,990**

2756080-465166 - Comm Vaccine & Oureach Rev	
FY21 Budget (carry forward)	$ 463,711
FY21 YTD expenses	($ 146,710)
FY21 encumbrances	($ 57,924)
FY21 YTD revenue	$ 116,968
FY22 est revenue	$ 100,000
Total	**$ 476,045**

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.

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

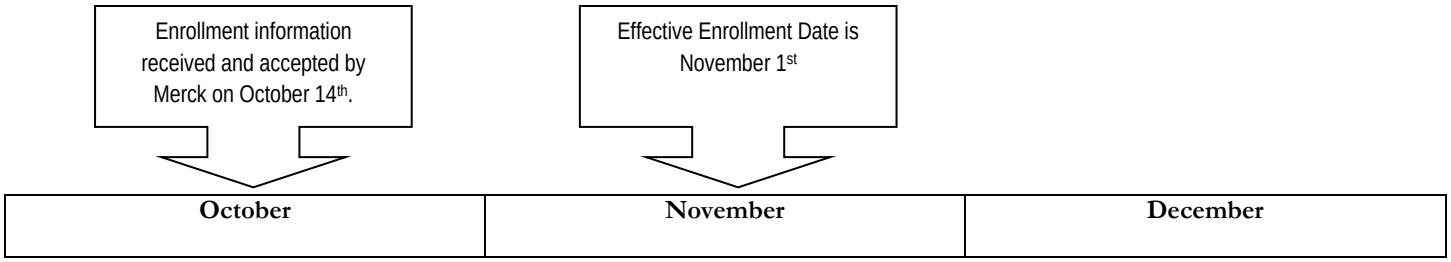
Enrollment information about the Eligible Facility must be submitted to Merck, via Merck's electronic method of enrollment, by the appropriate personnel with authority to manage Program enrollment on behalf of the Eligible Facility.

− 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.

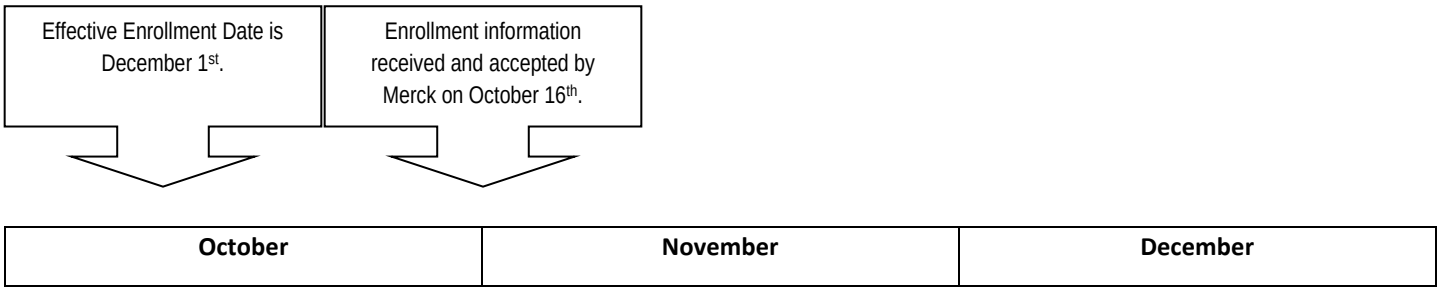
− If the enrollment information is received and accepted after the fifteenth (15th) day of the month, Merck will make reasonable efforts to make the Eligible Facility eligible to receive discounts on purchases the first (1st) day of the following month, at its sole discretion. Otherwise, Eligible Facility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

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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.