STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** October 20, 2016

Staff Contact: Laura Tadman and Nicki Aaker

Agenda Title: For Possible Action: To approve the purchase of various vaccinations and pharmaceuticals for Health and Human Services Department through Joinder Contracts with Sanofi Pasteur, Merck Sharp & Dohme, Cardinal Health, GlaxoSmithKline, and Pfizer Pharmaceuticals in the total amount not to exceed $432,500.00 to be funded from the Health and Human Services Private Vaccine, Clinical Services and various grant fund accounts for FY2016/2017. (Laura Tadman; LTadman@carson.org and Nicki Aaker; NAaker@carson.org)

Staff Summary: The Carson City Health and Human Services Department wish to utilize current contracts through the Minnesota Multistate Contracting Alliance for Pharmacy to purchase vaccinations and pharmaceuticals for Carson City and Douglas County citizens.

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

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Proposed Motion

I move to approve the purchase of various vaccinations and pharmaceuticals for Health and Human Services Department through Joinder Contracts with Sanofi Pasteur, Merck Sharp & Dohme, Cardinal Health, GlaxoSmithKline, and Pfizer Pharmaceuticals in the total amount not to exceed $432,500.00 to be funded from the Health and Human Services Private Vaccine, Clinical Services and various grant fund accounts for FY2016/2017.

Board's Strategic Goal

Efficient Government

Previous Action

Background/Issues & Analysis

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 and NRS 332.195

Financial Information

Is there a fiscal impact? ☒ Yes ☐ No

If yes, account name/number: See account breakdown

Is it currently budgeted? ☒ Yes ☐ No

Explanation of Fiscal Impact: Funding is provided by Douglas County Interlocal Agreement, vaccine program income and restricted general fund vaccine and clinic accounts. If approved accounts will be reduced by up to $432,500.

Alternatives

Not approve purchase and provide other direction.

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay

2) _____ _____

_____

_____

_____

_____

(Vote Recorded By)

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

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

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

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

The Vendor wishes to contract with MMCAP to supply products to MMCAP Participating Facilities.

1 Term of Contract

1.1 ***Effective date:*** July 1, 2015, or the date MMCAP obtains all required signatures under Minnesota Statutes Section16C.05, subdivision 2, whichever is later.
1.2 ***Expiration date:*** June 30, 2019, or as cancelled pursuant to clause 21. Contract may be extended upon mutual agreement of both parties.
1.3 ***Survival of Terms.*** The following clauses survive the expiration or cancellation of this Contract: 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Contracted Products

2.1 ***Product Availability.***
2.1.1 The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP Participating Facilities directly and via MMCAP's Authorized Wholesalers. The current MMCAP Authorized Wholesalers are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC. Vendor will notify MMCAP's Authorized Wholesalers of all Product and pricing identified in Attachment A.
2.1.2 Deleted in its entirety.
2.1.3 Vendor must establish and maintain chargeback agreement(s) with MMCAP's Authorized Wholesalers.
2.1.4 It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the needs of the MMCAP Participating Facilities.
2.1.5 Vendor must notify MMCAP immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect Product availability. Notices must be sent to:
MMCAP.Contracts@state.mn.us

2.2 ***Direct Orders, Payment and Delivery Terms***
2.2.1 Vendor is authorized to sell Products directly to MMCAP Participating Facilities. Vendor will honor any request for a direct order made by an MMCAP Participating Facility.
2.2.2 Order Placement for direct orders:

Phone:	800-VACCINE (800-822-2463) Monday- Friday, between 8 AM and 6:30 PM Eastern Time
Fax:	(570) 957-0940
Website:	www.vaccineshoppe.com*

Mail: Sanofi Pasteur Inc.
Attn: Customer Account Management
Discovery Drive
Swiftwater, PA 18370-0187

**An additional 1% savings is available for all orders placed online.*

Title to merchandise sold will pass to the Facility upon delivery at the MMCAP Participating Facility's destination. All shipments are made by common carrier. Should an MMCAP Participating Facility have a question regarding a shipment, please contact a Sanofi Pasteur Representative or call Customer Account Management at Sanofi Pasteur's corporate headquarters, toll-free at 1-800-VACCINE (1-800-822-2463), Monday through Friday, between 8:30 AM and 6:00 PM Eastern Time.

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

Invoices must be paid in full within 30 days (or at contract terms, if applicable) of the invoice date. Vendor reserves the right to charge a fee of the lesser of 1.5% per month or the maximum permissible rate if payment is not received within terms. Federal Excise Tax is not subject to any discounts. Payment may be sent to the remittance address indicated on the invoice. Payment by check is recognized when received at the lock-box address indicated on the invoice. MasterCard®, VISA®, Discover®, American Express®, Electronic Check Payment at www.vaccineshoppe.com and check by phone are accepted as payment for purchases. All accounts shall be paid in United States Dollars.

Arrangements for establishing payment via Electronic Fund Transfer may be made by contacting Credit Services at 1-800-VACCINE (1-800-822-2463).

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

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

If an MMCAP Participating Facility's orders within 1 month for any individual product(s) are in excess of 150% of the MMCAP Participating Facility's average monthly purchases calculated over the previous 6 months, then Vendor reserves the right to reduce, defer, backorder, or not accept such orders.

If an MMCAP Participating Facility does not have an established ordering pattern of monthly purchases for individual product(s), then Vendor reserves the right to evaluate the purchase and establish a maximum quantity that will be supplied.

All orders are subject to acceptance by Vendor at its corporate headquarters

Time of delivery is usually within 14 days after receipt of order. Notwithstanding anything herein to the contrary, any failure by Vendor to make a required shipment within the time required hereunder or within thirty (30) days thereafter, shall not be considered a breach of contract by Vendor.
Claims for loss, shortage, breakage, leakage, or other damage occurring in transit must be submitted to Vendor at its headquarters within 10 days from date of invoice, for replacement or credit of affected product(s), which includes but is not limited to vaccines, in accordance with Section 2.10. The sole and exclusive remedy of the MMCAP Participating Facility is Vendor credit or replacement, as applicable, of affected product(s); no other remedy (including, but not limited to, incidental, consequential, or other damages of any kind) shall be available. Loss, shortage, breakage, leakage, or other damage claims must also be accompanied by freight bill with notation by the common carrier of the loss, shortage, breakage, or damage, or accompanied by the carrier's concealed loss

or damage report where the loss is of a concealed nature. Where loss, shortage, breakage, leakage, or other damage has occurred in transit, the MMCAP Participating Facility agrees to cooperate fully with Vendor in Vendor's effort to establish a claim against the transportation company. Claims submitted without appropriate documentation will be denied.

All claims involving discounts, pricing, credits, or returns, for direct sales must be reported to Vendor's headquarters within 1 year of the date of invoice for the purchase in question. Inappropriate deductions taken from MMCAP Participating Facility payments, including but not limited to those made after this deadline, will be reflected against the account and could jeopardize future shipments on open terms. (Claims concerning chargebacks or for loss, shortage, leakage, breakage, or other damage occurring in transit are covered elsewhere in these Terms and Conditions and are excluded from this provision.)

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

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

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

2.4 *Pricing.*

2.4.1 *Non-Fixed, 30 Day Notice:*

All Products listed as Non-Fixed 30 Day Notice on Attachment A require notice of price increases be submitted to MMCAP.Contracts@state.mn.us at least 30calendar days (as applicable) before the requested price increase may take effect. Notwithstanding this provision, no price increases can become effective until 120 calendar days after the effective date of the Contract; unless a force majeure condition can be established and is approved by the MMCAP Authorized Representative. In the event of any price reduction, the Vendor will advise MMCAP in writing as set forth in Article 2.7.

2.4.2 Vendor must notify MMCAP's Authorized Wholesalers of any price reductions. If Vendor fails to send price reduction notification(s), Vendor agrees to honor all chargebacks at the reduced contract price from the effective date indicated on the fully executed Contract amendment. In the event of a price increase, if Vendor fails to provide the required advanced written notice of a price increase to MMCAP, Vendor will honor all chargebacks at the current contract price until MMCAP reviews and approves the price increase.

2.4.3 MMCAP must be notified that price changes have been sent to its Authorized Wholesalers at the same time notice is sent to the Authorized Wholesalers. Send notices to: MMCAP.Contracts@state.mn.us.

2.4.4 If an MMCAP contracted item's equivalent product market price is less than the MMCAP contract price, the Vendor will match the lower market price. If the Vendor does not match the lower price, MMCAP reserves the right to dual award or re-award the product.

2.4.5 In the event of any price increase, MMCAP reserves the right to obtain quotes from other vendors and reserves the right to dual award the product to the vendor offering the best value.

2.4.6 Deleted in its entirety.
2.4.7 Deleted in its entirety.
2.4.8 MMCAP reserves the right during the term of the Contract to award or dual award Products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by MMCAP Authorized Wholesalers, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by MMCAP Participating Facilities, recall situations, product shortages, failure to supply situations, and in situations that are in the best interest of the MMCAP Participating Facilities.
2.4.9 With the exception of a recall, if the Vendor removes a Product from Attachment A during the term of this Contract, Vendor will make reasonable efforts to provide written notice to MMCAP at least 30 days prior to the removal and will honor contract pricing until the MMCAP-Authorized Wholesalers' inventories are depleted. Article 2.4.9 does not apply in backorder or shortage situations.

2.5 *Failure to Supply (FTS) Contracted Pharmaceuticals.*

2.5.1 Deleted in its entirety.
2.5.2 If Vendor cannot supply sufficient quantities, MMCAP may at its discretion add an additional vendor(s) as needed to meet the needs of its members.
2.5.3 Vendor must provide written notice of all Product backorders expected to last longer than 30 calendar days and/or inability to supply situations to MMCAP within a commercially reasonable time of Vendor's knowledge of the situation. Notices must include the reason(s) for and the expected duration of the issue. Notices must be sent to: MMCAP.Contracts@state.mn.us.
2.5.4 Deleted in its entirety.
2.5.5 Deleted in its entirety.
2.5.6 Deleted in its entirety.
2.5.7 Deleted in its entirety.
2.5.8 Deleted in its entirety.
2.5.9 Deleted in its entirety.
2.5.10 Deleted in its entirety.
2.5.11 Deleted in its entirety.

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

2.7 *Contract Changes.*

2.7.1 *Product Offers and Amendments*. Any changes to this Contract, including but not limited to product additions/deletions, price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed by the effective date of the amendment. Vendor-generated Product offers and notifications may be used as amendments to Attachment A by submitting to MMCAP a letter on Vendor's letterhead with the following elements:

- Offer Date
- MMCAP Contract Number
- Action (e.g., addition, deletion, price change, NDC conversion)
- NDC Number
- Product Description
- Packaging
- Contract Price
- Pricing Type
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's change to contract. A typed name, regardless of

font, does not constitute a signature.

2.7.2 If the product offer is accepted by MMCAP and is executed by Vendor as well as the authorized State of Minnesota representatives, the product offer letter will automatically amend Attachment A of this Contract; and if not clearly stated on the offer, the effective date will be what is agreed to by the parties and written on the amendment. With regard to Vendor-initiated offers that become amendments, MMCAP will clearly indicate on the offer which products, if any, will **not** be amended into Attachment A. Except as specifically offered by Vendor and accepted in writing by MMCAP, all other terms, conditions, and Products listed in Attachment A will remain in full force and effect. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP will draft all amendments.

2.7.3 With the exception of price changes which are subject to Article 2.4, Vendor must send confirmation of fully executed Contract amendment changes, including but not limited to additions/deletions, NDC changes, Product removals, etc., to the MMCAP Authorized Wholesalers within 2 business days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Authorized Wholesalers do not receive Contract change notification(s), Vendor agrees to honor all chargebacks at the contract price from the effective date indicated on the fully executed Contract amendment.

2.8 ***MMCAP Participating Facilities.***

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

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

2.8.3 The following MMCAP Participating Facilities are eligible to purchase Products from Vendor, including but not limited to licensed wholesalers and physician distributors (collectively hereinafter "distributors"); federal, state, and local government entities; closed-door pharmacies; hospitals, clinics, and contract Customers. In order to be eligible for contract pricing under the Contract, an MMCAP Participating Facility must be able to certify that (1) the Facility is purchasing the Vendor's products for its "own use," as defined in De Modena, et al. v. Kaiser Foundation Health Plan, Inc., et al., 743 F. 2d 13888 (9 Cir. 1984), applying the holding of the U.S. Supreme Court in Abbott Laboratories, et al. v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976); (2) the Facility is a nonprofit institution, eligible for all purposes under the Nonprofit Institutions Act, 15 U.S.C. § 13c, for which purchases of said products are made for said Facility's "own use"; or (3) the Facility is the exclusive provider of said products to patients, physicians or employees of a medical home under the terms of a contract between said home and the Facility. Any Participating Facilities that cannot meet the above criteria, including but not limited to Community Immunization Providers, retailers, and distributors not fulfilling orders under this contract, are not eligible to purchase products under this Agreement.

2.8.4 If Vendor maintains class of trade restrictions, monthly electronic eligibility lists must be sent to MMCAP at the following e-mail address: MMCAP.Contracts@state.mn.us

2.8.5 Certification, eligibility, or GPO declaration forms maintained by Vendor must be attached and incorporated into this Contract, if applicable.

2.8.6 Vendor must notify MMCAP at least 30 days prior to removing any MMCAP Participating Facilities from contract pricing. Notices must be sent to: MMCAP.Contracts@state.mn.us. If MMCAP does not receive notification that an MMCAP Participating Facility has been removed from contract pricing, Vendor will honor pricing until 30 days after such notice is provided to MMCAP.

2.9 ***Administrative Fee.*** In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases (minus any credits and exclusive of excise tax) made through the MMCAP Authorized Wholesalers or directly with the Vendor. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to 1.5% of MMCAP Participating Facilities' purchases for all Products. The administrative fee must be paid as soon as is reasonable after the end of each month, but no later than 60 calendar days after the end of the month. Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155. The vendor must submit a quarterly Administrative Fee Data Report that includes both

direct (sales made direct from vendor to MMCAP facility) and indirect purchases (sales made through an MMCAP Authorized Wholesaler). The monthly Administrative Fee Data Report must contain the fields detailed below. All Administrative Fee Data Reports* must be sent to: Mn.MMCAP@state.mn.us at the end of each quarter, but no later than 60 days after the end of the quarter. Failure to comply with this provision may constitute breach of this Contract. MMCAP reserves the right to collect interest on payments 30 days past due at a rate consistent with Minn. Stat. § 16D.13.

Administrative Fee Data Report fields:

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

In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event the contract is cancelled by either party prior to the contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

2.10 *Returned Goods/Credits.*

Indirect Sales: Product(s) not purchased directly from Vendor should be returned to the site of purchase under their terms of sales. Indirectly purchased product(s) can be returned to Vendor upon expiration for destruction only.

Direct Sales: All returns must comply with federal and state laws and regulations. With the exception of the products listed below, Vendor offers 100% credit (credit based on the invoice purchase price) upon expiration on all listed Vendor product(s) purchased directly from Vendor that are unopened, complete packages returned within 1 year after the expiration date. All expired product(s) must be shipped prepaid to Vendor at Genco Pharmaceutical Services, 6101 N. 64th Street, Milwaukee, WI 53218. Collect shipments will not be accepted. Please include MMCAP Participating Facility name, address and account number inside the return package. Please contact Customer Account Management for instructions on returning product due to physical defect or for purchases not made directly from Vendor. All product(s) manufactured by Vendor and returned to Vendor at Genco Pharmaceutical Services will be destroyed. If the MMCAP Participating Facility has any questions regarding the Return Goods Policy, please contact Customer Account Management at Vendor's headquarters at 1-800-VACCINE (1-800-822-2463).

- The Return Goods Policy is subject to change without prior notification, and does not provide any

return rights for:

- Imogam® Rabies-HT, Rabies Immune Globulin(Human) USP, Heat Treated;
- Menomune®-A/C/Y/W-135 Vaccine.

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

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

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

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

Vendor product(s) supplied through the federal Vaccines for Children program or any other federal government program contract where product(s) are purchased under special conditions will not be exchanged or replaced for any reason. Vendor will continue to accept these product(s) for proper disposal.

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

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

2.13 ***Product Use.*** All items acquired by MMCAP Participating Facilities under this Contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

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

2.15 ***Direct Marketing, Advertising, and Offers with Member Facilities.*** Any direct advertising, marketing, or direct offers with MMCAP Participating Facilities for on- or off- contract products must be approved by MMCAP. Materials should be sent to: MMCAP.Contracts@state.mn.us. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

2.16 ***Customer Service.***

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

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.16.2

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

2.16.2. *Business Reviews.* Vendor will perform at least one business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor and MMCAP and at a minimum address the

following: a review of sales to members, pricing and contract terms, administrative fees, FDA and DEA issues, supply issues, pipeline update, outstanding contract issues, wholesaler or customer issues, and any other necessary information.

2.17 *Dispute Resolution.* Vendor and MMCAP will handle dispute resolution for unresolved contract eligibility issues using the following procedure:

2.17.1 *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. And if necessary, MMCAP and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

2.17.2 *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The Vendor will have 30 calendar days to cure the issue.

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

2.17.4 *MMCAP Rights.* In the event MMCAP cannot resolve a dispute with the Vendor, MMCAP may cancel this Contract upon 60 days' written notice to the other party.

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

3 Authorized Agent

MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155.

The Vendor's Authorized Agent is Pamela Garcia-Gomez, Deputy Director, State Government Contracts, Discovery Drive, Swiftwater, PA 18370.

4 Assignment, Amendments, Waiver, and Contract Complete

4.1 *Assignment.* Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement. If the Vendor assigns a Product during the term of this Contract, Vendor must provide written notice to MMCAP at least 30 days prior to the assignment.

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

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

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

5 Liability

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

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

warranty, negligence, strict liability in tort, negligence, or any other legal theory.

6 State Audits

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

7 Government Data Practices and Intellectual Property

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

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

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

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

8 Publicity and Endorsement

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

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

9 Governing Law, Jurisdiction, and Venue

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

10 Antitrust

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

11 Force Majeure.

Vendor shall not be liable for delays in shipment, reductions of shipment amounts or default in delivery for any cause beyond its reasonable control including, but not limited to:

(a) an actual or potential national shortage of any vaccine,

(b) actions by federal, state or local governmental agencies, units, bodies or officials relating to an actual or potential national shortage of any vaccine, including, but not limited to, orders, guidelines, recommendations

or requests to limit, alter or change vaccine sales or distribution or to limit the persons who should be vaccinated
(c) government action (to the extent such action is not covered by the preceding subparagraph (b)), public health emergencies, war, riots, civil commotion, embargoes, acts of terrorism or martial laws,
(d) Vendor's inability to obtain necessary materials from its usual sources of supply,
(e) shortage of labor, raw material, production or transportation facilities of other delays in transit,
(f) labor difficulty involving employees of Vendor or others,
(g) fire, flood or other casualty, or
(h) other contingencies of manufacture or shipment.

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

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

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

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

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

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

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

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

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

16.3 Additional Insurance Conditions:

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will endeavor to notify MMCAP within 30 business days with a copy of the cancellation notice
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.

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

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

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

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

18.2 Minnesota Statutes Section 363A.36. Minnesota Statutes Section 363A.36 requires Vendor to have an

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

18.3 Minnesota Rules 5000.3400-5000.3600.

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

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

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

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

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

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

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

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

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

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

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

21 Cancellation. MMCAP or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment,

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

1. SANOFI PASTEUR INC.

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

By: PAMELA GARCIA-GOMEZ

Title: DEPUTY DIRECTOR, STATE GOVERNMENT CONTRACTS

Date: 29 May, 2015

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

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

By: _____

Title: SPAP

Date: 6/10/2015

3. COMMISSIONER OF ADMINISTRATION

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

By: _____

Title: _____

Date: June 10, 2015

AMENDMENT NO. 1 TO MMCAP CONTRACT NO. MMS15198 (426028)

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

MMCAP has a contract with the Vendor identified as Contract No. MMS15198 (426028) (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

(1810JV)

Effective when signed Section 2.9 Administrative Fee of the Original Contract is replaced with the attached updated language.

2.9 *Administrative Fee.* In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases (minus any credits and exclusive of excise tax) made through the MMCAP Authorized Wholesalers or directly with the Vendor. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to 1.5% of MMCAP Participating Facilities' purchases for all Products. The administrative fee must be paid as soon as is reasonable after the end of each quarter, but no later than 60 calendar days after the end of the quarter. Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155. The vendor must submit a monthly Administrative Fee Data Report that includes both direct (sales made direct from vendor to MMCAP facility) and indirect purchases (sales made through an MMCAP Authorized Wholesaler). The monthly Administrative Fee Data Report must contain the fields detailed below. All Administrative Fee Data Reports* must be sent to: Mn.MMCAP@state.mn.us at the end of each month, but no later than 30 days after the end of the month. Failure to comply with this provision may constitute breach of this Contract. MMCAP reserves the right to collect interest on payments 30 days past due at a rate consistent with Minn. Stat. § 16D.13.

Administrative Fee Data Report fields:

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

In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event the contract is cancelled by either party prior to the contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

AMENDMENT NO. 1 TO MMCAP CONTRACT NO. MMS15198 (426028)

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

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

By: Pamela Garcia-Gomez

Title: Deputy Director, State Government Contracts

Date: 21 Sept 2015

By: ______________________

Title: ______________________

Date: ______________________

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

By: [signature]

Title: SPA [illegible]

Date: 9/21/2015

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

By: Heather Pickett

Title: ______________________

Date: Sept. 21, 2015

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

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

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

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

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

1 Term of Contract

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

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

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

2. Contracted Pharmaceuticals

2.1 **Products**

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

2.2 **Product Availability through Distributors.**

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

Purchasing through MMCAP-Contracted Distributors:

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

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

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

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

2.4 **Pricing**

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

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

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

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

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

2.5 Failure to Supply Contracted Pharmaceuticals.

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

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

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

2.7 Contract Changes.

2.7.1 *Notifications.*

Vendor shall advise MMCAP by Notification for the following items:

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

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

2.7.2 *Amendments.*

Vendor shall advise MMCAP by Amendment for the following items:

- Addition of a Product at the NDC Level

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

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

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

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

2.8 MMCAP Participating Facilities.

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

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

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

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

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

2.9 Administrative Fee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. **Government Data Practices**

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

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

8. **Publicity Endorsement**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Cancellation.

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

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

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

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

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

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

20. Disclosure Requirements.

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

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

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

21. Exclusion.

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

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

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

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

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

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

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

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

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

23. Confidentiality.

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

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

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

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

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

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

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

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

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

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

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

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

By: _____

Title: SVP, Managed Markets + Policy

Date: 6/5/2015

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

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

By: Sandra Christensen

Title: Pharmacy Analyst

Date: 06-08-15

3. COMMISSIONER OF ADMINISTRATION

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

By: DatHoang, PharmD MBA

Title: Pharmacist Senior

Date: June 8, 2015

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

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") **Cardinal Health 411, Inc. and Cardinal Health 110, LLC**, 7000 Cardinal Place, Dublin, Ohio 43017 ("Vendor").

Pursuant to Minnesota Statutes Section 16C.03, the Commissioner of Administration may enter into this contract on behalf of MMCAP for the benefit of its members.
MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members' use. Participation in MMCAP is limited to facilities within member states that are specifically permitted by the member state's statutes to purchase goods from the member state's contracts. Participation is generally available to facilities run by state agencies, counties, cities, townships, and school districts.

The Vendor wishes to contract with MMCAP to supply products to MMCAP Participating Facilities.

1 Term of Contract

1.1 ***Effective date:*** July 1, 2015, or the date MMCAP obtains all required signatures under Minnesota Statutes Section16C.05, subdivision 2, whichever is later.
1.2 ***Expiration date:*** June 30, 2019, or as cancelled pursuant to Article 19. The Contract may be extended upon mutual agreement of both parties.
1.3 ***Survival of Terms.*** The following clauses survive the expiration or cancellation of this Contract: 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Contracted Products

2.1 ***Product Availability.***
2.1.1 The Vendor will supply the Products at the prices listed in Attachment A (Products), which is attached and incorporated, to MMCAP Participating Facilities that have selected Cardinal Health as their Authorized Wholesaler via the MMCAP/Cardinal Health wholesaler contract (hereinafter referred to as "Authorized Wholesaler").
2.1.2 Direct sales to MMCAP Participating Facilities, not processed through the MMCAP/Cardinal Health wholesaler contract may result in immediate termination of this Contract at the sole discretion of MMCAP.
2.1.3 **Reserved**
2.1.4 It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the needs of the MMCAP Participating Facilities.
2.1.5 Vendor must notify MMCAP promptly of any issues that could affect Product availability. Notices must be sent to: MMCAP.Contracts@state.mn.us.
2.2 Reserved
2.3 FDA-Certified Drug Application. The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish no Product under this Contract that is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of

Pharmacy.

2.4 *Pricing.*

2.4.1 *Non-Fixed, 30 Day Notice:*

All Products listed as Non-Fixed, 30 Day Notice on Attachment A require notice of price increases be submitted to MMCAP.Contracts@state.mn.us at least 30 calendar days (as applicable) before the requested price increase may take effect. Notwithstanding this provision, no price increases can become effective until 120 calendar days after the effective date of the Contract; unless a force majeure condition can be established and is approved by the MMCAP Authorized Representative. In the event of any price reduction, the Vendor will advise MMCAP in writing as set forth in Article 2.7.

2.4.2 If Vendor fails to honor price reduction notification(s) after an MMCAP amendment has been signed, Vendor agrees to honor all chargebacks at the reduced contract price from the effective date indicated on the fully executed Contract amendment. In the event of a price increase, if Vendor fails to provide the required advanced written notice of a price increase to MMCAP, Vendor will honor all chargebacks at the current contract price until MMCAP reviews and approves the price increase.

2.4.3 Deleted in its entirety.

2.4.4 If MMCAP identifies a product that is less than the MMCAP contract price for a Product, the Vendor may match the lower general market price. If the Vendor does not match the lower price, MMCAP reserves the right to dual award or re-award the Product.

2.4.5 In the event of any price increase, MMCAP reserves the right to obtain quotes from other vendors and reserves the right to dual award the product to the vendor offering the best value.

2.4.6 In order for Vendor to receive right of first refusal on post-180 calendar day new generic products (e.g., authorized generics), the new generic product must be offered to MMCAP as a contracted Product at least 150 calendar days before the expiration of the 180 calendar day exclusivity period. Failure to do so waives Vendor's right of first refusal.

2.4.7 If Vendor elects to submit an offer for a product currently awarded to another vendor, each vendor will be permitted one best and final offer. If Vendor's awarded product is challenged by another vendor, each vendor will be provided one best and final offer.

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

2.4.9 With the exception of a recall, if the Vendor removes a Product from Attachment A during the term of this Contract, Vendor must provide written notice to MMCAP at least 30 days prior to the removal and will honor contract pricing until Vendor's inventory is depleted. If inventory is depleted prior to the end of the 30 day period, Vendor will pay Failure to Supply claims as set forth in Article 2.5.

2.5 *Failure to Supply (FTS) Contracted Pharmaceuticals.*

2.5.1 If Vendor fails to maintain sufficient inventory to meet the anticipated needs of MMCAP Participating Facilities for any Products, the ordering MMCAP Participating Facility may purchase an alternate equivalent generic product on the open market for the period in which the Vendor is unable to provide the Product. The Vendor will be liable for any excess cost over the MMCAP contracted price and the alternate price of the product supplied by the alternate vendor.

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

2.5.3 Vendor must provide written notice of all Product backorders expected to last longer than 30 calendar days and/or inability to supply situations to MMCAP within 24 hours of the knowledge of the situation. Notices must

include the reason(s) for and the expected duration of the issue. Notices must be sent to: MMCAP.Contracts@state.mn.us.

2.5.4 Vendor will use the price of the MMCAP contracted product and the invoice price of the alternate generic product to determine the amount of reimbursement for failure to supply claims.

2.5.5 MMCAP Participating Facilities will submit the following information to the Vendor for each product that reimbursement is expected:

- MMCAP Participating Facility Name, Address, City, State, Zip
- MMCAP Participating Facility DEA or HIN
- MMCAP Participating Facility point of contact for reimbursement (including telephone number and e-mail address)
- MMCAP contract NDC number
- Product description
- MMCAP contract price
- Cardinal Health account number
- Distribution service fee
- MMCAP Participating Facility purchase price
- Alternate NDC
- Alternate NDC manufacturer
- Alternate NDC purchase price
- Alternate NDC quantity purchased
- Alternate NDC date purchased
- Amount due
- Reason (e.g., brief description, such as Manufacturer Backorder)
- A copy of the invoice showing the purchase of an equivalent generic product from the alternate source

2.5.6 Vendor must pay claims directly to the MMCAP Participating Facility within 30 days of receipt of a claim as described above. The MMCAP Participating Facility has the right to charge, and Vendor agrees to pay, a late fee equal to the statutory maximum allowable percentage per month of the amount of any claim within 30 days from receipt of the claim. A detailed payment of claim report must be provided with payment to the MMCAP Participating Facility.

2.5.7 Failure to supply claims may be submitted if MMCAP Participating Facilities show that a purchase attempt was made for a Product and such purchase attempt was not partially or completely filled for a quantity not to exceed 150% of the previous quarter's monthly average.

2.5.8 If Vendor can prove that its inability to supply any Product was not due to its acts or omissions, then Vendor will not be liable for any such failure to supply claim.

2.5.9 Vendor will be responsible for payment of Failure to Supply claims for 180 calendar days unless the Vendor has provided MMCAP with at least 180 calendar days' advanced written notice of the intent to remove said Product(s) from production and discontinue distribution in the U.S. market. Vendor will remain responsible for all Failure to Supply claims during the 180-day notice period.

2.5.10 In the event MMCAP chooses to process Failure to Supply claims on behalf of the MMCAP Participating Facilities, Vendor will receive 30 days' advanced written notice. Vendor agrees to accept electronic claims from MMCAP, any MMCAP-contracted failure to supply claims system vendor, and/or the MMCAP Participating Facility. Electronic claims will identify the specific contract Products for which alternative products were purchased and the amount of reimbursement claimed on behalf of each MMCAP Participating Facility for the additional cost incurred in purchasing the alternative products. Vendor must pay such claims to the MMCAP Participating Facilities within 30 days of receipt of a claim as described above. MMCAP will have the right to charge, and Vendor agrees to pay, a late fee equal to the statutory maximum allowable percentage per month of the amount of

any claim within 30 days from receipt of the claim. A detailed payment of claim report must accompany payment. All Failure to Supply payments made to MMCAP must be separate from administrative fee payments and must be clearly identified as such.

2.5.11 Vendor's address for FTS reimbursement:

Attn: Naomi Duvall
7000 Cardinal Place,
Dublin, OH 43017
Naomi.Duvall@cardinalhealth.com

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

2.7 *Contract Changes.*

2.7.1 *Product Offers and Amendments.* Any changes to this Contract, including but not limited to product additions/deletions, price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed by the effective date of the amendment. Vendor-generated Product offers and notifications may be used as amendments to Attachment A by submitting to MMCAP a letter on Vendor's letterhead with the following elements:

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

2.7.2 If the product offer is accepted by MMCAP and is executed by Vendor as well as the authorized State of Minnesota representatives, the product offer letter will automatically amend Attachment A of this Contract; and if not clearly stated on the offer, the effective date will be what is agreed to by the parties and written on the amendment. With regard to Vendor-initiated offers that become amendments, MMCAP will clearly indicate on the offer which products, if any, will **not** be amended into Attachment A. Except as specifically offered by Vendor and accepted in writing by MMCAP, all other terms, conditions, and Products listed in Attachment A will remain in full force and effect. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP will draft all amendments.

2.7.3 Deleted in its entirety.

2.8 *MMCAP Participating Facilities.*

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

2.8.2 MMCAP reserves the right to add and delete MMCAP Participating Facilities during the term of this Contract.

2.8.3 If Vendor maintains class of trade restrictions, eligibility criteria must be listed in this Article 2.8, if applicable. If Vendor maintains class of trade restrictions which are not present or expressly defined in this Contract, MMCAP reserves the right to cancel this Contract and to reject any proposal submitted by the Vendor in any subsequent solicitations.

2.8.4 If Vendor maintains class of trade restrictions, monthly electronic eligibility lists must be sent to MMCAP at the following e-mail address: MMCAP.Contracts@state.mn.us

2.8.5 Certification, eligibility, or GPO declaration forms maintained by Vendor must be attached and incorporated into this Contract, if applicable.

2.8.6 Vendor must notify MMCAP at least 30 days prior to removing any MMCAP Participating Facilities from contract pricing. Notices must be sent to: MMCAP.Contracts@state.mn.us. If MMCAP does not receive notification that an MMCAP Participating Facility has been removed from contract pricing, Vendor will honor pricing until 30 days after such notice is provided to MMCAP.

2.9 Leader® *Administrative Fee.* In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee on all contract purchases for Products (minus any credits) made through Vendor. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to 3% of MMCAP Participating Facilities' purchases for all Products. Any Products that are offered through Vendor's Generic Drug Program as referenced in Section 4.15 of the MMCAP/Cardinal Health 110, Inc. and Cardinal Health 411, Inc. Contract MMS15001 will be credited as an MMCAP contract sale under this Contract MMS15064 and therefore subject to a 3% administrative fee under this Contract only. The Leader® Administrative Fee must be paid as soon as is reasonable after the end of each month, but no later than 30 calendar days after the end of the month. Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155. The vendor must submit a monthly Administrative Fee Data Report that includes both direct (sales made direct from vendor to MMCAP facility) and indirect purchases (sales made through an MMCAP Authorized Wholesaler). The monthly Administrative Fee Data Report must contain the fields detailed below. All Administrative Fee Data Reports must be sent to: Mn.MMCAP@state.mn.us at the end of each month, but no later than 30 days after the end of the month. Failure to comply with this provision may constitute breach of this Contract. MMCAP reserves the right to collect interest on payments 30 days past due at a rate consistent with Minn. Stat. § 16D.13.

Administrative Fee Data Report fields:

- MMCAP Assigned Authorized Wholesaler Number (Cardinal Health = 0301)
- MMCAP Assigned Manufacturer Number – Column may be left blank
- Direct or Indirect Purchase Indicator (I=Indirect)
- Invoice Date (Point of Sale Date)
- Invoice Number
- MMCAP Participating Facility Name
- Vendor's Account Number for the MMCAP Facility
- MMCAP Participating Facility DEA Number, if applicable
- MMCAP Participating Facility HIN Number, if applicable
- MMCAP Participating Facility Address
- MMCAP Participating Facility City
- MMCAP Participating Facility State
- Product's NDC (Use all 11 digits (00076888888))
- Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- Credit Indicator (C = credit)
- Contracted Units (The number of units purchased on contract.
- MMCAP Contracted Unit Price
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))

- Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)

Vendor must also report this contract number, MMS15xxx, in the Sales Data Report referenced in Section 4.16 A of the MMCAP/Cardinal Health 110, Inc. and Cardinal Health 411, Inc. Contract MMS15001, in the MMCAP Contract Number field.

All Administrative Fee payments made to MMCAP must be clearly identified as such and must be separate from other payments made to MMCAP. In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event the contract is cancelled by either party prior to the contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

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

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

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

2.13 ***Product Use.*** All items acquired by MMCAP Participating Facilities under this Contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

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

2.15 ***Direct Marketing, Advertising, and Offers with Member Facilities.*** Any direct advertising, marketing, or direct offers with MMCAP Participating Facilities for on- or off- contract products must be approved by MMCAP. Materials should be sent to: MMCAP.Contracts@state.mn.us. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

2.16 ***Customer Service.***

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

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.16.2

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

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

2.17 ***Dispute Resolution*** Vendor and MMCAP will handle dispute resolution for unresolved contract eligibility issues using the following procedure:

2.17.1 *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to

resolve such dispute within a reasonable period of time. And if necessary, MMCAP and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2.17.2 *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The Vendor will have 30 calendar days to cure the issue.
2.17.3 *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP members as a result of such failure to proceed will be borne by the Vendor.
2.17.4 *MMCAP Rights.* In the event MMCAP cannot resolve a dispute with the Vendor, MMCAP may cancel this Contract upon 60 days' written notice to the other party.
2.17.5 *No Waiver.* This clause will in no way limit or waive either party's right to seek available legal or equitable remedies.
2.18 ***Annual Bid Cycle.***
2.18.1 Vendor will be required to submit pricing on an annual basis. Products may be awarded to other contract holders during this annual cycle. In the event Vendor loses all Products on its contract during an annual cycle, it will not lose its Vendor status with MMCAP and is eligible to resubmit products and pricing during the next annual cycle. MMCAP reserves the right to open its RFP process to new suppliers during the annual cycle.
2.18.2 *Bid Roll.* Vendor must report its Products to MMCAP's Authorized Wholesalers no later than May 15 of the annual bid cycle. Changes to the Contract will be managed per Article 2.7.

3 Authorized Agent
MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155. The Vendor's Authorized Agent is Naomi Duvall, Director of Consumer Health.

4 Assignment, Amendments, Waiver, and Contract Complete
4.1 ***Assignment.*** Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement. If the Vendor assigns a Product during the term of this Contract, Vendor must provide written notice to MMCAP at least 30 days prior to the assignment.
4.2 ***Amendments.*** Any amendment to this Contract must be in writing and will not be effective until it has been executed by both parties. Vendor agrees to use the amendment process set forth in Article 2.7 above.
4.3 ***Waiver.*** If MMCAP fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
4.4 ***Contract Complete.*** This Contract contains all negotiations and agreements between MMCAP and the Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

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

for MMCAP's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify the Vendor.

6 State Audits

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

7 Government Data Practices and Intellectual Property

7.1. ***Government Data Practices.*** The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Vendor or MMCAP. If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify MMCAP, and consult with the agency as to how the Vendor should respond to the request. The Vendor's response to the request will comply with applicable law.

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

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

8 Publicity and Endorsement

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

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

9 Governing Law, Jurisdiction, and Venue

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

10 Antitrust

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

11 Force Majeure

Neither party to this Contract will be held responsible for delay or default caused by fire, riot, war, or acts of God.

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

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

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

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

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

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

Insurance **minimum** limits are as follows:

$5,000,000 - per occurrence
$5,000,000 - annual aggregate

The following coverages must be included:
Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability

MMCAP named as an Additional Insured

Products and Completed Operations Liability: Vendor is required to maintain Products/Completed Operations Liability insurance. Vendor may self-insure or self-administer all of any portion of the required insurance, and to the extend Vendor does self-insure, such insurance will not be deemed to exceed the scope of coverage and/or limits that would have been provided in actual policy of insurance that satisfies the insurance requirement. Insurance minimum limits are $5,000,000 annual aggregate.

16.3 Additional Insurance Conditions:

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

16.4. MMCAP reserves the right to immediately terminate the Contract if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor.

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

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

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

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

18.3 Minnesota Rules 5000.3400-5000.3600.

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

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

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

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

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

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

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

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

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

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

1. CARDINAL HEALTH 411, INC., AND CARDINAL HEALTH 110, LLC.

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

By: James L. Scott

Title: SVP National Markets

Date: June 26, 2015

By: James L. Scott

Title: SVP, National Markets

Date: June 26, 2015

2. STATE OF MINNESOTA FOR MMCAP

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

By: Jeff VanderPlaats, CPhT

Title: SPA-P

Date: 6/26/2015

3. COMMISSIONER OF ADMINISTRATION

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

By: Sara Turnbaw, PharmD, BCPS

Title: Pharmacist Sr.

Date: 6-26-15

MMCAP Contract Number: MMS15112

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

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

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

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

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

1 Term of Contract

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

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

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

2 Contracted Products

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

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

2.2 Product Availability

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.4 Pricing.

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

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

*Product Lines:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.11 ***Reserved.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 Audits

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

6.2 GSK Audit/Records Rights.

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

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

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

Without prior notice, MMCAP may release the following information:

a. Contract Release and contract documents to MMCAP Members and Participating Facilities;

b. Contract pricing to MMCAP's Authorized Wholesalers for use in the Authorized Wholesaler's ordering, invoicing, and reporting systems;

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

7 Government Data Practices and Intellectual Property

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

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

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

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

8 Publicity and Endorsement

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

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

9 Governing Law, Jurisdiction, and Venue

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

10 Antitrust

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

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

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

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

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

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

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

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

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

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

16.3 Additional Insurance Conditions:

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

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

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

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

19 Regulatory Reporting Requirements.

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

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

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

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

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

20 Anti-Bribery and Corruption

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

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

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

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

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

22.3 Minnesota Rules 5000.3400-5000.3600.

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

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

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

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

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

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

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

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

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

1. GLAXOSMITHKLINE LLC

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

By: _____

Title: VP, National Accounts

Date: 6/17/15

2. STATE OF MINNESOTA FOR MMCAP

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

By: Sandra Christense

Title: Pharmacy Analyst

Date: 6-25-15

3. COMMISSIONER OF ADMINISTRATION

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

By: _____

Title: _____

Date: _____

By: Dai Hoang, PharmD, MBA

Title: Pharmacist Senior

Date: June 25, 2015

MMS15112
Attachment B

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

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

GLAXOSMITHKLINE

GROUP PURCHASING ORGANIZATION MEMBERSHIP DECLARATION w/ SURVEY

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

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

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

FACILITY NAME _____

DEA # _____

ADDRESS _____

TELEPHONE _____ fax#: _____

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

PRIMARY WHOLESALER (NAME, CITY, STATE) _____

TYPE OF BUSINESS:

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

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

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

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

Is this facility for profit? YES NO

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

_____ _____
Printed Name Signature

_____ _____
Title Date

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

For Internal use Only:

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

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

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of **Minnesota Multistate Contracting Alliance for Pharmacy** ("MMCAP") and **Pfizer Inc.**, having a place of business at 235 East 42nd Street, New York, NY 10017 ("Vendor" or "Pfizer").

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

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

The Vendor wishes to contract with MMCAP to supply products to MMCAP Participating Facilities ("Members").

1 Term of Contract

1.1 Effective date: October 1, 2015, or the date MMCAP obtains all required signatures under Minnesota Statutes Section16C.05, subdivision 2, whichever is later.
1.2 Expiration date: June 30, 2019, or as cancelled pursuant to clause 19. The Contract may be extended upon mutual agreement of both parties.
1.3 Survival of Terms. The following clauses survive the expiration or cancellation of this Contract: 5. Liability; 6. State Audits; 7. Government Data Practices and Intellectual Property; 8. Publicity and Endorsement; 9. Governing Law, Jurisdiction, and Venue; and 15. Data Disclosure.

2 Contracted Pharmaceuticals

2.1 Products
2.1.1 The Vendor will supply the Products at the prices listed in Attachments A & A-1 (Products), which is attached and incorporated, to MMCAP Participating Facilities via MMCAP's Authorized Wholesalers. The MMCAP Authorized Wholesalers are: AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co., LLC. Vendor will notify MMCAP's Authorized Wholesalers of all Product and pricing identified in Attachments A. & A-1.
2.1.2 MMCAP reserves the right during the term of the Contract to award or dual award products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by MMCAP Authorized Wholesalers due to "pedigree law" requirements, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by MMCAP Participating Facilities, recall situations, product shortages, failure to supply situations, and in situations that are in the best interest of the MMCAP Participating Facilities.
2.1.3 Vendor must specifically authorize the addition of a product to the Agreement. Vendor reserves the right to remove any Product at any time from this Agreement, upon written, including electronic, notice.
2.1.4 If MMCAP fails to be in compliance with all terms and conditions set forth in this Agreement, MMCAP and/or its Members will not be eligible to purchase Products at the Prices set forth as of the date such noncompliance occurred until MMCAP has cured such noncompliance. Any difference between the Prices set forth

in this Agreement and the List Price of any Product purchased during such period of noncompliance shall be paid by the Member to Vendor.

2.1.5 Nothing in this Agreement shall be construed to limit or restrict Vendor's right to discontinue the manufacture, licensing, sale or distribution of any Product at any time. In such event, this Agreement, as it relates to such Product, shall terminate, at our option, contemporaneously with such discontinuance of manufacture, licensing, sale or distribution, and neither party shall have any obligation to the other for any period following such termination.

2.2 Product Availability

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

2.2.2 Vendor must establish and maintain chargeback agreement(s) with MMCAP's Authorized Wholesalers.

2.2.3 All sales must be through MMCAP's Authorized Wholesalers unless previously authorized in writing by MMCAP. Direct sales to MMCAP Participating Facilities without written authority may result in immediate termination of this Contract at the sole discretion of MMCAP.

2.2.4 Deleted in its entirety.

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

2.2.6 If the Vendor assigns, discontinues, or deletes a Product during the term of this Contract, Vendor will make commercially reasonable efforts to provide written notice to MMCAP at least 30 days prior to the assignment, discontinuance, or deletion.

2.3 FDA-Certified Drug Application. The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor warrants that as of the time Products are delivered to the relevant carrier for delivery, such Product under this Contract shall not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.

2.4 Pricing.

2.4.1 The Price of any Product is subject to change if the initial bid is submitted more than 60 days before the start of this Agreement. The Price is subject to change during the term of the Agreement upon notice to MMCAP. Notwithstanding any contrary provision in this Agreement, the aggregated discounts on any Unit of Product dispensed (combined with any other payment, discount, or guarantee on that Unit of Product) shall never exceed the lesser of (i) 23% of the List Price; or (ii) the minimum reimbursement required by the federal Medicaid statute (42 USC 1396r-8) in effect at that time.

2.4.2 Vendor must notify MMCAP's Authorized Wholesalers of approved price changes within 2 business days of notifying MMCAP.

2.4.3 Deleted in its entirety.

2.4.4 Chargebacks must be submitted within six (6) months of the contract transaction.

2.4.5 Vendor shall not be required to provide any duplicate discount to Member if Member has previously entered into a pharmaceutical purchasing agreement with Vendor or is a member of any other group purchasing organization that has entered into a pharmaceutical purchase agreement with Vendor. In the event that any duplicate discount or conflicting agreements exists, Vendor has sole discretion as to which purchasing agreement will be honored. Chargebacks will be processed based on how they are submitted by the Authorized Wholesaler. If Vendor receives multiple submissions, it will process the first one.

2.5 Failure to Supply Contracted Pharmaceuticals. Deleted in its entirety.

2.6 First Data Bank, Inc. All contracted prescription Products must have an 11-digit NDC code that Vendor will use commercially reasonable efforts to ensure is registered with First Data Bank, Inc., unless such designation is expressly waived by an MMCAP Authorized Representative.

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

2.7 Contract Changes.

2.7.1 *Product Offers and Amendments*. Vendor-generated product offers and notifications may be used as amendments to Attachment A & A-1 by submitting to MMCAP a letter on Vendor's letterhead with the following elements:

- Offer Date
- MMCAP Contract Number
- Action (e.g., addition, deletion, price change, NDC conversion)
- NDC Number
- Product Description
- Packaging
- Contract Price
- Pricing Type (fixed, non-fixed, floating List Price)
- Amendment Effective Date
- Signature of an individual authorized to bind Vendor's offer

If the product offer is accepted by MMCAP and is executed by Vendor as well as the authorized State of Minnesota representatives, the product offer letter will automatically amend Attachment A and/or A-1 of this Contract. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP will draft all amendments.

2.7.2 Vendor must send confirmation of fully executed Contract amendments to the MMCAP Authorized Wholesalers within 10 business days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Authorized Wholesalers do not receive Contract amendment notification(s), Vendor agrees to honor all chargebacks at the contract price from the date indicated on the fully executed Contract amendment.

2.8 MMCAP Participating Facilities.

2.8.1 The Vendor must allow new MMCAP Members joining MMCAP to be added to the MMCAP Membership List (password protected and published online at www.mmcap.org) and to access contract prices throughout the term of this Contract for the eligible facilities ("Eligible Participating Facilities") listed below. As new MMCAP Members are added to MMCAP, the Vendor will be given 30 days from date of notification to implement contract pricing. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Membership List has been posted online.

2.8.2 MMCAP reserves the right to add and delete MMCAP Members during the term of this Contract.

2.8.3 **Eligible Participating Facilities.**

2.8.3.1. Pricing is not offered by Vendor to the following classes of trade for Products listed on Attachment A.

a. Any 340B eligible City, County or State Hospital or Facility, and any of their affiliated sites registered to receive pricing for outpatient use of covered drugs under the 340B Drug Pricing Program administered by the Health Resource Services Administration, Office of Pharmacy Affairs as listed on the Office of Pharmacy Affairs ("OPA") website.

1. For clarity, 340B eligible hospitals are offered pricing for Products listed on Attachment A for Inpatient Use.
2. A 340B Inpatient Use hospital means a non- profit hospital as defined by the Veteran's Health Care Act, Section 602 and meets the eligibility requirements of 42 USC 256b(a)(4)(L) or (M) or (N) or (O) and is registered to receive pricing for outpatient use of covered drugs under the 340B Drug Pricing Program as listed on the OPA website. Examples of 340B Inpatient Use Hospitals are Disproportionate Share (DSH), Children's (PED), Free Standing Cancer (CAN) and Sole Community (SC) hospitals as well as Rural Referral Centers (RRC).
3. In no event shall a 340B Inpatient Use Hospital utilize Product purchased under this Agreement for outpatient use.

b. Any US Federal Government agency or department or Other Government entity customers which have notified Vendor as eligible to purchase from Federal Supply Schedule (FSS) contracts, except state veterans homes receiving funding under 38 U.S.C. 1741.

c. Veterinary clinics or Veterinary doctors or Veterinary distributors that purchase product for resale to dispensing veterinary clinics or veterinary doctors are not eligible.

d. Any MMCAP participating facilities or members which do not meet vendor's eligibility criteria and standards for other trade classes, as determined by Vendor, are not eligible. (For example, vendor requires hospitals to be state-licensed and appear in recognized published directories for contract eligibility.)

2.8.3.2 Pricing is only offered by Vendor to the following classes of trade for the Products listed on Attachment A-1.

a. "City, County or State Facilities and 340B Eligible Non-Hospital Facilities", are owned, funded or operated by city, county or state governments, which provide ambulatory medical care to patients. Examples of types of facilities included are health departments and centers, healthcare delivery sites within detention or correctional facilities, and public higher education facilities. City, County or State facilities listed on the Office of Pharmacy Affairs ("OPA") website as eligible non-hospital 340B covered entity types are also included.

b. "Student Health Clinics" means a College or University-funded student health clinic. An eligible facility may dispense product only to university students, and not the general public.

c. "Dispensing Physician" means a physician who purchases vaccines for the purpose of administration to patients.

d. "Clinics" means a clinic that is a group of one or more physicians maintaining a licensed pharmacy on the premises operated by a registered pharmacist whose sole function is to dispense to the patients of the clinic. If the pharmacy is open to the general public, regardless of ownership, it must be coded as a retail pharmacy, and is not eligible to purchase Covered Product under this Agreement.

2.8.3.4 If Vendor maintains class of trade restrictions, electronic eligibility lists must be sent to MMCAP upon request.

2.8.3.5 Deleted in its entirety.

2.9 Deleted in its entirety.

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

2.11 Value-Added Programs. Deleted in its entirety.

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

2.13 Product Use. All items acquired by MMCAP Participating Facilities under this Contract are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise. Members will acknowledge that any and all Products purchased under this agreement, directly or indirectly, are sold to Members for their "own use" and no Products purchased hereunder may be commercially resold to any other entity or person. Vendor reserves the right to audit MMCAP's records to ensure compliance with this provision.

2.14 Product Dating. Deleted in its entirety.

2.15 Direct Marketing, Advertising, and Offers with Member Facilities. Vendor will use commercially reasonable efforts to advise of direct offers with MMCAP Participating Facilities for on- or off- contact products and must be approved by MMCAP. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

2.16 *Customer Service.*

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

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review as described in 2.16.2 at the request of MMCAP.

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

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

2.17 *Dispute Resolution* Vendor and MMCAP will handle dispute resolution for unresolved contract eligibility issues using the following procedure:

2.17.1 *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. And if necessary, MMCAP and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

2.17.2 *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The Vendor will have 60 calendar days to cure the issue.

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

2.17.4 *MMCAP Rights.* In the event MMCAP cannot resolve a dispute with the Vendor, MMCAP may cancel this Contract upon 60 days' written notice to the other party.

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

3 Authorized Representatives. MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155. The Vendor's Authorized Representative is the Vice President, US Contract Strategy and Management.

4 Assignment, Amendments, Waiver, and Contract Complete

4.1 *Assignment.* Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement, except Vendor may, without such consent, assign its rights and obligations under this Agreement to any Affiliate, provided such interest shall be transferred back to Vendor if such entity ceases to be an Affiliate of Vendor, and provided further that Vendor shall guarantee the performance of such Affiliate. In the event of such assignment Vendor will provide MMCAP with notice.

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

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

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

5 Liability. The Vendor must indemnify, save, and hold MMCAP, MMCAP Participating Facilities, including their agents, and employees (the "Indemnitees") harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of Product so long as (a) the product and components were properly stored and handled; (b) there is not evidence an Indemnitee was involved or engaged in any negligent or illegal act or omission; (c) Pfizer is promptly notified by an Indemnitee of any clams or lawsuits involving a Product and full cooperation is provided to Vendor by Indemnitees in the defense of the claim or lawsuit, including the opportunity to control the defense; (d) there is not breach by an Indemnity of an express or implied warranty owed by Indemnity to Pfizer or a third party ; and (e) the claim does not involve Product sold or transferred by an Indemnitee after

notice has been given that said Product should not be sold or transferred for any reason, including but not limited to recalls, seizures or any governmental activities. This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify the Vendor.

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

6.1 Audits by Vendor.

6.1.1.MMCAP's Obligation. During the Term of this Agreement and for the three (3) years subsequent to the Term (unless a longer period is required under law), MMCAP shall maintain copies of pharmacy and Eligible Facility records related to this Agreement. No patient identifiable data will be made available to Vendor.

6.1.2. Vendor's Rights. Vendor has the right to audit or request information related to the Agreement or related to the distribution and use of Products at any time. If Vendor determines through an audit or otherwise any payment discrepancies that any ineligible facilities received Product under this Agreement, the remedies described below shall apply:

6.1.2.a. If Vendor discovers that payments have been made and/or discounts have been provided to MMCAP in error, Vendor may at its option, deduct the payments made from future payments to MMCAP.

6.1.2.b. For any facility that is not an Eligible Facility defined in Section 2.8, Vendor may seek a refund of any difference between the Price and List Price as of the date of sale of any Product purchased while the facility was ineligible or non-compliant within sixty (60) days following such determination that such facility is not an Eligible Facility. Vendor is solely responsible for discount eligibility.

7 Government Data Practices and Intellectual Property

7.1. *Government Data Practices.* The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Vendor or MMCAP. The Parties hereby agree that MMCAP, MMCAP Participating Facilities, including their agents, and employees will not provide Pfizer with Data on Individuals as that term is defined in Section 13.02, Subsection 5.

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

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

8 Publicity and Endorsement

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

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

8.3 Use of Names. Neither party shall use any patented, tradenamed, trademarked, or copyrighted material or property belonging to the other party, except as expressly permitted by this Agreement or otherwise in writing by the other party.

9 Governing Law, Jurisdiction, and Venue. Deleted in its entirety.

10 Antitrust. Deleted in its entirety.

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

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

13 Default and Remedies. Deleted in its entirety.

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

15 Data Disclosure. Deleted in its entirety.

16 Insurance Requirement's.

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

16.2 Vendor is required to maintain and furnish satisfactory evidence of the following insurance (or self insure):

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

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

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

16.3 Additional Insurance Conditions:

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract; to the extent of Vendor's negligence or culpability;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will notify MMCAP 30 business days prior to cancellation;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and

- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.

16.4 MMCAP reserves the right to immediately terminate the Contract if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor.

17 Laws and Regulations

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

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

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

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

18.3 *Minnesota Rules 5000.3400-5000.3600.*

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

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

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

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

(3) In the event of Vendor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with

Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

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

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

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

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

18.4 Vendor Compliance. Vendor represents and warrants that is in compliance with relevant federal affirmative action requirements as applicable. The Parties hereby agree that this representation and warranty by Vendor is in satisfaction of Vendor's obligations under Article 18 of this Agreement.

19 Cancelation and Termination for Cause.

19.1 *Cancellation.* MMCAP or the Vendor may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment, determined in a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date.

19.2 *Termination for cause.* Unless otherwise specified below, either party may immediately terminate this Agreement:

a. If the other party breaches any of its obligations under this Agreement and fails to cure such breach within 30 days after the non-breaching party gives written notice of such breach; or

b. If this Agreement, or any performance by the other party under it, fails to comply with all relevant laws, rules and regulations (including, but not limited to, 42 U.S.C. Section 1320a-7b(b), and 42 C.F.R. Section 1001.951 et. al, as the same may be amended, supplemented or replaced) and similar state laws; or

c. If the other party is found guilty of fraud or a felony; or

d. If the other party becomes insolvent or bankrupt, or has a receiver appointed for its assets; or

e. If after the full execution of this Agreement, changes in any applicable law or regulation materially frustrate the original intent of the parties, but after negotiating in good faith for a period of at least sixty (60) days, the parties cannot agree on an amendment to this Agreement that would reflect the parties' original intent.

20 Changes in Law. Unless otherwise specified below, either party may immediately terminate this Agreement if after the full execution of this Agreement, changes in any applicable law or regulation materially frustrate the original intent of the parties, but after negotiating in good faith for a period of at least thirty (30) days, the parties cannot agree on an amendment to this Agreement that would reflect the parties' original intent.

21 Confidentiality. Vendor and MMCAP agree to maintain the confidentiality of any confidential information of the other party, including any confidential pricing, marketing or product information, this Agreement and corresponding attachments, and any other non-public information or documents provided by one party to the other (collectively, "Confidential Information") during the term of the Agreement and three (3) years thereafter unless disclosure is required by law, is necessary to carry out or enforce this Agreement, or the receiving party obtains the written consent from the disclosing party for its release. Notwithstanding the preceding language, the Parties recognize that MMCAP may be subject to "open records or freedom of information" laws and, accordingly, MMCAP will use commercially reasonable efforts to not communicate pricing or terms directly to pharmaceutical manufacturers or group purchasing organizations.

22 Disclosure.

22.1 The Parties will comply with the requirements of all applicable federal and state laws, including the federal health care programs anti-kickback statute (42 U.S.C. § 1320a-7b(b)) and regulations promulgated thereunder (42 C.F.R. § 1001.952).

22.2 The Parties agree that it is not their intent that any payments made under this Agreement be in return for the purchasing or ordering of any goods services other than the specific products described in this Agreement.

22.3 MMCAP represents and warrants that MMCAP satisfies and will continue to satisfy the requirements of 42 U.S.C. §1320a-7b(b)(3)(C) and 42 C.F.R. § 1001.952(j), including that: (1) MMCAP is acting as a "group purchasing organization" as defined in 42 C.F.R. § 1001.952(j); (2) MMCAP, if eligible for an administrative fee under an agreement with a vendor, maintains and will continue to maintain written agreements with each of its Members that, (i) state that vendors will pay an administrative fee to MMCAP of three percent (3%) or less of the purchase price of the goods provided by such vendors to MMCAP Members or (ii) specify the amount or the maximum amount MMCAP will be paid by each vendor (either as a fixed amount or fixed percentage of the purchase price of the goods provided by such vendors to MMCAP Members); and (3) MMCAP will disclose in writing at least annually to each MMCAP Member, and to the Secretary of Health and Human Services upon request, the amount received from Manufacturer with respect to sales of products covered under this Agreement to such MMCAP Member. MMCAP acknowledges that the prices made available under this Agreement to MMCAP Members include discounts that must be properly and accurately accounted for and reported by Members in accordance with all federal and state laws, including the anti-kickback law (42 C.F.R. § 1320a-7b(b)(3)(A)) and regulations thereunder (42 C.F.R. §1001.952(h)). MMCAP will advise each MMCAP Member of its obligations thereunder.

1. PFIZER INC.

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

By: _____

Title: VP, USCSM

Date: 9/18/15

By: _____

Title: _____

Date: _____

2. STATE OF MINNESOTA FOR MMCAP

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

By: Lisa VanderPlaats, CMT

Title: SPA-P

Date: 9/16/2015

3. COMMISSIONER OF ADMINISTRATION

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

By: Sara Turnbow, PharmD, BCPS

Title: Pharmacist Sr.

Date: 9-16-15

VACCINATION AND PHARMACEUTICAL FUNDING

	Joinder Contract Amounts	Current Available Funding
General Fund - Health Dept Restricted Funds		
101-6852-441-03-50	$ 35,000	$ 87,791
101-6852-441-06-97	175,500	251,495
Grant Fund		
275-6830-441-06-25	16,000	16,000
275-6830-441-06-97	32,000	32,000
275-6831-441-12-31	103,000	246,478
275-6866-441-06-25	71,000	107,250
TOTAL	$ 432,500	$ 741,014

FY 16 EXPENDITURES BY VENDOR

Sanofi Pasteur	$ 117,924
Merck Sharp & Dohme	81,351
Cardinal Health	44,635
GlaxoSmithKline	59,544
Pfizer	46,972
	$ 350,426