

STATE OF MICHIGAN  
 DEPARTMENT OF MANAGEMENT AND BUDGET  
 PURCHASING OPERATIONS  
 P.O. BOX 30026, LANSING, MI 48909  
 OR  
 530 W. ALLEGAN, LANSING, MI 48933

February 26, 2010

NOTICE  
 OF  
 CONTRACT NO. 071B0200153  
 between  
 THE STATE OF MICHIGAN  
 and

NAME & ADDRESS OF CONTRACTOR  <b>ASD Healthcare</b> <b>4006 Beltline Rd, Ste 200</b> <b>Addison, TX 75001</b>  allison.andrea@asdhealthcare.com	TELEPHONE (800) 746-6273 x6563 Allison Andrea
	BUYER/CA (517) 241-0684 <b>Brian Kloeckner</b>
	CONTRACT COMPLIANCE INSPECTOR: Brian Kloeckner <b>Influenza Vaccine, Flulaval, Afluria, FluMist – Statewide usage for 2010/2011</b>
CONTRACT PERIOD: From: <b>February 26, 2010</b> To: <b>May 1, 2011</b>	
TERMS <b>Net 30 days</b>	SHIPMENT <b>As specified</b>
F.O.B. <b>N/A</b>	SHIPPED FROM <b>N/A</b>
MINIMUM DELIVERY REQUIREMENTS <b>N/A</b>	

The terms and conditions of this Contract are those of Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP)'s Contract # MMS29091. This Contract is between MMCAP and ASD Healthcare. In the event of any conflicts between the specifications, terms and conditions indicated by MMCAP and those indicated by the vendor, those of MMCAP take precedence.

Attachments:

- **MMCAP Contract # MMS29091**

ESTIMATED ONE (1) YEAR/SEASON CONTRACT COST: **\$24,000.00**

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR  
PHARMACY  
INFLUENZA VACCINE**

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 **ASD Specialty Healthcare, Inc.**, 3101 Gaylord Parkway, Frisco, TX 75034 ("Vendor").

Under Minn. Stat. § 16C.03, the Commissioner of Administration on behalf of MMCAP is empowered to engage such assistance as deemed necessary.

MMCAP is a group purchasing organization of government-run health care facilities which 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, cities, townships, and counties.

The Vendor wishes to contract with MMCAP to supply products awarded through the MMCAP request for proposals process.

**Contract**

**1. Term of Contract**

**1.1 Effective date:** December 1, 2009, or the date the MMCAP obtains all required signatures under Minn. Stat. §16C.05, subd. 2, whichever is later.

**1.2 Expiration date:** May 1, 2011, or as cancelled pursuant to clause 21.

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

**2. Contracted Vaccine**

**2.1 Products.**

<b>Manuf. Name</b>	<b>Product Name</b>	<b>Container Type</b>	<b>Pack Size</b>	<b>Price Per Container</b> (Prices do not include FET)	<b>Florida Cost</b> (Prices do not include FET)	<b>Georgia Cost</b> (Prices do not include FET)	<b>Max. Quantity to MMCAP</b>
Med-Immune	FluMist	Sprayer	Pack of 10	149.50	151.00	152.49	1 (one) million doses
Novartis Vaccines	Fluvirin	0.5 mL prefilled syringes	Pack of 10	120.00	121.20	122.40	
Novartis Vaccines	Fluvirin	5 mL MD vial	10 dose	105.00	106.05	107.10	
Sanofi Pasteur	Fluzone	5 ml MD vial; 6 months of age and older	10 dose	121.25	122.46	123.68	50,000 doses

Sanofi Pasteur	Fluzone, No Preservative	36 months of age and older; prefilled syringe	Pack of 10	139.00	140.39	141.78	100,000 doses
Sanofi Pasteur	Fluzone, No Preservative: Pediatric Dose	6 months to 35 months of age; prefilled syringe	Pack of 10	139.00	140.39	141.78	100,000 doses

Vendor will not charge a fee for members using credit or P-cards.

**2.2 Prebooking** MMCAP members may pre-book immediately upon execution of this Agreement through May 1, 2010, or when the number of vials allotted to MMCAP is pre-booked, whichever is earlier. For a MMCAP member that pre-booked prior to the execution of this Agreement, Vendor will honor the MMCAP contracted pricing stated in this Agreement; provided that such member notifies Vendor that it will be purchasing its vials under this Agreement (rather than under another agreement with a group purchasing organization or other third party). Flu Vaccines may be ordered online, by phone or by fax:

- Live: 1-866-281-4FLU(4358)
- Monday - Friday 7 a.m. to 6 p.m., Central Time.
- On-line: [www.asdhealthcare.com](http://www.asdhealthcare.com)
- Fax: 1-800-547-9413

Facilities that did not order last year will be required to complete a business application if an existing account is not set up or has been inactive for greater than one year. Orders may be modified or cancelled by ordering facility until August 1, 2010, and thereafter in accordance with the schedule set forth below.

**2.3 Delivery** Vendor will offer its **FluFirst Program** to MMCAP members as follows:

- **Early Pre-Booking:** 25% of a member's pre-booked orders will be filled based on order of receipt. The remaining 75% of a member's pre-booked order will be filled based on availability from manufacturers.
- **Price Protection:** Vendor will provide members with price protection on their pre-booked orders for Flu Vaccines with Vendor. Price protection is guaranteed for 15 days after Flu Vaccines is shipped to a member, until October 15, 2010. Vendor will provide credits for reductions in price from its published prices for Flu Vaccines.
- **Returns:** A member may return up to 25% of its Flu Vaccine orders of multi-dose vials, subject to compliance with the requirements of the Prescription Drug Marketing Act (including maintenance of product integrity) and Vendor's return policy. The member must pay return freight, and all Flu Vaccines must be returned by November 10, 2010, to be eligible for credit. Pre-filled syringes are not returnable.

Based on the potential volatility in the Flu Vaccine market and manufacturers' inability to provide a guarantee to supply provision to Vendor, MMCAP acknowledges that Vendor does not guarantee any supply of Flu Vaccines to purchasers or the presentation of Flu Vaccines that will be available. Neither Vendor nor any of its affiliates guarantee any specific delivery date or quantity of Flu Vaccines to any purchaser. Vendor ships Flu Vaccines based on availability from manufacturers. Neither Vendor nor any of its affiliates will be liable for any delays or product shortages. In no event shall Vendor be liable to purchasers for incidental, special, or consequential damages (including lost profits) from any cause, including without limitation, damages resulting from any unavailability or delays in shipments of, or defects in, Flu Vaccines. If vaccine supply is limited through no fault of Vendor and is inadequate to meet demand, Vendor will work in conjunction with MMCAP to obtain alternative supply

**2.4 First DataBank, Inc.** All contracted products must be included in the database of First DataBank, Inc., unless such designation is expressly waived by an MMCAP authorized representative.

**2.5 Contract Changes.** The Vendor must send confirmation of fully executed contract amendments to the MMCAP distributor network within 10 working days of the time that documentation of the change is received by the Vendor from MMCAP.

**2.6 MMCAP Participating Facilities.** The Vendor must allow qualified new state agencies and political subdivisions joining MMCAP to be added to the current participants' list and access contract prices throughout the term of this contract. Some Participating Entities statutorily permit non-profit facilities to access the Participating Entity's contracts, thus permitting MMCAP membership. The MMCAP membership list distinguishes these facilities. As new facilities are added to MMCAP, the Vendor will be given 30 days, from date of notification, to implement coverage for the newly participating facility. MMCAP reserves the right to add and delete other members, state and political subdivision facilities, during the life of this contract; however, Vendor retains the right to determine which MMCAP members may receive its pricing.

Members will be required to complete Vendor's business application if an existing account is not set up or has been inactive for greater than one year. All purchasers are required to abide by conditions as presented in the Terms and Conditions of the business application. The business applications covers, terms, payment, credits and returns, orders and shipping, the Prescription Drug Marketing Agreement (PDMA) guidelines, and licensure requirements. Vendor will not hold shipments or limit orders so long as MMCAP participants are in compliance with these terms and conditions as outlined within the business application and/or current policy.

**2.6.1 Communication.** The Vendor or Authorized Representative will communicate all mass mailings/fax with the MMCAP Office prior to distribution to the MMCAP Participating Facilities.

**2.7 Reports.**

**2.7.1** Vendor must supply MMCAP with automatic monthly updates during prebooking and delivery. The monthly reports must include the following data and be sorted by state, city and customer name (in that order):

- Customer Name
- Customer Number
- Order Number
- Bill to Address
- Bill to City
- Bill to State
- NDC
- Product Name
- Pack Size
- Contract Price
- Quantity Ordered (in packs)
- Quantity Shipped
- Extended Price (Quantity \* Price)
- Ship Date
- Tracking Number

Within 30 days of Vendor's final shipment, Vendor must submit to MMCAP a final sales report to Mn.MMCAP@state.mn.us. The report must be in an Excel spreadsheet per the format in Attachment A, which is attached and incorporated.

**2.7.2** Distributor(s) must be able to supply to the MMCAP Office accurate monthly sales data on or before the 10th day of the second subsequent month (e.g., June's data will be due July 10). This data MUST include the following for every transaction between the distributor and the MMCAP Facility:

Required Data Field Full Name
MMCAP-assigned facility ID
MMCAP Facility Name
Blank Field
Vendor-assigned Account number for the MMCAP Facility
Invoice Number
Invoice Line Number
Purchase Order Number
Invoice date (mmddccyy)
Buyer name or equivalent of buyer ID for person submitting the invoices
Vendor's (distributor) SKU item number
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.
Label Name
Unit Dose
Pack Size
Unit
Case Size
Dose
Strength
Route
Unit Price (99999.9999)
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
Bill to Address 1
Bill to City
Bill to State (2 alpha postal code)
Bill to Zip (standard 5-4 format, no dash necessary)
Ship to Address 1
Ship to City
Ship to State (2 alpha postal code)
Ship to Zip (standard 5-4 format, no dash necessary)
Service Fee (9999.9999)
MMCAP Contract Number (MMSxxxxx)
Admin fee for not-on-contract items (9999.9999)
Credit Indicator (C for credit)
Blank Field
Manufacture Name (MFG Name)
Blank Field
Blank Field

Monthly Usage Report - Fixed Length Fields

Required Data Field Full Name	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP_id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP_Name	Alpha Numeric		30	1	8	37
Vendor Distribution Center Code	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	InvoiceDate	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack_Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case_Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocity	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiptoaddress1	Alpha Numeric		30	1	330	359
Ship to City	shiptocity	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiptostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiptozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxxx)	contractnumber	Alpha Numeric		10	1	400	409
Admin fee for not-on-contract items (9999.9999)	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
MMCAP Assigned Wholesaler Code (AmeriSource-Bergen=0401, Cardinal Health=0301, Morris-Dickson=0701)	WholeCode	Alpha Numeric		4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade	ClassofTrade	Alpha Numeric		4	1	464	467
340b Purchase	340b	Alpha Numeric		1	1	468	468

**2.7.3 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). Within 30 days of completion of all influenza deliveries, Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to three (3) percent of MMCAP Participating Facilities' purchases for all products covered by this contract. MMCAP reserves the right to collect interest on past due payments at a rate of 18% annually, consistent with Minn. Stat. § 16A.124.

Vendor will pay Administrative fees on the following schedule:

- Initial delivery – December 31, 2010; payment by February 15, 2011;
- Deliveries from January 1, 2011 – June 30, 2011, payment by July 31, 2011.

The parties acknowledge that certain manufacturers of Flu Vaccines may enter into agreements with MMCAP to pay administrative fees directly to MMCAP with respect to the sales of the manufacturer's brand of Flu Vaccines to members. In such event, all administrative fees will be paid by the manufacturer and Vendor will not pay administrative fees to MMCAP on account of such sales.

**2.8 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.

**2.9 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.

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

#### **2.11 State Specific Requirements**

##### **2.11.1 STATE OF NEW YORK**

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

Jason Wilkie, Purchasing Officer  
 New York State Office of General Services  
 Division of Purchasing  
 Esp Tower Bldg 37th Floor  
 Albany, NY 12242  
 Phone: 518.474.4723  
 Email: jason.wilkie@ogs.state.ny.us

##### **2.11.2 STATE OF FLORIDA**

As referenced in 2. above, Vendors wishing to do business directly with the State of Florida may be required by Florida to comply with the provision set-forth below. Please indicate in your proposal if you agree to comply with the provision set forth below. Vendor agrees to comply with such provisions; as set forth above, the prices of all Flu Vaccines under this Agreement for sale to the State of Florida are one percent (1%) higher than standard MMCAP prices. If so, this provision will be included as an incorporated contract provision:

#### **1. Vendor Registration**

Each vendor doing business with the State for the sale of commodities or contractual services as defined in Section 287.012, F.S., shall register in the MyFloridaMarketPlace system, unless exempted under subsection 60A-1.030(3), F.A.C. Also, an agency shall not enter into an agreement for the sale of commodities or contractual services as defined in Section 287.012 F.S. with any vendor not registered in the MyFloridaMarketplace system, unless exempted by rule.

A vendor not currently registered in the MyFloridaMarketPlace system shall do so within 5 days after posting of intent to award. Information about the registration is available, and registration may be completed, at the MyFloridaMarketPlace website (link under Business on the State portal at

<http://www.myflorida.com>). Those lacking internet access may request assistance from the MyFloridaMarketPlace Customer Service at 866-352-3776 or from State Purchasing, 4050 Esplanade Drive, Suite 300, Tallahassee, Florida 32399.

For vendors located outside of the United States, please contact Vendor Registration Customer Service at 866-352-3776 (8 a.m. - 5:30 p.m. Eastern Time) to register.

## 2. Transaction Fee

The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057(23), Florida Statutes (2002), all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering procurement costs from the Contractor in addition to all outstanding fees.

**CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES SHALL BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.**

### 2.11.3 STATE OF GEORGIA

**ADMINISTRATIVE FEE AND QUARTERLY SALES REPORTING.** Pursuant to H.B. 312 and Official Code of Georgia Annotated Section 50-5-51 (10), DOAS has the authority to collect moneys, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to Code Section 50-5-57. Pursuant to this authority, DOAS has identified certain statewide contracts which will include administrative fees, which are "pass through" fees paid by the state customer in addition to the cost of the vendor's goods or services. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new statewide contracts, training, and technology. Pursuant to this Amendment, DOAS hereby imposes an administrative fee on this Statewide Contract, as defined below:

ADMINISTRATIVE FEE	
<b>Administrative Fee Percentage:</b>	Two Percent (2%)
<b>Effective Date:</b>	January 1, 2009

By executing this Agreement, the parties agree that the administrative fee identified in the table above has been included in new contract pricing, which new contract pricing has been approved by DOAS and will become effective upon the Effective Date identified in the Administrative Fee Table above. The administrative fee (hereinafter, "the Fee") will be collected by Contractor on all sales pursuant to this Statewide Contract placed on or after the "Effective Date" defined in the Administrative Fee Table. The Fee shall be remitted by Contractor to DOAS as further described below.

- a. Quarterly Payment and Sales Reporting Requirements. The parties agree that the collected Fees and the corresponding Quarterly Sales Report, which identifies the total sales pursuant to this Statewide Contract for the corresponding fiscal quarter, shall be submitted by Contractor to DOAS. The total sales reported in the Quarterly Sales Report should be limited to sales in which the Contractor has received payment from the state customer. The Fees and the Quarterly Sales Report must be received by DOAS on or before the Contractor's Payment Due Date as defined in the table below:

DOAS' Fiscal Quarters	Months	Contractor's Payment Due Date
Quarter 1	July 1 <sup>st</sup> – September 30 <sup>th</sup>	<u>November 15<sup>th</sup></u>
Quarter 2	October 1 <sup>st</sup> – December 31 <sup>st</sup>	<u>February 15<sup>th</sup></u>
Quarter 3	January 1 <sup>st</sup> – March 31 <sup>st</sup>	<u>May 15<sup>th</sup></u>
Quarter 4	April 1 <sup>st</sup> – June 30 <sup>th</sup>	<u>August 15<sup>th</sup></u>
-----	-----	<u>30 calendar days following the termination of this Statewide Contract for any reason</u>

- b. The Quarterly Sales Report must be in Excel spreadsheet format and must contain the following fields: Vendor Part Number/SKU, Item Description, Customer Name, NIGP Code, Unit of Measure (Packaging), Volume Quantity, Order Date, Date Delivered, List Price, Contract Price, Total Contract Spend, Total Admin Fee Owed Off Contract Price.

- c. At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report. In the event no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating no sales have occurred. No later than the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, Contractor shall remit a check payable to DOAS for the Fees, which check shall include the note "administrative fee" and the contract number. Contractor shall remit the check together with the Quarterly Sales Report to:

Department of Administrative Services  
**Finance & Administration Division**  
 Finance and Administration Division Director  
 Sloppy Floyd Building  
 200 Piedmont Avenue, S.E.  
 Suite 1820, West Tower  
 Atlanta, Georgia 30334-9010

At the same time, Contractor shall also submit a second copy of the Quarterly Sales Report to the DOAS Issuing Officer. By submission of these reports and corresponding Contractor payments, Contractor is certifying their correctness. DOAS, at its sole discretion, may also accept payment of Fees from the Contractor via electronic funds transfer (EFT).

- d. Auditing and Contract Close Out. All sales reports and Fee payments shall be subject to audit by the State. Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit,

whichever is later. Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

In no event shall Contractor retain any amount of money in excess of the compensation to which Contractor is entitled and all Fees owed DOAS shall be paid within thirty (30) calendar days of termination of this Statewide Contract for any reason.

e. Modifying or Canceling the Fee. DOAS reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend the Statewide Contract pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

f. Late Payment Fee. In the event DOAS does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree the Contractor must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

$$\begin{aligned} &(\text{Administrative Fee Amount Due}) \times (18\%) = X \\ &X / 365 \text{ (366 for leap years)} = Y \\ &Y \times (\text{Number of Days Payment is Late}) = \text{Interest Owed} \end{aligned}$$

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting DOAS in writing of the Contractor's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund the overpayment amount to the Contractor no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment. DOAS will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.

g. Default. **THE PARTIES AGREE THE CONTRACTOR'S RESPONSIBILITY TO COLLECT AND REMIT THE ADMINISTRATIVE FEE ON BEHALF OF DOAS IS A SERIOUS RESPONSIBILITY AS THE CONTRACTOR IS HANDLING STATE FUNDS.** Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring Contractor in default and recovering procurement costs from Contractor in addition to all outstanding Fees and interest.

#### 2.11.4 ALL OTHER STATES

In the event any other state requires additional contract terms or conditions or collects a service or transaction fee or other type of administrative fee from the Vendor, those terms and conditions or fees must be amended into the MMCAP contract. For example, if a Member state requires a one percent (1%) service fee to be paid by the MMCAP-contracted Vendor, the Vendor must present the information to MMCAP and an amendment to the contract will be issued that will change the cost of the products to that state to include the 1% fee.

3. **Authorized Representatives.** MMCAP's Authorized Representative is the MMCAP Manager, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155 (MMCAP Manager). The Vendor's Authorized Representative is Steve Kair, 3101 Gaylord Parkway, Frisco, TX 75034

#### **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.**

**4.2.1** 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. As required by State of Minnesota policy, amendments will be drafted by MMCAP.

**4.2.2** Member states may prepare a Participating Addendum to this contract, if required. Participating Addendum is an instrument that may be used in limited circumstances where the standard MMCAP contract terms and conditions do not include provision(s) required by the laws of the member state or when the standard MMCAP contract terms and conditions conflict with the laws of the member state. If these circumstances exist, a member state may prepare a Participating Addendum to set forth additional or altered terms and conditions agreeable to the member state, the Vendor, and MMCAP. The Participating Addendum applies only to the relationship between the state initiating the addendum and the Vendor. A Participating Addendum does not affect the rights of the other states or the obligation of the Vendor to the other states. The member state is responsible for creating and negotiating any Participating Addendum and must notify the MMCAP Authorized Representative and provide a copy of the Participating Addendum for approval prior to its execution.

**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, its agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the performance of this contract by the Vendor or the Vendor's agents or employees. 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 § 1, MMCAP is not permitted to indemnify the Vendor.

**6. State Audits.** Minn. Stat. § 16C.05, subd. 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. Any audit will be done with reasonable prior written notice, during normal business hours, at MMCAP's expense.

#### **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, Minn. Stat. Ch. 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 Minn. Stat. § 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. MMCAP will give the Vendor instructions concerning the release of the data to the requesting party before the data is released.

**7.2. Intellectual Property Indemnification.** Deleted in its entirety.

#### **8. Publicity and Endorsement**

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

**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 Agreement are clearly inconsistent therewith, this contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this contract entails delivery or performance of services, such services shall be deemed “goods” within the meaning of the UCC except when to do so is unreasonable.

**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 agreement 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 product release by the United States Food and Drug Administration, 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.** 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;
- (b) Terminate the contract or any portion thereof, including any orders issued against the contract; or
- (c) Impose liquidated damages, as specified in the solicitation or 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 that are applicable to a distributor. Vendor certifies that it has not adulterated or misbranded any products to be delivered pursuant to this agreement, within the meaning of the Food, Drug, and Cosmetic Act or any regulation of the Food and Drug Administration or the Minnesota State Board of Pharmacy. The foregoing sentence overrides Section 1(D) of the MMCAP Influenza Vaccine Proposal Response Sheet executed by Vendor. Vendor maintains appropriate state & federal licensure for all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

MMCAP acknowledges that Vendor is not the manufacturer of any influenza vaccines. Vendor shall assign to purchasers, to the extent permitted by the manufacturer, any manufacturers’ warranties and indemnities applicable to influenza vaccines, and that Vendor disclaims all warranties express and implied, including warranties those of merchantability, non-infringement and fitness for a particular purpose, of the influenza vaccines.

**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 will comply with the insurance requirements of MMCAP's contracted distributors. In the event Vendor solely sells its products to MMCAP member facilities, it is required to maintain the following insurance:

**16.1** Vendor will not commence work under the contract until it has obtained all the insurance described below. Vendor shall maintain such insurance in force and effect throughout the term of the contract. Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:

**Commercial General Liability:** Vendor is required to 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** amounts are as follows:

\$5,000,000 – per occurrence

\$5,000,000 – annual aggregate

\$5,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Vendor's insurance is described at:

<http://www.marsh.com/MarshPortal/PortalMain?PID=AppMoiFAQ-Terms&CLIENT=900001146>.

**16.2** Vendor will be required to:

- Vendor will provide the MMCAP with thirty (30) days' advance notice of cancellation, nonrenewal, or reduction in limits of coverage or other material change;
- 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; and
- Obtain insurance policies from an insurance company having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better and must be authorized to do business in the State of Minnesota.

**16.3** 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 the MMCAP's authorized representative upon written request.

The successful responder is required to submit acceptable evidence of insurance coverage requirements prior to commencing work under the contract.

### **17. Minn. Stat. § 181.59**

The vendor will comply with the provisions of Minn. Stat. § 181.59 which requires:

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

**18. Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Contractor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business**

The State intends to carry out its responsibility for requiring affirmative action by its Contractors.

**18.1 Covered Contracts and Contractors.** If the Contract exceeds \$100,000 and the contractor 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 the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**18.2 Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor 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 Minn. R. 5000.3400-5000.3600.**

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

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

The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor 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.

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

In the event of the Contractor's noncompliance with the requirements of this clause, 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.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contractor'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.

The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor 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 the Contractor'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.

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

**19. Foreign Outsourcing**

Contractor agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form (Attachment A) submitted with its proposal are true, accurate and incorporated into this contract by reference.

**20. Employee Status**

By order of the Governor's Executive Order 08-01, if this contract, including any extension options, is or could be in excess of \$50,000, Contractor certifies that it and its subcontractors:

**A.** Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and

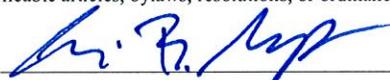
**B.** By the date of the performance of services under this contract, Contractor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

Contractor shall obtain certifications of compliance with this section from all subcontractors who will participate in the performance of this contract. Subcontractor certifications shall be maintained by Contractor and made available to the state upon request. If Contractor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the contract, the state reserves the right to determine what action it may take including but not limited to, cancelling the contract and/or suspending or debaring the contractor from state purchasing.

**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, determined in a pro rata basis, for work or services satisfactorily performed or products supplied through the contract cancellation date.

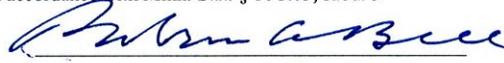
**1. ASD Specialty Healthcare, Inc.**

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: C.O.O.  
Date: 12-4-09

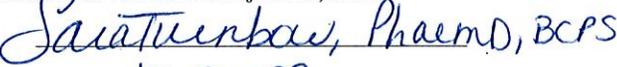
**2. STATE OF MINNESOTA FOR MMCAP**

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

By:   
Title: AMS  
Date: 12-08-2009

**3. COMMISSIONER OF ADMINISTRATION**

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

By:   
Date: 12-8-09