



**STATE OF MICHIGAN PROCUREMENT**  
 Department of Technology, Management, and Budget –  
 Central Procurement  
 525 W. Allegan St, Lansing, MI 48933  
 P.O. Box 30026, Lansing, MI 48909

**NOTICE OF CONTRACT**

NOTICE OF CONTRACT NO. **19000000355**  
 between  
 THE STATE OF MICHIGAN  
 and

<b>CONTRACTOR</b>	Seqirus USA, Inc.
	25 Deforest Ave
	Summit, NJ 07901
	Kyle Mosley
	908-723-5944
	kyle.mosley@seqirus.com
	VS0068038

<b>STATE</b>	Program Manager	Doug Glaser	DTMB
		517-898-3982	
	glaserd@michigan.gov		
	Contract Administrator	Doug Glaser	DTMB
517-898-3982			
glaserd@michigan.gov			

CONTRACT SUMMARY			
<b>DESCRIPTION: Influenza Vaccination pre-ordering through MMCAP</b>			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
March 15, 2019	March 14, 2024		
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 61, 2% if paid in Net 60 Days			
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
N/A			
MISCELLANEOUS INFORMATION			
<b>THIS IS NOT AN ORDER. This Notice of Contract is a result of MMCAP vendor contract MMS 16001. Orders for delivery will be issued directly by participating Departments through issuance of a Purchase Order.</b>			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			<b>\$90,000.00</b>

CONTRACT NO. **190000000355**

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**FOR THE CONTRACTOR:**

Seqirus USA Inc.

**Company Name**

DocuSigned by:  
  
D8E2850ED7704C0...

**Authorized Agent Signature**


Yvonne Hilsky

**Authorized Agent** (Print or Type)

7/18/2019

**Date**

**FOR THE STATE:**

  
**Signature**

**Pamela Platte – Category Director**  
**Name & Title**

**DTMB – Central Procurement**  
**Agency**

7-18-19  
**Date**

## Member-Requested Participation Addendum (MPA)

This Addendum (“**MPA**”) is entered into by State of Michigan (“**Member**”) and Seqirus USA Inc., a corporation, with a principle address of 25 Deforest Ave Summit, NJ 07901 (“**Vendor**”) and incorporates the Minnesota Multistate Contracting Alliance for Pharmacy, an agency of the State of Minnesota (“**MMCAP**”) vendor contract MMS16001 (“**Vendor Contract**”).

**WHEREAS**, MMCAP and Vendor executed the Vendor Contract on June 15, 2016.

**WHEREAS**, Member and Vendor wish to amend the terms and conditions of the Vendor Contract to address the matters of Member.

**WHEREAS**, MMCAP has sole approval authority to any changes to the Vendor Contract, thus is a signatory to this Agreement.

**WHEREAS**, Member, MMCAP, and Vendor do not intend to alter, amend, interfere, modify, or adjust the contractual relationship of MMCAP and Vendor nor the relationship between any other member of MMCAP and the Vendor.

**THEREFORE**, the parties agree as follows:

### I. **DEFINITIONS**

- A. **Membership**: Means the joint power cooperative comprised of the MMCAP authorized states, departments, facilities, and other municipalities.

### II. **EFFECTIVE DATE AND TERM**

- A. **Effective Date**: This Agreement is effective on the date all signatures have been obtained.
- B. **Termination**: This Agreement terminates upon:
1. Thirty (30) calendar days’ written notice upon written notice to the other parties; or
  2. The termination of the Vendor Contract between MMCAP and the Vendor; or
  3. Written agreement executed by all parties.

### III. **SCOPE**

- A. **Exhibit A**: Which is attached and incorporated herein, identifies the Vendor Contract and all other previous Agreements/Amendments to be incorporated into the contractual relationship between Member and Vendor.
- B. **Exhibit B**: Which is attached and incorporated herein identifies the language to be incorporated into the contractual relationships between Member and Vendor, as referenced on Exhibit A. In the event of any conflict between the terms of the Vendor Contract and Exhibit B of this Agreement, the terms of Exhibit B will supersede as between Member and Vendor. *MMCAP, the State of Minnesota, nor any other party of the Membership are bound by the terms of Exhibit B.*

IV. **GENERAL PROVISIONS**

- A. **Assignment:** Except as affirmed in this Agreement, the Member nor Vendor will not assign, delegate, or transfer any rights or obligations under this Agreement without the prior written consent of MMCAP.
  
- B. **Counterparts and Electronic Signature:** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP has obtained all required signatures. If requested by MMCAP, Member and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP in order for this Agreement to be a transferable record, to ensure that MMCAP has control of the authoritative copy of such transferable record.
  
- C. **Amendments:** Any amendment or modification to this Agreement must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP

**[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]**


IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed on their behalf intending to be bound thereby.

**BY AND BETWEEN:**


**FOR THE MEMBER:**

On behalf of the Member, the undersigned person warrants that he or she is authorized warrants that he or she is authorized to execute the contract and legally bind the Member.

**VENDOR: Segirus USA Inc.**

DocuSigned by:  
Signature:   
By: Dave Ross 5F8FCE434...  
Title: VP Commercial Operations - NA  
Date: 3/6/2019

**STATE OF MICHIGAN**

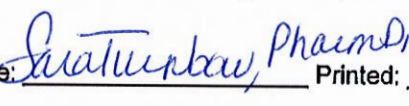
Signature:   
By: J. Blaceto  
Title: CPO  
Date: 3/6/19

**IN AN APPROVAL CAPACITY ONLY:**

**State of Minnesota for MMCAP**  
In accordance with Minn. Stat. § 16C.03, subd. 3

Signature:  Printed: Jennifer VandPlaat Date: 3/8/2019

**Minnesota Commissioner of Administration**  
In accordance with Minn. Stat. § 16C.05, subd. 2

Signature:  Printed: Sara Turnbow Date: 3-8-19

[SIGNATURE PAGE]

**EXHIBIT A**

**Vendor Contract and other Applicable Legal Documents**

The following is a list of the legal documents to be referenced and to be incorporated with the terms and conditions of Exhibit B. If you would like to receive a copy of an entire legal document, please contact MMCAP's Legal Department.

1. Vendor Contract MMS16001

**EXHIBIT B**

**Language Modification of the Vendor Contract**

The following terms and conditions are entered into between Vendor and the Member and incorporate the documents identified on Exhibit A. Neither MMCAP, the State of Minnesota, nor the Membership, except for the Member, are bound by the terms within this Exhibit.

Modification of Terms:

**This has been intentionally been left blank.**

Additional Terms:

1. **Original Contract Identification:** Member will identify the Original Contract as 190000000355.
2. **Terms of Payment.** Vendor must register with the State of Michigan at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments.
3. **Primary Contact for Member:**

Joy Nakfoor  
Commodities Category Specialist  
Michigan Department of Technology, Management, and Budget  
Central Procurement Services  
525 West Allegan Street, 1<sup>st</sup> Floor NE  
Lansing, MI 48933

**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 **Seqirus USA, Inc.**, 1020 First Avenue., King of Prussia, PA 19406 and **Seqirus Inc.**, a Delaware corporation located at 475 Green Oaks Parkway, Holly Springs, North Carolina 27540 (collectively referred to as the "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:** June 15, 2016, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

**1.2 Expiration date:** May 30, 2020, or as cancelled pursuant to Article 19. 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, directly to MMCAP Participating Facilities or through MMCAP's Authorized Influenza Vaccine Distributors which for the 2016-2017 Influenza Season are: FFF Enterprises, Inc. and McKesson Medical Surgical. For subsequent Influenza Seasons, MMCAP's Authorized Influenza Vaccine Distributors shall be subject to mutual written approval between the parties. Vendor will notify MMCAP Authorized Influenza Vaccine Distributors of all product and pricing identified in Attachment A. Pricing will be honored for all prebooks placed by MMCAP Participating Facilities for each influenza season. MMCAP Contract pricing will not be made available to non-MMCAP entities.

**2.1.2** Direct Sales are permitted under this agreement.

**2.1.3** Vendor must establish and maintain chargeback agreement(s) with MMCAP's Authorized Distributors.

**2.1.4** 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.

**2.1.5** Vendor must notify MMCAP immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Distributors that could affect Product availability. Notices must be sent to:

[MMCAP.Contracts@state.mn.us](mailto:MMCAP.Contracts@state.mn.us).

**2.1.6 Modification of Product.** Subject to compliance with applicable laws and regulations, Vendor may, in its sole discretion, at any time and from time to time, modify a Product as it deems appropriate or necessary or as may be required by any governmental authority, including changes in design, production or packaging of a Product or



withdrawal of a Product in response to a governmental authority action, without liability to MMCAP Participating Facilities of any kind.

## **2.2 Direct Orders**

**2.2.1 Terms for Direct Purchases of Product from Vendor** – The terms of this shall govern the direct purchase of Product from Vendor by MMCAP Participating Facilities. Any person or entity that purchases Product from Vendor pursuant to a written agreement other than these terms and conditions and Product orders submitted pursuant hereto shall not be eligible to purchase Product under these terms and conditions. No MMCAP Participating Facility may market, promote, administer or use Product for the benefit of persons or entities outside of the United States, or where it ought reasonably to be aware that the ultimate destination for Product is outside of the United States.

**2.2.2 Pre-booking.** MMCAP Participating Facilities may order influenza vaccine via the following three methods:

- Website: [www.Flu.seqirus.com.com](http://www.Flu.seqirus.com.com)
- Customer Service: 1-855-358-8966

Vendor will notify MMCAP and the MMCAP Participating Facility immediately of any credit holds placed on pre-booking orders. Once a MMCAP Participating Facility orders Products from Vendor, the order is “firm” and may not be cancelled by the MMCAP Participating Facility.

Each order submitted by a MMCAP Participating Facility is subject to the Vendor’s confirmation of such MMCAP Participating Facility’s valid state license number and authorizations and the MMCAP Participating Facility’s creditworthiness.

**2.2.3 Delivery.** MMCAP Participating Facilities will receive a delivery date and order confirmation prior to shipment of products. Vendor will use commercially reasonable efforts to deliver Product ordered by an MMCAP Participating Facility to the destination designated by such MMCAP Participating Facility in the MMCAP Participating Facility’s direct purchase account. All influenza vaccine will be shipped to MMCAP Facilities in a specially designed and validated refrigerated container and will be shipped at no charge, either overnight or second day delivery. In the event of a shortage or delay in production, or allocation situation, MMCAP Participating Facilities will be given equal shipment priority with Seqirus’ GPO customers. Shipment of orders to MMCAP Participating Facilities will be distributed concurrent with all other orders Vendor has to satisfy and will not be shipped later than retail, hospital, or other group purchasing organization’s influenza vaccine shipments. All orders for Product are shipped F.O.B. Destination. Title to Product and risk of loss of each shipment of Product will pass to the MMCAP Participating Facility upon delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility’s direct purchase account.

**2.2.4 Inspection of Product by Customers; Right to Return Product.** MMCAP Participating Facilities must, within four (4) business days after delivery of Product, conduct a physical inspection of the packaged Product and notify Vendor in writing of any issue or physical damage that is apparent from such inspection. If an MMCAP Participating Facility fails to give such notice, then the MMCAP Participating Facility will be conclusively presumed to have accepted the shipment and Vendor will have no liability to the MMCAP Participating Facility for any defects that could have been identified by such inspection or for any discrepancies between the shipment received and the amount of Product ordered by the MMCAP Participating Facility.

Any defect or damage to the Product that is not identifiable from a physical inspection will remain grounds for rejection of Product if the MMCAP Participating Facility notifies Vendor in writing within four (4) business days following discovery of the defect or damage. Upon receipt of such notice from a MMCAP Participating Facility, Vendor will conduct an investigation and if Vendor agrees with the MMCAP Participating Facility’s determination, (i) Vendor will use reasonable commercial efforts to supply replacement Product to the MMCAP Participating Facility, or if no replacement Product can be supplied, Vendor will, issue a refund to the MMCAP Participating Facility for the rejected Product; and (ii) the MMCAP Participating Facility must ship the defective or damaged Product back to the Vendor in accordance with instructions provided by Vendor. If Vendor, in its sole

discretion, determines that no defect or damage to Product exists, then the MMCAP Participating Facility must accept delivery of such Product and pay the invoiced price for such Product (in which event Vendor will not be deemed to be in breach of these terms and conditions or have any further liability to the MMCAP Participating Facility with respect to the alleged defect or damage). Notify Vendor of such by calling Vendor Customer Service at (855) 358-8966.

**2.2.5 Returns.** An MMCAP Participating Facility may return up to ten percent (10%) of the total number of doses of each Product ordered on or before August 1, 2016 ("Returnable Doses"). For purchases of Product doses made directly from Vendor, MMCAP Participating Facilities shall return such Returnable Doses to Vendor in accordance with Section 2.2.5(i) below. For purchases of Product doses made from a third party, MMCAP Participating Facilities shall return such Returnable Doses to such third party in accordance with any instructions provided to MMCAP Participating Facilities by such third party. All orders for doses placed after August 1, 2016, will be non-Returnable Doses. All Returnable Doses must be returned by March 31, 2017, in accordance with the below instructions. Any unused Returnable Doses must be postmarked no later than March 31, 2017.

- (i) In order to return Returnable Doses to Vendor the MMCAP Participating Facility must (a) call Vendor Customer Service at (855) 358-8966 to obtain a Return Goods Authorization number; and then (b) ship the Returnable Doses (at the MMCAP Participating Facility's sole cost and expense) to Vendor, or its designee, prior to March 31, 2017, and according to the instructions provided by Vendor. After receipt and confirmation of the Returnable Doses, Vendor shall provide to the MMCAP Participating Facility a credit to its account equal to the number of Returnable Doses timely returned by the MMCAP Participating Facility. Partially used multi-dose Product vials that are returned will not be eligible for reimbursement.

#### **2.2.6 Purchase Orders.**

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

##### **2.2.6.1 Funds available and authorized/non-appropriation.**

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

##### **2.2.6.2 Termination of Individual Purchase Orders.**

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

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

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

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

##### **2.2.6.3 Jurisdiction and Venue of Purchase Orders.**

Upon completion of the Dispute Resolution process outlined in this Contract, and solely with the prior written

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

**2.2.7 Invoicing.** Vendor agrees that MMCAP Participating Facilities will be invoiced at the MMCAP Contract price for MMCAP Contract products throughout the term of this Agreement. Invoices are subject to 61 day Net Pay. Vendor will submit an invoice with each order. Invoices must be only for the amount of product delivered. Federal Excise Tax will be a separate line item on the invoice. At a minimum, the Vendor's invoice will contain the following fields:

- Facility Name
- Vendor-assigned account number for the MMCAP Participating Facility
- Invoice number
- MMCAP Participating Facility's purchase order number
- Invoice date
- Invoice due date
- NDC (11 digit)
- Product Name/Description
- Packaging as associated with NDC number
- Unit price
- Quantity ordered
- Quantity shipped
- Extension (unit price multiplied by the quantity shipped)
- Total invoice price
- Bill to address
- Ship to address
- Applicable tax

**2.2.8 Payment Terms.** Invoices will be eligible for an additional discount of 2% which will apply to each invoice fully paid no later than 60 days, Net 61.

**2.2.9 Limitations on Marketing.** MMCAP Participating Facilities may not sell, promote or market Product in a manner that is, or engage in activities or efforts that are, disparaging or otherwise damaging to Vendor. MMCAP Participating Facilities may not hold themselves out as representatives or agents of Vendor or otherwise as being entitled to bind Vendor in any way, and MMCAP Participating Facilities must make clear in all dealings with other persons or entities that they are not acting as agents of Vendor.

**2.2.10 Covenants of MMCAP Participating Facilities.** By ordering any Product from Vendor, each MMCAP Participating Facility agrees that it will:

- obtain and maintain all licenses and approvals that may be necessary for the use, administration, storage and marketing of each Product, as applicable to such MMCAP Participating Facility, in the United States; consult with Vendor and keep Vendor fully apprised of all communications, correspondence, or information requests made by, or with any governmental authority relating to a Product, not make any representation to any person or entity nor give any warranties other than those printed on a Product's packaging, including the package insert for a Product, or included within promotional material or other Product information provided by Vendor;
- not administer or use a Product for indications not approved by a governmental authority or listed on a Product's packaging, including the package insert for a Product;
- observe and comply with such storage, handling, stock control and operational practices and procedures of Vendor in effect from time to time or as required by any governmental authority or applicable law;

- observe and comply with Vendor' adverse event and Product technical complaint reporting procedures and procedures found at <http://flu.seqirus.com/contact-us.html> regarding provision of medical information in effect from time to time;
- execute any recall or withdrawal of a Product from the market in accordance with procedures communicated to MMCAP Participating Facilities by Vendor in the event of such recall or withdrawal of a Product from the market., , of Vendor in effect from time to time; and
- comply with applicable law or any other applicable requirements imposed by a governmental authority relating to any Product.

**2.2.11 *Withdrawal of Product Approval.*** Vendor will promptly notify MMCAP Participating Facility's in writing of any withdrawal of a Product's United States Food and Drug Administration approval or of a Product's material noncompliance with United States Food and Drug Administration standards. At the request of Vendor, MMCAP Participating Facilities agree to return to Vendor, at Vendor' sole cost and expense, any allegedly defective Product owing to the withdrawal of a Product's approval or a determination of material non-compliance by Vendor or a governmental authority.

**2.2.12 *Government Payment Programs.*** By ordering a Product, each MMCAP Participating Facility represents and warrants to Vendor that neither it, nor any individual employed by it, is currently included in the Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities or in the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Each MMCAP Participating Facility must notify Vendor immediately and in writing if the MMCAP Participating Facility or any individual employed by it is excluded or becomes reasonably subject to exclusion from a Federal Healthcare Program as defined by 42 U.S.C. § 1320a-7b(f). If an MMCAP Participating Facility or any individual employed by an MMCAP Participating Facility is excluded or becomes reasonably subject to such exclusion from a Federal Healthcare Program, Vendor will have the right to immediately terminate any outstanding order submitted by such MMCAP Participating Facility and to refuse acceptance of any further orders from such MMCAP Participating Facility.

**2.2.13 *Warranties of Vendor.*** Vendor makes the following warranties with respect to a Product ordered by MMCAP Participating Facilities under these terms:

- (a) at the time of delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account, all Product will materially conform to the quality, identity, and strength standards of Product as described in the Product's U.S. Biologics License Application, as amended, modified or replaced;
- (b) no Product bearing Vendor' name is adulterated or misbranded (within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act, as such Act is effective at the time of delivery) at the time of delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account and no Product is prohibited from being introduced into interstate commerce; and
- (c) all Product, when delivered to the MMCAP Participating Facility, will have been manufactured in compliance with current good manufacturing practices, as specified in the United States Code of Federal Regulations (21 CFR Part 210 & Part 211), and any other applicable laws or regulations. This Section sets forth Vendor' sole and limited warranties with respect to Product supplied to MMCAP Participating Facilities. To the maximum extent allowed by law, except as unambiguously and expressly set forth in this Section, Vendor specifically disclaims , and, by ordering a Product, each MMCAP Participating Facility is expressly waiving and releasing Vendor from all other warranties, conditions and terms regarding or relating to a Product (whether used alone or with other substances or materials) that may have been provided to a MMCAP Participating Facility or otherwise that might have effect between an MMCAP Participating Facility and Vendor or be implied into these terms, a Product order, or any other collateral contract, whether by statute, common law or otherwise and whether express, implied or otherwise, include in all implied warranties of fitness for a particular purpose.

**2.2.14 Limitation on Warranties of Vendor.** Vendor will not be liable to any MMCAP Participating Facility, and, by ordering Product, each MMCAP Participating Facility is expressly waiving and releasing Vendor from any liability, with respect to a Product (an "Uncovered Product") that (a) has been tampered with or in any way altered or modified after delivery to the MMCAP Participating Facility's designated destination; (b) has been subject to misuse, negligence or accident after delivery to the MMCAP Participating Facility's designated destination; (c) has been stored, handled, maintained, administered or used in a manner contrary to regulatory requirements, the labeling of a Product or Vendor' instructions, or otherwise not as originally intended, after delivery to the MMCAP Participating Facility's designated destination; or (d) has passed its expiration date. The warranties contained in Section 2.2 herein will not apply to any such Uncovered Product.

**2.2.15 Limitation on Damages.** IN NO EVENT WILL VENDOR BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES RELATING TO LOSS OF USE, INCOME OR PROFIT, OR LOSS OR DAMAGE TO PERSON OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE MARKETING, SALE OR USE OF A PRODUCT, INCLUDING DAMAGES RESULTING FROM ANY NEGLIGENCE OR BREACH OF ANY OBLIGATION IMPOSED ON ANY MMCAP PARTICIPATING FACILITY. THE EXCLUSIVE REMEDY OF A PARTICIPATING MMCAP FACILITY ORDERING A PRODUCT FROM VENDOR FOR CLAIMS WITH RESPECT TO THESE TERMS OR ANY ORDER SUBMITTED BY SUCH MMCAP PARTICIPATING FACILITY WILL BE PURSUANT TO THE IMDEMNIFICATION PROVISION SET FORTH IN SECTION 5 HEREIN.

**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. Vaccines in Attachment A are split-virion preparations as formulated by the United States Food and Drug Administration, Vaccines and Related Biological Product Advisory Committee for the influenza season.

**2.4 Product Pricing.**

**2.4.1 Pricing:**

Products and pricing listed in Attachment A are for Contract year one; otherwise defined as the 2016-2017 influenza season. Products in Attachment A will remain fixed for Contract year one. Price reductions may be submitted to MMCAP, [mmcap.contracts@state.mn.us](mailto:mmcap.contracts@state.mn.us), at any time. Products and pricing for Contract year two is defined as the 2017-2018 influenza season, and subsequent years will be managed by amendment to this Contract. All newly FDA approved influenza vaccine products may be added to this Contract via mutual agreement of the parties and an amendment.

2.4.2 Vendor must notify MMCAP and MMCAP's Authorized Distributors 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.

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

2.4.4 Omitted

2.4.5 Vendor must not substitute any Product contained in the contract without prior written consent of MMCAP and MMCAP Participating Facility.

2.4.6 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 Distributors 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.

2.4.7 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 inventories are depleted. Vendor will make reasonable efforts to find alternative product to

fulfill MMCAP Facilities pre-booked product requests.

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

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

2.5.2 Vendor must provide written notice of all Product situations expected to delay shipments longer than 30 calendar days and/or inability to supply situations to MMCAP within 48 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](mailto:MMCAP.Contracts@state.mn.us).

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

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 will 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 agreed to in the amendment. 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.

2.7.3 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 Distributors within 2 business days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Authorized Distributors do not receive Contract change notification(s), Vendor agrees to honor all chargebacks at the contract price and date on the fully executed Contract amendment.

2.7.4 Newly FDA approved influenza vaccine products may be added to this Contract via mutual agreement of the parties and an amendment.

**2.8 MMCAP Participating Facilities.**

2.8.1 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](http://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.

2.8.3 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](mailto: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) made through the MMCAP Authorized Distributors or directly with the 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. The initial payment is due February 15<sup>th</sup> of each contract year for purchases delivered by December 31<sup>st</sup>. If this amount does not cover all purchases, additional payments must be made by July 31<sup>st</sup> of the contract year for all other purchases until all amounts due are fully paid. Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155. With the first payment, 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 Administrative Fee Data Report must contain the fields

detailed below. All Administrative Fee Data Reports must be sent to: [Mn.MMCAP@state.mn.us](mailto:Mn.MMCAP@state.mn.us). Failure to comply with this provision may constitute breach of this Contract.

Administrative Fee Data Report fields:

- MMCAP Assigned Authorized Wholesaler Number (FFF Enterprises, Inc.=3402, McKesson Medical Surgical =1001)
- 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)
- 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 for purchases made prior to such cancellation will be due no more than 30 days from the cancellation date.

Notwithstanding anything to the contrary contained herein, Vendor's obligation to make an initial payment on February 15<sup>th</sup> of each contract year and a subsequent payment on July 31<sup>st</sup> of each contract year as well as its obligation to submit an Administrative Fee Report by the date requested herein is subject to Vendor's timely receipt of purchase and chargeback information from MMCAP's Authorized Distributors.

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

**2.10.1 Federal Excise Tax** is refundable on all expired or returned vaccine MMCAP Participating Facilities must contact Vendors customer service department for assistance.

**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 HIN Numbers.** Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from MMCAP Participating Facilities.

**2.13 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.

**2.13.1** No MMCAP Participating Facility may market, promote, administer or use Product for the benefit of persons or entities outside of the United States, or where it ought reasonably to be aware that the ultimate destination for Product is outside of the United States.

**2.14 Product Dating.** All Products supplied to MMCAP's Authorized Influenza Vaccine Distributors 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](mailto: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, distributor or MMCAP Participating Facility 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 David Dwight, Vice President of National Accounts.

### **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 (MMCAP Indemnitees), 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. Notwithstanding anything to the contrary, in no event will Vendor be obligated to defend, indemnify or hold harmless MMCAP Indemnitees, from any claims, demands, actions, losses, expenses, damages, liabilities, costs (including interest, penalties, and reasonable attorneys' fees) and judgments which result from the misconduct or negligence of an MMCAP Indemnitees (including, for the avoidance of doubt, any Damage that results from a Product becoming an Uncovered Product).

## **6 State Audits**

Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract. This clause also extends to MMCAP Member Facilities as it relates to business conducted with and sales to that Member Facility.

## **7 Government Data Practices and Intellectual Property**

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

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

**7.2.1 Use of Trademarks.** MMCAP Participating Facilities shall not use Product trademarks for any purpose other than as expressly necessary to exercise their rights and perform their obligations under these terms. MMCAP Participating Facilities shall not use any other trade name or trademark of Vendor, other than the trademarks set forth in these terms, to the extent permitted in the foregoing sentence. MMCAP Participating Facilities must

ensure that each reference to and use of a Product trademark is accompanied by an acknowledgement that the same is a registered trademark of Vendor. Vendor may request copies of examples of a MMCAP Participating Facility's use of a Product trademark or any other trademark of Vendor in order to assess compliance with this Section. MMCAP Participating Facilities will not acquire any rights in respect of any trade names or trademarks of Vendor (including any Product trademarks) or of the goodwill associated therein and all such rights and goodwill are, and will at all times remain, vested in Vendor. Other than as is set forth in these terms, no license, express or implied, is granted to MMCAP Participating Facilities by Vendor under any intellectual property rights, including those of Vendor' affiliates

**7.2.2 Limitations on Use of Intellectual Property.** MMCAP Participating Facilities may not: (a) make any modification to a Product or its packaging; (b) alter, obscure, remove or tamper with any trademarks, markings, numbers, labels, indication of the source of origin, or other means of identification used on, or in relation to, a Product; (c) use a Product trademark in any way which might materially prejudice its distinctiveness or validity or the goodwill of Vendor therein; (d) use any trademarks other than those set forth herein in relation to Product; or (e) use or make any application for registration in the United States of any trademarks or trade names so resembling any trademark or trade name of Vendor as to be likely to cause confusion or deception.

## **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, epidemics of disease, influenza epidemic or pandemic, government requisition or impoundment or other acts of any governmental authority or acts of God,. In addition, the Vendor will not be held in breach of this Contract for any failure to deliver any Product or otherwise breach this Agreement due to any order by the FDA or any federal or other applicable regulatory agency.

## **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 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 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 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.

IN WITNESS WHEREOF, the following duly executed representatives of the Parties have executed this Agreement.

**1. Seqirus USA, INC. and Seqirus, 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: [Signature]

Name: Brent MacGregor

Title: Senior Vice President, Commercial Ops.

Date: \_\_\_\_\_

By: [Signature]

Name: John Minardo

Title: Secretary

Date: 6/15/14

**2. STATE OF MINNESOTA FOR MMCAP**

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

By: [Signature]

Title: Pharm Analyst

Date: 6-20-16

**3. COMMISSIONER OF ADMINISTRATION**

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

By: [Signature]

Title: SPA-P

Date: 6/20/2016



# Vendor Awards

# Attachment A

MMCAP  
 112 Administration Bldg.  
 50 Sherburne Ave  
 Saint Paul, MN 55155

**Seqirus Inc. (Vendor #1234)**

Contract Number: MMS16001  
 Contract Dates: 6/15/2016 - 5/30/2020  
 Sales Type: Annual Fixed Pricing

Description: Influenza Vaccine  
 Trade Classes: ALL

NDC	Generic Name-Str-Dosage Form	Brand Name	AD	Packaging	Bid Type	Payment Terms	Price	*Firm Dose Invoice Price
TBD	INFLUENZA VACCINE 2016-2017	AFLURIA	IM	1 - 5ML MULTI-USE VIAL	ANNUAL FIXED	2% 60 days, Net 61	\$110.99	\$88.79
TBD	INFLUENZA VACCINE 2016-2017	AFLURIA	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$130.11	\$104.09
TBD	INFLUENZA VACCINE 2016-2017	FLUVIRIN	IM	1 - 5ML MULTI-USE VIAL	ANNUAL FIXED	2% 60 days, Net 61	\$110.99	\$88.79
TBD	INFLUENZA VACCINE 2016-2017	FLUVIRIN	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$130.11	\$104.09
TBD	INFLUENZA VACCINE 2016-2017	FLUAD	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$295.64	N/A
TBD	INFLUENZA VACCINE 2016-2017	FLUCELVAX	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$143.55	N/A

\*Firm Dose Discount is a discount solely for orders of Product ("Firm Doses"), which are directly purchased through Seqirus on or before June 1, 2016. Firm Doses are not subject to any right of cancellation.

MMCAP Pricing is exclusive of federal, state and local excises taxes (including, but not limited to, the federal excise tax of \$0.75 per dose) and any other applicable taxes.

January 4, 2017

Minnesota Multistate Contracting Alliance for Pharmacy  
State of Minnesota, Department of Administration  
Materials Management Division  
50 Sherburne Avenue, Room 112  
St. Paul, MN 55155

Attention: Jennifer VanderPlaats, CPhT  
Contracts and Business Operations

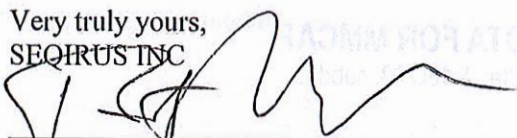
**Re: Notification of 2017-2018 Influenza Season Pricing, Discounts and Terms**

Dear Jennifer:

Seqirus Inc. and Seqirus USA Inc., *f/k/a* Novartis Vaccines and Diagnostics, Inc., (“Seqirus”) is providing notification below of Pricing, Discounts and Terms offered to contracted Group Purchasing Organizations (GPO’s) and their associated members for the 2017-2018 influenza season. Seqirus’ seasonal influenza vaccines are marketed under the Flud™, Flucelvax®, Fluvirin® and Afluria® brand names.

1. The Initial Price for the 2017-2018 Influenza Season, per Product, payable by GPO’s members (“Members”) is shown below. The Initial Price may also be referred to as the “GPO Price.”
2. A Firm Dose Discount (“Firm Dose Discount”) may be offered on selected Product(s) (“Firm Doses”) for which a contracted GPO member places orders for the purchase of Product(s) on or before April 15, 2017 pursuant to which the doses are not subject to any right of cancellation.
3. All Prices do not include Assessments.
4. Members shall be entitled to a prompt payment discount (“Prompt Payment Discount”) equal to two percent (2%) of the applicable Invoice Price, and may deduct such amount from the payment made, *provided* that Seqirus receives any such payment within sixty (60) days of the applicable Delivery Date.
5. For the 2017-2018 Influenza Season, GPO members may return 20% of their total shipped doses (Returnable Doses). Members shall return any Returnable Doses it elects to return to Seqirus or its designee in accordance with Seqirus’ instructions and at Member’s sole cost and expense. Member shall provide to Seqirus, on or before December 15, 2017 and March 15, 2018, its initial and final non-binding estimate, respectively, of the number of Product doses it expects to return to Seqirus or its designee.
6. Seqirus will use reasonable commercial efforts to deliver Product according to the following delivery schedule:
  - 50% delivered by 8/31/2017, 100% delivered by 10/15/2017

Very truly yours,  
SEQIRUS INC

  
Brent MacGregor – Sr. VP, Commercial Operations



111MS16001  
Amendment #1  
Pg 2 of 2

**Effective December 1, 2016**  
**2017-2018 Seqirus Influenza Vaccine Pricing and Discounts**

Product	Presentation	Initial Price (GPO Price) Per Package/ Per Dose <sup>1</sup>	Firm Dose Discount <sup>2</sup> Percent	Firm Dose Discount Price Per Package/ Per Dose	Price After Prompt Pay <sup>3</sup> Per Package/ Per Dose
Fluad™ Influenza Vaccine Adjuvanted	0.5mL pre-filled syringe (10 per pack)	\$410.37/\$41.037	3%	\$398.06/\$39.806	\$390.09/\$39.009
Flucelvax® Influenza Vaccine QIV	0.5mL single-dose syringes (10 per pack)	\$164.78/\$16.478	3%	\$159.83/\$15.983	\$156.64/\$15.664
Flucelvax® Influenza Vaccine QIV	5mL multi-dose vial	\$151.08/\$15.108	3%	\$146.55/\$14.655	\$143.61/\$14.361
Afluria® Influenza Vaccine QIV	0.5mL single-dose syringes (10 per pack)	\$143.31/\$14.331	3%	\$139.01/\$13.901	\$136.23/\$13.623
Afluria® Influenza Vaccine QIV	5mL multi-dose vial	\$133.52/\$13.352	3%	\$129.51/\$12.951	\$126.92/\$12.692
Fluvirin® Influenza Vaccine TIV	0.5mL single-dose syringes (10 per pack)	\$113.81/\$11.381	3%	\$110.39/\$11.039	\$108.18/\$10.818
Fluvirin® Influenza Vaccine TIV	5mL multi-dose vial	\$104.22/\$10.422	3%	\$101.09/\$10.109	\$99.07/\$9.907
Afluria® Influenza Vaccine TIV	0.5mL single-dose syringes (10 per pack)	\$113.81/\$11.381	3%	\$110.39/\$11.039	\$108.18/\$10.818
Afluria® Influenza Vaccine TIV	5mL multi-dose vial	\$104.22/\$10.422	3%	\$101.09/\$10.109	\$99.07/\$9.907

<sup>1</sup> All prices are exclusive of Assessment per vial or packet. Purchaser will be invoiced based on per packet or per vial price. Due to variability in numerical rounding, per dose prices are provided for illustration purposes only.

<sup>2</sup> Firm Dose Discount is a discount solely for orders of Product ("Firm Doses"), which are directly purchased through Seqirus on or before April 15, 2017. Firm Doses are not subject to any right of cancellation.

<sup>3</sup> Payment terms regarding the Prompt Payment Discount are as follows: 2% 60, net 61.

**STATE OF MINNESOTA FOR MMCAP**

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

By: *[Signature]*

Title: SPTA

Date: 1/25/2017

**COMMISSIONER OF ADMINISTRATION**

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

By: *[Signature]*

Date: Jan. 25, 2017





MMS 16001  
Amendment #  
#2

**Notification of 2018-2019 Influenza Season Pricing, Discounts and Other Terms under Group Purchasing Agreement**

Seqirus USA Inc. (“Seqirus”); and Minnesota Multistate Contracting Alliance For Pharmacy (“GPO” or “MMCAP”) (each a “party” and collectively the “parties”) are parties to a Group Purchasing Agreement (as amended and in effect on the date hereof, the “Agreement”), dated as of June 15, 2016, regarding the purchase and sale of Seqirus’ seasonal influenza vaccines (each a “Product” and collectively with Seqirus’ current and pending offerings, the “Products”).

Pursuant to the Agreement, Seqirus has the right to determine, in its sole discretion after good faith consultation with GPO, the Initial Price, Invoice Price and other discounts and/or rebates applicable for the 2018-2019 Influenza Season. Based on the parties’ recent discussions and other factors considered by Seqirus, Seqirus hereby notifies GPO of such items set forth in this notification (“Notification”).

1. The Initial Price for the 2018-2019 Influenza Season, per Product, shall be as set forth on Schedule 1. The Initial Price may also be referred to as the “Contract Price.”
2. A Firm Dose Discount (“Firm Dose Discount”) may be offered on selected Product(s) (“Firm Doses”) for which Participating Members place Product orders for the purchase of Product(s) on or before April 15, 2018 pursuant to which the doses are not subject to any cancellation.
3. The Invoice Price for the 2018-2019 Influenza Season after applicable discounts, per Product, shall be as set forth below.
4. All Prices do not include Assessments. Purchaser will be invoiced based on per packet or per vial price. Due to variability in numerical rounding, per dose prices are provided for illustration purposes only.
5. Participating Members shall be entitled to a prompt payment discount (“Prompt Payment Discount”) in accordance with the Agreement and may deduct such amount from the payment made provided that Seqirus receives any such payment within **the due date specified in the Agreement.**
6. For the 2018-2019 Influenza Season, the number of Returnable Doses shall be **equal to the percentage(s) listed in the Agreement.** Participating Members shall return any Returnable Doses it elects to return to Seqirus or its designee on or before the date set forth in the Agreement in accordance with Seqirus’ instructions and at Participating Member’s sole cost and expense.
7. Seqirus will use commercially reasonable efforts to deliver Product according to the terms set forth in the Agreement.

MMS160001  
Amendment#  
2

All terms and conditions of the Agreement, including this 2018-2019 Pricing Notice, are hereby ratified and confirmed in all respects and shall continue in full force and effect.

SEQIRUS USA INC.

By: Yvonne Hilsky  
Name: Yvonne Hilsky  
Title: Director, Pricing and Contracting

**STATE OF MINNESOTA FOR MMCAP**  
In accordance with Minn. Stat. § 16C.03, subd. 3  
By: [Signature]  
Title: SPA-C  
Date: 12/20/2017

**COMMISSIONER OF ADMINISTRATION**  
In accordance with Minn. Stat. § 16C.05, subd. 2  
By: [Signature]  
Date: 12/20/2017

MMS16001  
 Amendment #  
 #2

2018-2019 Influenza Season Pricing and Discounts

Product	Presentation	Initial Price (Contract Price) Per Package/ Per Dose	Firm Dose Disc. Percent	Firm Dose Disc. (Price Per Package/ Per Dose)	Price After Prompt Pay Per Package/ Per Dose
Fluad™ Influenza Vaccine Adjuvanted	0.5mL pre- filled syringe (10/pack)	433.15/ \$43.315	3%	\$420.16/ \$42.016	\$411.75/ \$41.175
Flucelvax® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$152.83/ \$15.283	3%	\$148.25/ \$14.825	\$145.28/ \$14.528
Flucelvax® Influenza Vaccine QIV	5mL multi-dose vial	\$142.36/ \$14.236	3%	\$138.09/ \$13.809	\$135.33/ \$13.533
Afluria® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$152.83/ \$15.283	3%	\$148.25/ \$14.825	\$145.28/ \$14.528
Afluria® Influenza Vaccine QIV	5mL multi- dose vial	\$142.36/ \$14.236	3%	\$138.09/ \$13.809	\$135.33/ \$13.533



**AMENDMENT NO. 3 TO MMCAP CONTRACT NO. MMS16001**

**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 Seqirus USA Inc., 1020 First Avenue, King of Prussia, PA 19406 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS16001 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

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

**Contract Amendment**

(MJ)

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

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

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

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

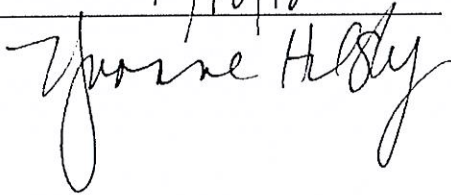
Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is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

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

**1. SEQIRUS USA 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: Yvonne HILSKY  
Title: DIR. CONTRACTING & PRICING  
Date: 1/18/18



**2. STATE OF MINNESOTA FOR MMCAP**

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

By: Sara Tuembow PharmD, BCPS  
Title: Pharmacist Sr.  
Date: 1-19-18

**3. COMMISSIONER OF ADMINISTRATION**

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

By: John Van der Plank  
Title: SPA-C  
Date: 1/19/2018

Seqirus USA Inc.,

MMS16001

Amendment

4

Not posted

For viewing

## AMENDMENT NO. 5 TO MMCAP CONTRACT NO. MMS16001

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 Seqirus USA Inc., 25 Deforest Avenue, Summit, NJ 07901 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS16001 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

(1954JV)

**Revision 1:** Seqirus USA Inc. current address is 25 Deforest Avenue, Summit, NJ 07901

**Revision 2:** Contract MMS16001, **Section 2.9 Administrative Fee** is deleted and replaced with the following and is effective upon finalization of signatures between the parties.

**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) made directly with the 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. The 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:

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

The vendor must submit a monthly Administrative Fee Data Report that includes direct sales (sales made direct from vendor to MMCAP facility). 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](mailto: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) (**LEAVE BLANK**)
- MMCAP Assigned Manufacturer Number 1234
- **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



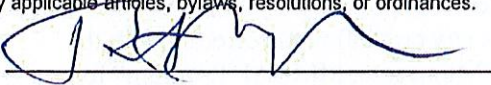
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- Vendor Contracted Sales (Contracted Units \* Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal Percentage \* Vendor Contracted Sales. Report in dollars)

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.

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

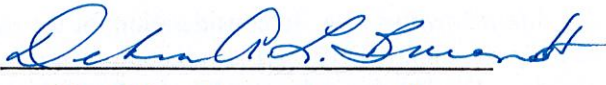
**1. SEQIRUS USA INC.**

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 Commercial Operations  
 Date: 06/26/2018


**2. STATE OF MINNESOTA FOR MMCAP**

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

By:   
 Title: SPA Coordinator  
 Date: 6-27-2018

**3. COMMISSIONER OF ADMINISTRATION**

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

By:   
 Title: AMS Sr.  
 Date: 6/27/18

MMS 16001  
Amendment # 6



**Notification of 2019-2020 Influenza Season Pricing, Discounts and Other Terms under Group Purchasing Agreement**

Seqirus USA Inc. ("Seqirus"); and Minnesota Multistate Contracting Alliance For Pharmacy ("GPO" or "MMCAP") (each a "party" and collectively the "parties") are parties to a Group Purchasing Agreement (as amended and in effect on the date hereof, the "Agreement"), dated as of June 15, 2016, regarding the purchase and sale of Seqirus' seasonal influenza vaccines (each a "Product" and collectively with Seqirus' current and pending offerings, the "Products").

Pursuant to the Agreement, Seqirus has the right to determine, in its sole discretion after good faith consultation with GPO, the Initial Price, Invoice Price and other discounts and/or rebates applicable for the 2019-2020 Influenza Season. Based on the parties' recent discussions and other factors considered by Seqirus, Seqirus hereby notifies GPO of such items set forth in this notification ("Notification").

1. The Initial Price for the 2019-2020 Influenza Season, per Product, shall be as set forth on Schedule 1. The Initial Price may also be referred to as the "Contract Price."
2. A Firm Dose Discount ("Firm Dose Discount") may be offered on selected Product(s) ("Firm Doses") for which Participating Members place Product orders for the purchase of Product(s) on or before April 15, 2019 pursuant to which the doses are not subject to any cancellation.
3. The Invoice Price for the 2019-2020 Influenza Season after applicable discounts, per Product, shall be as set forth below.
4. All Prices do not include Assessments. Purchaser will be invoiced based on per packet or per vial price. Due to variability in numerical rounding, per dose prices are provided for illustration purposes only.
5. Participating Members shall be entitled to a prompt payment discount ("Prompt Payment Discount") in accordance with the Agreement and may deduct such amount from the payment made provided that Seqirus receives any such payment within the due date specified in the Agreement.
6. For the 2019-2020 Influenza Season, the number of Returnable Doses shall be equal to the percentage(s) listed in the Agreement. Participating Members shall return any Returnable Doses it elects to return to Seqirus or its designee on or before the date set forth in the Agreement in accordance with Seqirus' instructions and at Participating Member's sole cost and expense.
7. For the 2019-2020 Influenza Season, the following Delivery terms for Doses ordered Direct from Seqirus will be in effect.
  - 50% by August 31, 2019
  - 100% by October 15, 2019
8. Seqirus will use commercially reasonable efforts to deliver Product according to the terms set forth in the Agreement.

All terms and conditions of the Agreement, including this 2019-2020 Pricing Notice, are hereby ratified and confirmed in all respects and shall continue in full force and effect.

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

SEQIRUS USA INC

DocuSigned by:

Yvonne Hilsky

By: \_\_\_\_\_

D6E2650ED7704C0...

Name: Yvonne Hilsky

Title: Director, Pricing and Contracting

By: [Signature]

Title: SPA-C

Date: 1/2/2019

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

By: [Signature]

Date: 1-2-19



MMS16001  
Amendment # 6

## 2019-2020 Influenza Season Pricing and Discounts

Product	Presentation	Initial Price (Contract Price) Per Package/Dose		Firm Dose Disc. Percent	Firm Dose Disc. Price Per Package/Dose		Price After Prompt Pay Per Package/Dose	
Fluad™ Influenza Vaccine Adjuvanted	0.5mL pre- filled syringe (10/pack)	\$445.00	\$44.500	3%	\$431.65	\$43.165	\$423.01	\$42.301
Flucelvax® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$179.58	\$17.958	3%	\$174.19	\$17.419	\$170.71	\$17.071
Flucelvax® Influenza Vaccine QIV	5mL multi-dose vial	\$167.27	\$16.727	3%	\$162.26	\$16.226	\$159.01	\$15.901
Afluria® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$152.84	\$15.284	3%	\$148.25	\$14.825	\$145.29	\$14.529
Afluria® Influenza Vaccine QIV	5mL multi- dose vial	\$142.36	\$14.236	3%	\$138.09	\$13.809	\$135.33	\$13.533
Afluria® Influenza Vaccine QIV	0.25mL single-dose syringes (10/pack)	\$152.84	\$15.284	3%	\$148.25	\$14.825	\$145.29	\$14.529

**FOR THE CONTRACTOR:**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Authorized Agent Signature**

\_\_\_\_\_  
**Authorized Agent** (Print or Type)

\_\_\_\_\_  
Date

**FOR THE STATE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
**Joy Nakfoor – Category Specialist**  
Name & Title

\_\_\_\_\_  
**DTMB – Central Procurement**  
Agency

\_\_\_\_\_  
Date

## Member-Requested Participation Addendum (MPA)

This Addendum (“**MPA**”) is entered into by State of Michigan (“**Member**”) and Seqirus USA Inc., a corporation, with a principle address of 25 Deforest Ave Summit, NJ 07901 (“**Vendor**”) and incorporates the Minnesota Multistate Contracting Alliance for Pharmacy, an agency of the State of Minnesota (“**MMCAP**”) vendor contract MMS16001 (“**Vendor Contract**”).

**WHEREAS**, MMCAP and Vendor executed the Vendor Contract on June 15, 2016.

**WHEREAS**, Member and Vendor wish to amend the terms and conditions of the Vendor Contract to address the matters of Member.

**WHEREAS**, MMCAP has sole approval authority to any changes to the Vendor Contract, thus is a signatory to this Agreement.

**WHEREAS**, Member, MMCAP, and Vendor do not intend to alter, amend, interfere, modify, or adjust the contractual relationship of MMCAP and Vendor nor the relationship between any other member of MMCAP and the Vendor.

**THEREFORE**, the parties agree as follows:

### I. **DEFINITIONS**

- A. **Membership**: Means the joint power cooperative comprised of the MMCAP authorized states, departments, facilities, and other municipalities.

### II. **EFFECTIVE DATE AND TERM**

- A. **Effective Date**: This Agreement is effective on the date all signatures have been obtained.
- B. **Termination**: This Agreement terminates upon:
1. Thirty (30) calendar days’ written notice upon written notice to the other parties; or
  2. The termination of the Vendor Contract between MMCAP and the Vendor; or
  3. Written agreement executed by all parties.

### III. **SCOPE**

- A. **Exhibit A**: Which is attached and incorporated herein, identifies the Vendor Contract and all other previous Agreements/Amendments to be incorporated into the contractual relationship between Member and Vendor.
- B. **Exhibit B**: Which is attached and incorporated herein identifies the language to be incorporated into the contractual relationships between Member and Vendor, as referenced on Exhibit A. In the event of any conflict between the terms of the Vendor Contract and Exhibit B of this Agreement, the terms of Exhibit B will supersede as between Member and Vendor. *MMCAP, the State of Minnesota, nor any other party of the Membership are bound by the terms of Exhibit B.*

IV. **GENERAL PROVISIONS**

- A. **Assignment:** Except as affirmed in this Agreement, the Member nor Vendor will not assign, delegate, or transfer any rights or obligations under this Agreement without the prior written consent of MMCAP.
  
- B. **Counterparts and Electronic Signature:** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP has obtained all required signatures. If requested by MMCAP, Member and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP in order for this Agreement to be a transferable record, to ensure that MMCAP has control of the authoritative copy of such transferable record.
  
- C. **Amendments:** Any amendment or modification to this Agreement must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP

**[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]**


IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be signed on their behalf intending to be bound thereby.

**BY AND BETWEEN:**


**FOR THE MEMBER:**

On behalf of the Member, the undersigned person warrants that he or she is authorized warrants that he or she is authorized to execute the contract and legally bind the Member.

**VENDOR: Segirus USA Inc.**

DocuSigned by:  
Signature:   
By: Dave Ross 5F8FCE434...  
Title: VP Commercial Operations - NA  
Date: 3/6/2019

**STATE OF MICHIGAN**

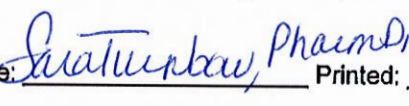
Signature:   
By: J. Blaceto  
Title: CPO  
Date: 3/6/19

**IN AN APPROVAL CAPACITY ONLY:**

**State of Minnesota for MMCAP**  
In accordance with Minn. Stat. § 16C.03, subd. 3

Signature:  Printed: Jennifer VandPlaat Date: 3/8/2019

**Minnesota Commissioner of Administration**  
In accordance with Minn. Stat. § 16C.05, subd. 2

Signature:  Printed: Sara Turnbow Date: 3-8-19

[SIGNATURE PAGE]

**EXHIBIT A**

**Vendor Contract and other Applicable Legal Documents**

The following is a list of the legal documents to be referenced and to be incorporated with the terms and conditions of Exhibit B. If you would like to receive a copy of an entire legal document, please contact MMCAP's Legal Department.

1. Vendor Contract MMS16001

**EXHIBIT B**

**Language Modification of the Vendor Contract**

The following terms and conditions are entered into between Vendor and the Member and incorporate the documents identified on Exhibit A. Neither MMCAP, the State of Minnesota, nor the Membership, except for the Member, are bound by the terms within this Exhibit.

Modification of Terms:

**This has been intentionally been left blank.**

Additional Terms:

1. **Original Contract Identification:** Member will identify the Original Contract as 190000000355.
2. **Terms of Payment.** Vendor must register with the State of Michigan at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments.

3. **Primary Contact for Member:**

Joy Nakfoor  
Commodities Category Specialist  
Michigan Department of Technology, Management, and Budget  
Central Procurement Services  
525 West Allegan Street, 1<sup>st</sup> Floor NE  
Lansing, MI 48933

**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 **Seqirus USA, Inc.**, 1020 First Avenue., King of Prussia, PA 19406 and **Seqirus Inc.**, a Delaware corporation located at 475 Green Oaks Parkway, Holly Springs, North Carolina 27540 (collectively referred to as the "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:** June 15, 2016, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

**1.2 Expiration date:** May 30, 2020, or as cancelled pursuant to Article 19. 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, directly to MMCAP Participating Facilities or through MMCAP's Authorized Influenza Vaccine Distributors which for the 2016-2017 Influenza Season are: FFF Enterprises, Inc. and McKesson Medical Surgical. For subsequent Influenza Seasons, MMCAP's Authorized Influenza Vaccine Distributors shall be subject to mutual written approval between the parties. Vendor will notify MMCAP Authorized Influenza Vaccine Distributors of all product and pricing identified in Attachment A. Pricing will be honored for all prebooks placed by MMCAP Participating Facilities for each influenza season. MMCAP Contract pricing will not be made available to non-MMCAP entities.

**2.1.2** Direct Sales are permitted under this agreement.

**2.1.3** Vendor must establish and maintain chargeback agreement(s) with MMCAP's Authorized Distributors.

**2.1.4** 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.

**2.1.5** Vendor must notify MMCAP immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Distributors that could affect Product availability. Notices must be sent to:

[MMCAP.Contracts@state.mn.us](mailto:MMCAP.Contracts@state.mn.us).

**2.1.6 Modification of Product.** Subject to compliance with applicable laws and regulations, Vendor may, in its sole discretion, at any time and from time to time, modify a Product as it deems appropriate or necessary or as may be required by any governmental authority, including changes in design, production or packaging of a Product or



withdrawal of a Product in response to a governmental authority action, without liability to MMCAP Participating Facilities of any kind.

## **2.2 Direct Orders**

**2.2.1 Terms for Direct Purchases of Product from Vendor** – The terms of this shall govern the direct purchase of Product from Vendor by MMCAP Participating Facilities. Any person or entity that purchases Product from Vendor pursuant to a written agreement other than these terms and conditions and Product orders submitted pursuant hereto shall not be eligible to purchase Product under these terms and conditions. No MMCAP Participating Facility may market, promote, administer or use Product for the benefit of persons or entities outside of the United States, or where it ought reasonably to be aware that the ultimate destination for Product is outside of the United States.

**2.2.2 Pre-booking.** MMCAP Participating Facilities may order influenza vaccine via the following three methods:

- Website: [www.Flu.seqirus.com.com](http://www.Flu.seqirus.com.com)
- Customer Service: 1-855-358-8966

Vendor will notify MMCAP and the MMCAP Participating Facility immediately of any credit holds placed on pre-booking orders. Once a MMCAP Participating Facility orders Products from Vendor, the order is “firm” and may not be cancelled by the MMCAP Participating Facility.

Each order submitted by a MMCAP Participating Facility is subject to the Vendor’s confirmation of such MMCAP Participating Facility’s valid state license number and authorizations and the MMCAP Participating Facility’s creditworthiness.

**2.2.3 Delivery.** MMCAP Participating Facilities will receive a delivery date and order confirmation prior to shipment of products. Vendor will use commercially reasonable efforts to deliver Product ordered by an MMCAP Participating Facility to the destination designated by such MMCAP Participating Facility in the MMCAP Participating Facility’s direct purchase account. All influenza vaccine will be shipped to MMCAP Facilities in a specially designed and validated refrigerated container and will be shipped at no charge, either overnight or second day delivery. In the event of a shortage or delay in production, or allocation situation, MMCAP Participating Facilities will be given equal shipment priority with Seqirus’ GPO customers. Shipment of orders to MMCAP Participating Facilities will be distributed concurrent with all other orders Vendor has to satisfy and will not be shipped later than retail, hospital, or other group purchasing organization’s influenza vaccine shipments. All orders for Product are shipped F.O.B. Destination. Title to Product and risk of loss of each shipment of Product will pass to the MMCAP Participating Facility upon delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility’s direct purchase account.

**2.2.4 Inspection of Product by Customers; Right to Return Product.** MMCAP Participating Facilities must, within four (4) business days after delivery of Product, conduct a physical inspection of the packaged Product and notify Vendor in writing of any issue or physical damage that is apparent from such inspection. If an MMCAP Participating Facility fails to give such notice, then the MMCAP Participating Facility will be conclusively presumed to have accepted the shipment and Vendor will have no liability to the MMCAP Participating Facility for any defects that could have been identified by such inspection or for any discrepancies between the shipment received and the amount of Product ordered by the MMCAP Participating Facility.

Any defect or damage to the Product that is not identifiable from a physical inspection will remain grounds for rejection of Product if the MMCAP Participating Facility notifies Vendor in writing within four (4) business days following discovery of the defect or damage. Upon receipt of such notice from a MMCAP Participating Facility, Vendor will conduct an investigation and if Vendor agrees with the MMCAP Participating Facility’s determination, (i) Vendor will use reasonable commercial efforts to supply replacement Product to the MMCAP Participating Facility, or if no replacement Product can be supplied, Vendor will, issue a refund to the MMCAP Participating Facility for the rejected Product; and (ii) the MMCAP Participating Facility must ship the defective or damaged Product back to the Vendor in accordance with instructions provided by Vendor. If Vendor, in its sole

discretion, determines that no defect or damage to Product exists, then the MMCAP Participating Facility must accept delivery of such Product and pay the invoiced price for such Product (in which event Vendor will not be deemed to be in breach of these terms and conditions or have any further liability to the MMCAP Participating Facility with respect to the alleged defect or damage). Notify Vendor of such by calling Vendor Customer Service at (855) 358-8966.

**2.2.5 Returns.** An MMCAP Participating Facility may return up to ten percent (10%) of the total number of doses of each Product ordered on or before August 1, 2016 ("Returnable Doses"). For purchases of Product doses made directly from Vendor, MMCAP Participating Facilities shall return such Returnable Doses to Vendor in accordance with Section 2.2.5(i) below. For purchases of Product doses made from a third party, MMCAP Participating Facilities shall return such Returnable Doses to such third party in accordance with any instructions provided to MMCAP Participating Facilities by such third party. All orders for doses placed after August 1, 2016, will be non-Returnable Doses. All Returnable Doses must be returned by March 31, 2017, in accordance with the below instructions. Any unused Returnable Doses must be postmarked no later than March 31, 2017.

- (i) In order to return Returnable Doses to Vendor the MMCAP Participating Facility must (a) call Vendor Customer Service at (855) 358-8966 to obtain a Return Goods Authorization number; and then (b) ship the Returnable Doses (at the MMCAP Participating Facility's sole cost and expense) to Vendor, or its designee, prior to March 31, 2017, and according to the instructions provided by Vendor. After receipt and confirmation of the Returnable Doses, Vendor shall provide to the MMCAP Participating Facility a credit to its account equal to the number of Returnable Doses timely returned by the MMCAP Participating Facility. Partially used multi-dose Product vials that are returned will not be eligible for reimbursement.

#### **2.2.6 Purchase Orders.**

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

##### *2.2.6.1 Funds available and authorized/non-appropriation.*

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

##### *2.2.6.2 Termination of Individual Purchase Orders.*

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

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

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

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

##### *2.2.6.3 Jurisdiction and Venue of Purchase Orders.*

Upon completion of the Dispute Resolution process outlined in this Contract, and solely with the prior written

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

**2.2.7 Invoicing.** Vendor agrees that MMCAP Participating Facilities will be invoiced at the MMCAP Contract price for MMCAP Contract products throughout the term of this Agreement. Invoices are subject to 61 day Net Pay. Vendor will submit an invoice with each order. Invoices must be only for the amount of product delivered. Federal Excise Tax will be a separate line item on the invoice. At a minimum, the Vendor's invoice will contain the following fields:

- Facility Name
- Vendor-assigned account number for the MMCAP Participating Facility
- Invoice number
- MMCAP Participating Facility's purchase order number
- Invoice date
- Invoice due date
- NDC (11 digit)
- Product Name/Description
- Packaging as associated with NDC number
- Unit price
- Quantity ordered
- Quantity shipped
- Extension (unit price multiplied by the quantity shipped)
- Total invoice price
- Bill to address
- Ship to address
- Applicable tax

**2.2.8 Payment Terms.** Invoices will be eligible for an additional discount of 2% which will apply to each invoice fully paid no later than 60 days, Net 61.

**2.2.9 Limitations on Marketing.** MMCAP Participating Facilities may not sell, promote or market Product in a manner that is, or engage in activities or efforts that are, disparaging or otherwise damaging to Vendor. MMCAP Participating Facilities may not hold themselves out as representatives or agents of Vendor or otherwise as being entitled to bind Vendor in any way, and MMCAP Participating Facilities must make clear in all dealings with other persons or entities that they are not acting as agents of Vendor.

**2.2.10 Covenants of MMCAP Participating Facilities.** By ordering any Product from Vendor, each MMCAP Participating Facility agrees that it will:

- obtain and maintain all licenses and approvals that may be necessary for the use, administration, storage and marketing of each Product, as applicable to such MMCAP Participating Facility, in the United States; consult with Vendor and keep Vendor fully apprised of all communications, correspondence, or information requests made by, or with any governmental authority relating to a Product, not make any representation to any person or entity nor give any warranties other than those printed on a Product's packaging, including the package insert for a Product, or included within promotional material or other Product information provided by Vendor;
- not administer or use a Product for indications not approved by a governmental authority or listed on a Product's packaging, including the package insert for a Product;
- observe and comply with such storage, handling, stock control and operational practices and procedures of Vendor in effect from time to time or as required by any governmental authority or applicable law;

- observe and comply with Vendor' adverse event and Product technical complaint reporting procedures and procedures found at <http://flu.seqirus.com/contact-us.html> regarding provision of medical information in effect from time to time;
- execute any recall or withdrawal of a Product from the market in accordance with procedures communicated to MMCAP Participating Facilities by Vendor in the event of such recall or withdrawal of a Product from the market., , of Vendor in effect from time to time; and
- comply with applicable law or any other applicable requirements imposed by a governmental authority relating to any Product.

**2.2.11 *Withdrawal of Product Approval.*** Vendor will promptly notify MMCAP Participating Facility's in writing of any withdrawal of a Product's United States Food and Drug Administration approval or of a Product's material noncompliance with United States Food and Drug Administration standards. At the request of Vendor, MMCAP Participating Facilities agree to return to Vendor, at Vendor' sole cost and expense, any allegedly defective Product owing to the withdrawal of a Product's approval or a determination of material non-compliance by Vendor or a governmental authority.

**2.2.12 *Government Payment Programs.*** By ordering a Product, each MMCAP Participating Facility represents and warrants to Vendor that neither it, nor any individual employed by it, is currently included in the Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities or in the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Each MMCAP Participating Facility must notify Vendor immediately and in writing if the MMCAP Participating Facility or any individual employed by it is excluded or becomes reasonably subject to exclusion from a Federal Healthcare Program as defined by 42 U.S.C. § 1320a-7b(f). If an MMCAP Participating Facility or any individual employed by an MMCAP Participating Facility is excluded or becomes reasonably subject to such exclusion from a Federal Healthcare Program, Vendor will have the right to immediately terminate any outstanding order submitted by such MMCAP Participating Facility and to refuse acceptance of any further orders from such MMCAP Participating Facility.

**2.2.13 *Warranties of Vendor.*** Vendor makes the following warranties with respect to a Product ordered by MMCAP Participating Facilities under these terms:

- (a) at the time of delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account, all Product will materially conform to the quality, identity, and strength standards of Product as described in the Product's U.S. Biologics License Application, as amended, modified or replaced;
- (b) no Product bearing Vendor' name is adulterated or misbranded (within the meaning of the U.S. Federal Food, Drug, and Cosmetic Act, as such Act is effective at the time of delivery) at the time of delivery to the destination designated by the MMCAP Participating Facility in the MMCAP Participating Facility's direct purchase account and no Product is prohibited from being introduced into interstate commerce; and
- (c) all Product, when delivered to the MMCAP Participating Facility, will have been manufactured in compliance with current good manufacturing practices, as specified in the United States Code of Federal Regulations (21 CFR Part 210 & Part 211), and any other applicable laws or regulations. This Section sets forth Vendor' sole and limited warranties with respect to Product supplied to MMCAP Participating Facilities. To the maximum extent allowed by law, except as unambiguously and expressly set forth in this Section, Vendor specifically disclaims , and, by ordering a Product, each MMCAP Participating Facility is expressly waiving and releasing Vendor from all other warranties, conditions and terms regarding or relating to a Product (whether used alone or with other substances or materials) that may have been provided to a MMCAP Participating Facility or otherwise that might have effect between an MMCAP Participating Facility and Vendor or be implied into these terms, a Product order, or any other collateral contract, whether by statute, common law or otherwise and whether express, implied or otherwise, include in all implied warranties of fitness for a particular purpose.

**2.2.14 Limitation on Warranties of Vendor.** Vendor will not be liable to any MMCAP Participating Facility, and, by ordering Product, each MMCAP Participating Facility is expressly waiving and releasing Vendor from any liability, with respect to a Product (an "Uncovered Product") that (a) has been tampered with or in any way altered or modified after delivery to the MMCAP Participating Facility's designated destination; (b) has been subject to misuse, negligence or accident after delivery to the MMCAP Participating Facility's designated destination; (c) has been stored, handled, maintained, administered or used in a manner contrary to regulatory requirements, the labeling of a Product or Vendor' instructions, or otherwise not as originally intended, after delivery to the MMCAP Participating Facility's designated destination; or (d) has passed its expiration date. The warranties contained in Section 2.2 herein will not apply to any such Uncovered Product.

**2.2.15 Limitation on Damages.** IN NO EVENT WILL VENDOR BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES RELATING TO LOSS OF USE, INCOME OR PROFIT, OR LOSS OR DAMAGE TO PERSON OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE MARKETING, SALE OR USE OF A PRODUCT, INCLUDING DAMAGES RESULTING FROM ANY NEGLIGENCE OR BREACH OF ANY OBLIGATION IMPOSED ON ANY MMCAP PARTICIPATING FACILITY. THE EXCLUSIVE REMEDY OF A PARTICIPATING MMCAP FACILITY ORDERING A PRODUCT FROM VENDOR FOR CLAIMS WITH RESPECT TO THESE TERMS OR ANY ORDER SUBMITTED BY SUCH MMCAP PARTICIPATING FACILITY WILL BE PURSUANT TO THE IMDEMNIFICATION PROVISION SET FORTH IN SECTION 5 HEREIN.

**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. Vaccines in Attachment A are split-virion preparations as formulated by the United States Food and Drug Administration, Vaccines and Related Biological Product Advisory Committee for the influenza season.

**2.4 Product Pricing.**

**2.4.1 Pricing:**

Products and pricing listed in Attachment A are for Contract year one; otherwise defined as the 2016-2017 influenza season. Products in Attachment A will remain fixed for Contract year one. Price reductions may be submitted to MMCAP, [mmcap.contracts@state.mn.us](mailto:mmcap.contracts@state.mn.us), at any time. Products and pricing for Contract year two is defined as the 2017-2018 influenza season, and subsequent years will be managed by amendment to this Contract. All newly FDA approved influenza vaccine products may be added to this Contract via mutual agreement of the parties and an amendment.

2.4.2 Vendor must notify MMCAP and MMCAP's Authorized Distributors 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.

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

2.4.4 Omitted

2.4.5 Vendor must not substitute any Product contained in the contract without prior written consent of MMCAP and MMCAP Participating Facility.

2.4.6 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 Distributors 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.

2.4.7 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 inventories are depleted. Vendor will make reasonable efforts to find alternative product to

fulfill MMCAP Facilities pre-booked product requests.

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

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

2.5.2 Vendor must provide written notice of all Product situations expected to delay shipments longer than 30 calendar days and/or inability to supply situations to MMCAP within 48 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](mailto:MMCAP.Contracts@state.mn.us).

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

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 will 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 agreed to in the amendment. 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.

2.7.3 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 Distributors within 2 business days of the time that documentation of the change is received by the Vendor from MMCAP. If MMCAP's Authorized Distributors do not receive Contract change notification(s), Vendor agrees to honor all chargebacks at the contract price and date on the fully executed Contract amendment.

2.7.4 Newly FDA approved influenza vaccine products may be added to this Contract via mutual agreement of the parties and an amendment.

**2.8 MMCAP Participating Facilities.**

2.8.1 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](http://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.

2.8.3 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](mailto: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) made through the MMCAP Authorized Distributors or directly with the 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. The initial payment is due February 15<sup>th</sup> of each contract year for purchases delivered by December 31<sup>st</sup>. If this amount does not cover all purchases, additional payments must be made by July 31<sup>st</sup> of the contract year for all other purchases until all amounts due are fully paid. Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155. With the first payment, 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 Administrative Fee Data Report must contain the fields

detailed below. All Administrative Fee Data Reports must be sent to: [Mn.MMCAP@state.mn.us](mailto:Mn.MMCAP@state.mn.us). Failure to comply with this provision may constitute breach of this Contract.

Administrative Fee Data Report fields:

- MMCAP Assigned Authorized Wholesaler Number (FFF Enterprises, Inc.=3402, McKesson Medical Surgical =1001)
- 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)
- 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 for purchases made prior to such cancellation will be due no more than 30 days from the cancellation date.

Notwithstanding anything to the contrary contained herein, Vendor's obligation to make an initial payment on February 15<sup>th</sup> of each contract year and a subsequent payment on July 31<sup>st</sup> of each contract year as well as its obligation to submit an Administrative Fee Report by the date requested herein is subject to Vendor's timely receipt of purchase and chargeback information from MMCAP's Authorized Distributors.

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

**2.10.1 Federal Excise Tax** is refundable on all expired or returned vaccine MMCAP Participating Facilities must contact Vendors customer service department for assistance.

**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 HIN Numbers.** Vendor may not require that an MMCAP Participating Facility have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from MMCAP Participating Facilities.

**2.13 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.

**2.13.1** No MMCAP Participating Facility may market, promote, administer or use Product for the benefit of persons or entities outside of the United States, or where it ought reasonably to be aware that the ultimate destination for Product is outside of the United States.

**2.14 Product Dating.** All Products supplied to MMCAP's Authorized Influenza Vaccine Distributors 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](mailto: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, distributor or MMCAP Participating Facility 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 David Dwight, Vice President of National Accounts.

### **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 (MMCAP Indemnitees), 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. Notwithstanding anything to the contrary, in no event will Vendor be obligated to defend, indemnify or hold harmless MMCAP Indemnitees, from any claims, demands, actions, losses, expenses, damages, liabilities, costs (including interest, penalties, and reasonable attorneys' fees) and judgments which result from the misconduct or negligence of an MMCAP Indemnitees (including, for the avoidance of doubt, any Damage that results from a Product becoming an Uncovered Product).

## **6 State Audits**

Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of the vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract. This clause also extends to MMCAP Member Facilities as it relates to business conducted with and sales to that Member Facility.

## **7 Government Data Practices and Intellectual Property**

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

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

**7.2.1 Use of Trademarks.** MMCAP Participating Facilities shall not use Product trademarks for any purpose other than as expressly necessary to exercise their rights and perform their obligations under these terms. MMCAP Participating Facilities shall not use any other trade name or trademark of Vendor, other than the trademarks set forth in these terms, to the extent permitted in the foregoing sentence. MMCAP Participating Facilities must

ensure that each reference to and use of a Product trademark is accompanied by an acknowledgement that the same is a registered trademark of Vendor. Vendor may request copies of examples of a MMCAP Participating Facility's use of a Product trademark or any other trademark of Vendor in order to assess compliance with this Section. MMCAP Participating Facilities will not acquire any rights in respect of any trade names or trademarks of Vendor (including any Product trademarks) or of the goodwill associated therein and all such rights and goodwill are, and will at all times remain, vested in Vendor. Other than as is set forth in these terms, no license, express or implied, is granted to MMCAP Participating Facilities by Vendor under any intellectual property rights, including those of Vendor' affiliates

**7.2.2 Limitations on Use of Intellectual Property.** MMCAP Participating Facilities may not: (a) make any modification to a Product or its packaging; (b) alter, obscure, remove or tamper with any trademarks, markings, numbers, labels, indication of the source of origin, or other means of identification used on, or in relation to, a Product; (c) use a Product trademark in any way which might materially prejudice its distinctiveness or validity or the goodwill of Vendor therein; (d) use any trademarks other than those set forth herein in relation to Product; or (e) use or make any application for registration in the United States of any trademarks or trade names so resembling any trademark or trade name of Vendor as to be likely to cause confusion or deception.

## **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, epidemics of disease, influenza epidemic or pandemic, government requisition or impoundment or other acts of any governmental authority or acts of God,. In addition, the Vendor will not be held in breach of this Contract for any failure to deliver any Product or otherwise breach this Agreement due to any order by the FDA or any federal or other applicable regulatory agency.

## **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 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 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.

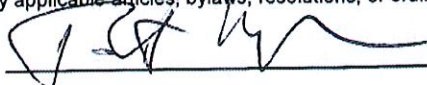
(d) Certification. Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

**19 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.

IN WITNESS WHEREOF, the following duly executed representatives of the Parties have executed this Agreement.

**1. Seqirus USA, INC. and Seqirus, 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:  \_\_\_\_\_

Name: Brent MacGregor

Title: Senior Vice President, Commercial Ops.

Date: \_\_\_\_\_

By:  \_\_\_\_\_

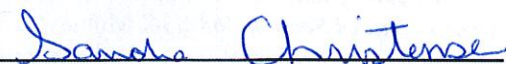
Name: John Minardo

Title: Secretary

Date: 6/15/14

**2. STATE OF MINNESOTA FOR MMCAP**

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

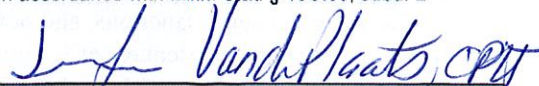
By:  \_\_\_\_\_

Title: Pharm Analyst

Date: 6-20-16

**3. COMMISSIONER OF ADMINISTRATION**

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

By:  \_\_\_\_\_

Title: SPA-P

Date: 6/20/2016



# Vendor Awards

# Attachment A

MMCAP  
 112 Administration Bldg.  
 50 Sherburne Ave  
 Saint Paul, MN 55155

**Seqirus Inc. (Vendor #1234)**

Contract Number: MMS16001  
 Contract Dates: 6/15/2016 - 5/30/2020  
 Sales Type: Annual Fixed Pricing

Description: Influenza Vaccine  
 Trade Classes: ALL

NDC	Generic Name-Str-Dosage Form	Brand Name	AD	Packaging	Bid Type	Payment Terms	Price	*Firm Dose Invoice Price
TBD	INFLUENZA VACCINE 2016-2017	AFLURIA	IM	1 - 5ML MULTI-USE VIAL	ANNUAL FIXED	2% 60 days, Net 61	\$110.99	\$88.79
TBD	INFLUENZA VACCINE 2016-2017	AFLURIA	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$130.11	\$104.09
TBD	INFLUENZA VACCINE 2016-2017	FLUVIRIN	IM	1 - 5ML MULTI-USE VIAL	ANNUAL FIXED	2% 60 days, Net 61	\$110.99	\$88.79
TBD	INFLUENZA VACCINE 2016-2017	FLUVIRIN	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$130.11	\$104.09
TBD	INFLUENZA VACCINE 2016-2017	FLUAD	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$295.64	N/A
TBD	INFLUENZA VACCINE 2016-2017	FLUCELVAX	IM	10 - 0.5ML SINGLE-USE PF SYRINGE	ANNUAL FIXED	2% 60 days, Net 61	\$143.55	N/A

\*Firm Dose Discount is a discount solely for orders of Product ("Firm Doses"), which are directly purchased through Seqirus on or before June 1, 2016. Firm Doses are not subject to any right of cancellation.

MMCAP Pricing is exclusive of federal, state and local excises taxes (including, but not limited to, the federal excise tax of \$0.75 per dose) and any other applicable taxes.

January 4, 2017

Minnesota Multistate Contracting Alliance for Pharmacy  
State of Minnesota, Department of Administration  
Materials Management Division  
50 Sherburne Avenue, Room 112  
St. Paul, MN 55155

Attention: Jennifer VanderPlaats, CPhT  
Contracts and Business Operations

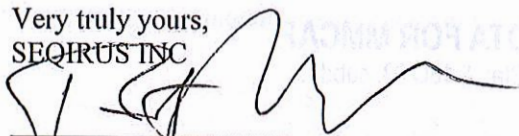
**Re: Notification of 2017-2018 Influenza Season Pricing, Discounts and Terms**

Dear Jennifer:

Seqirus Inc. and Seqirus USA Inc., *f/k/a* Novartis Vaccines and Diagnostics, Inc., (“Seqirus”) is providing notification below of Pricing, Discounts and Terms offered to contracted Group Purchasing Organizations (GPO’s) and their associated members for the 2017-2018 influenza season. Seqirus’ seasonal influenza vaccines are marketed under the Flud™, Flucelvax®, Fluvirin® and Afluria® brand names.

1. The Initial Price for the 2017-2018 Influenza Season, per Product, payable by GPO’s members (“Members”) is shown below. The Initial Price may also be referred to as the “GPO Price.”
2. A Firm Dose Discount (“Firm Dose Discount”) may be offered on selected Product(s) (“Firm Doses”) for which a contracted GPO member places orders for the purchase of Product(s) on or before April 15, 2017 pursuant to which the doses are not subject to any right of cancellation.
3. All Prices do not include Assessments.
4. Members shall be entitled to a prompt payment discount (“Prompt Payment Discount”) equal to two percent (2%) of the applicable Invoice Price, and may deduct such amount from the payment made, *provided* that Seqirus receives any such payment within sixty (60) days of the applicable Delivery Date.
5. For the 2017-2018 Influenza Season, GPO members may return 20% of their total shipped doses (Returnable Doses). Members shall return any Returnable Doses it elects to return to Seqirus or its designee in accordance with Seqirus’ instructions and at Member’s sole cost and expense. Member shall provide to Seqirus, on or before December 15, 2017 and March 15, 2018, its initial and final non-binding estimate, respectively, of the number of Product doses it expects to return to Seqirus or its designee.
6. Seqirus will use reasonable commercial efforts to deliver Product according to the following delivery schedule:
  - 50% delivered by 8/31/2017, 100% delivered by 10/15/2017

Very truly yours,  
SEQIRUS INC

  
Brent MacGregor – Sr. VP, Commercial Operations



111MS16001  
Amendment #1  
Pg 2 of 2

**Effective December 1, 2016**  
**2017-2018 Seqirus Influenza Vaccine Pricing and Discounts**

Product	Presentation	Initial Price (GPO Price) Per Package/ Per Dose <sup>1</sup>	Firm Dose Discount <sup>2</sup> Percent	Firm Dose Discount Price Per Package/ Per Dose	Price After Prompt Pay <sup>3</sup> Per Package/ Per Dose
Fluad™ Influenza Vaccine Adjuvanted	0.5mL pre-filled syringe (10 per pack)	\$410.37/\$41.037	3%	\$398.06/\$39.806	\$390.09/\$39.009
Flucelvax® Influenza Vaccine QIV	0.5mL single-dose syringes (10 per pack)	\$164.78/\$16.478	3%	\$159.83/\$15.983	\$156.64/\$15.664
Flucelvax® Influenza Vaccine QIV	5mL multi-dose vial	\$151.08/\$15.108	3%	\$146.55/\$14.655	\$143.61/\$14.361
Afluria® Influenza Vaccine QIV	0.5mL single-dose syringes (10 per pack)	\$143.31/\$14.331	3%	\$139.01/\$13.901	\$136.23/\$13.623
Afluria® Influenza Vaccine QIV	5mL multi-dose vial	\$133.52/\$13.352	3%	\$129.51/\$12.951	\$126.92/\$12.692
Fluvirin® Influenza Vaccine TIV	0.5mL single-dose syringes (10 per pack)	\$113.81/\$11.381	3%	\$110.39/\$11.039	\$108.18/\$10.818
Fluvirin® Influenza Vaccine TIV	5mL multi-dose vial	\$104.22/\$10.422	3%	\$101.09/\$10.109	\$99.07/\$9.907
Afluria® Influenza Vaccine TIV	0.5mL single-dose syringes (10 per pack)	\$113.81/\$11.381	3%	\$110.39/\$11.039	\$108.18/\$10.818
Afluria® Influenza Vaccine TIV	5mL multi-dose vial	\$104.22/\$10.422	3%	\$101.09/\$10.109	\$99.07/\$9.907

<sup>1</sup> All prices are exclusive of Assessment per vial or packet. Purchaser will be invoiced based on per packet or per vial price. Due to variability in numerical rounding, per dose prices are provided for illustration purposes only.

<sup>2</sup> Firm Dose Discount is a discount solely for orders of Product ("Firm Doses"), which are directly purchased through Seqirus on or before April 15, 2017. Firm Doses are not subject to any right of cancellation.

<sup>3</sup> Payment terms regarding the Prompt Payment Discount are as follows: 2% 60, net 61.

**STATE OF MINNESOTA FOR MMCAP**

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

By: *Shirley K. Kott*

Title: SPTA

Date: 1/25/2017

**COMMISSIONER OF ADMINISTRATION**

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

By: *Shirley K. Kott*

Date: Jan. 25, 2017





MMS 16001  
Amendment #  
#2

**Notification of 2018-2019 Influenza Season Pricing, Discounts and Other Terms under Group Purchasing Agreement**

Seqirus USA Inc. (“Seqirus”); and Minnesota Multistate Contracting Alliance For Pharmacy (“GPO” or “MMCAP”) (each a “party” and collectively the “parties”) are parties to a Group Purchasing Agreement (as amended and in effect on the date hereof, the “Agreement”), dated as of June 15, 2016, regarding the purchase and sale of Seqirus’ seasonal influenza vaccines (each a “Product” and collectively with Seqirus’ current and pending offerings, the “Products”).

Pursuant to the Agreement, Seqirus has the right to determine, in its sole discretion after good faith consultation with GPO, the Initial Price, Invoice Price and other discounts and/or rebates applicable for the 2018-2019 Influenza Season. Based on the parties’ recent discussions and other factors considered by Seqirus, Seqirus hereby notifies GPO of such items set forth in this notification (“Notification”).

1. The Initial Price for the 2018-2019 Influenza Season, per Product, shall be as set forth on Schedule 1. The Initial Price may also be referred to as the “Contract Price.”
2. A Firm Dose Discount (“Firm Dose Discount”) may be offered on selected Product(s) (“Firm Doses”) for which Participating Members place Product orders for the purchase of Product(s) on or before April 15, 2018 pursuant to which the doses are not subject to any cancellation.
3. The Invoice Price for the 2018-2019 Influenza Season after applicable discounts, per Product, shall be as set forth below.
4. All Prices do not include Assessments. Purchaser will be invoiced based on per packet or per vial price. Due to variability in numerical rounding, per dose prices are provided for illustration purposes only.
5. Participating Members shall be entitled to a prompt payment discount (“Prompt Payment Discount”) in accordance with the Agreement and may deduct such amount from the payment made provided that Seqirus receives any such payment within **the due date specified in the Agreement.**
6. For the 2018-2019 Influenza Season, the number of Returnable Doses shall be **equal to the percentage(s) listed in the Agreement.** Participating Members shall return any Returnable Doses it elects to return to Seqirus or its designee on or before the date set forth in the Agreement in accordance with Seqirus’ instructions and at Participating Member’s sole cost and expense.
7. Seqirus will use commercially reasonable efforts to deliver Product according to the terms set forth in the Agreement.

MMS160001  
Amendment#  
2

All terms and conditions of the Agreement, including this 2018-2019 Pricing Notice, are hereby ratified and confirmed in all respects and shall continue in full force and effect.

SEQIRUS USA INC.

By: Yvonne Hilsky  
Name: Yvonne Hilsky  
Title: Director, Pricing and Contracting

**STATE OF MINNESOTA FOR MMCAP**  
In accordance with Minn. Stat. § 16C.03, subd. 3  
By: [Signature]  
Title: SPA-C  
Date: 12/20/2017

**COMMISSIONER OF ADMINISTRATION**  
In accordance with Minn. Stat. § 16C.05, subd. 2  
By: [Signature]  
Date: 12/20/2017

MMS16001  
 Amendment #  
 #2

2018-2019 Influenza Season Pricing and Discounts

Product	Presentation	Initial Price (Contract Price) Per Package/ Per Dose	Firm Dose Disc. Percent	Firm Dose Disc. (Price Per Package/ Per Dose)	Price After Prompt Pay Per Package/ Per Dose
Fluad™ Influenza Vaccine Adjuvanted	0.5mL pre- filled syringe (10/pack)	433.15/ \$43.315	3%	\$420.16/ \$42.016	\$411.75/ \$41.175
Flucelvax® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$152.83/ \$15.283	3%	\$148.25/ \$14.825	\$145.28/ \$14.528
Flucelvax® Influenza Vaccine QIV	5mL multi-dose vial	\$142.36/ \$14.236	3%	\$138.09/ \$13.809	\$135.33/ \$13.533
Afluria® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$152.83/ \$15.283	3%	\$148.25/ \$14.825	\$145.28/ \$14.528
Afluria® Influenza Vaccine QIV	5mL multi- dose vial	\$142.36/ \$14.236	3%	\$138.09/ \$13.809	\$135.33/ \$13.533



**AMENDMENT NO. 3 TO MMCAP CONTRACT NO. MMS16001**

**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 Seqirus USA Inc., 1020 First Avenue, King of Prussia, PA 19406 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS16001 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

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

**Contract Amendment**

(MJ)

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

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

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

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

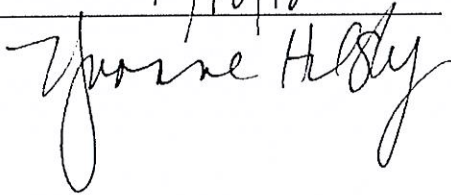
Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the vendor's business. For purposes of this article, "discrimination" includes but is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

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

**1. SEQIRUS USA 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: Yvonne HILSKY  
Title: DIR. CONTRACTING & PRICING  
Date: 1/18/18



**2. STATE OF MINNESOTA FOR MMCAP**

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

By: Sara Tuembow PharmD, BCPS  
Title: Pharmacist Sr.  
Date: 1-19-18

**3. COMMISSIONER OF ADMINISTRATION**

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

By: Lupe VandePlante  
Title: SPA-C  
Date: 1/19/2018

Seqirus USA Inc.,

MMS16001

Amendment

4

Not posted

For viewing

## AMENDMENT NO. 5 TO MMCAP CONTRACT NO. MMS16001

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 Seqirus USA Inc., 25 Deforest Avenue, Summit, NJ 07901 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS16001 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

### Contract Amendment

(1954JV)

**Revision 1:** Seqirus USA Inc. current address is 25 Deforest Avenue, Summit, NJ 07901

**Revision 2:** Contract MMS16001, **Section 2.9 Administrative Fee** is deleted and replaced with the following and is effective upon finalization of signatures between the parties.

**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) made directly with the 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. The 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:

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

The vendor must submit a monthly Administrative Fee Data Report that includes direct sales (sales made direct from vendor to MMCAP facility). 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](mailto: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) (**LEAVE BLANK**)
- MMCAP Assigned Manufacturer Number 1234
- **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



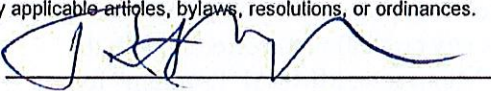
- Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- Vendor Contracted Sales (Contracted Units \* Contracted Unit Price. Report in dollars.)
- Administrative Fee Payment Amount (Administrative Fee Decimal Percentage \* Vendor Contracted Sales. Report in dollars)

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.

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

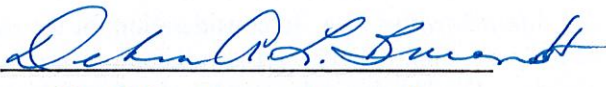
**1. SEQIRUS USA INC.**

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 Commercial Operations  
 Date: 06/26/2018


**2. STATE OF MINNESOTA FOR MMCAP**

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

By:   
 Title: SPA Coordinator  
 Date: 6-27-2018

**3. COMMISSIONER OF ADMINISTRATION**

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

By:   
 Title: AMS Sr.  
 Date: 6/27/18



MMS 16001  
Amendment # 6



**Notification of 2019-2020 Influenza Season Pricing, Discounts and Other Terms under Group Purchasing Agreement**

Seqirus USA Inc. ("Seqirus"); and Minnesota Multistate Contracting Alliance For Pharmacy ("GPO" or "MMCAP") (each a "party" and collectively the "parties") are parties to a Group Purchasing Agreement (as amended and in effect on the date hereof, the "Agreement"), dated as of June 15, 2016, regarding the purchase and sale of Seqirus' seasonal influenza vaccines (each a "Product" and collectively with Seqirus' current and pending offerings, the "Products").

Pursuant to the Agreement, Seqirus has the right to determine, in its sole discretion after good faith consultation with GPO, the Initial Price, Invoice Price and other discounts and/or rebates applicable for the 2019-2020 Influenza Season. Based on the parties' recent discussions and other factors considered by Seqirus, Seqirus hereby notifies GPO of such items set forth in this notification ("Notification").

1. The Initial Price for the 2019-2020 Influenza Season, per Product, shall be as set forth on Schedule 1. The Initial Price may also be referred to as the "Contract Price."
2. A Firm Dose Discount ("Firm Dose Discount") may be offered on selected Product(s) ("Firm Doses") for which Participating Members place Product orders for the purchase of Product(s) on or before April 15, 2019 pursuant to which the doses are not subject to any cancellation.
3. The Invoice Price for the 2019-2020 Influenza Season after applicable discounts, per Product, shall be as set forth below.
4. All Prices do not include Assessments. Purchaser will be invoiced based on per packet or per vial price. Due to variability in numerical rounding, per dose prices are provided for illustration purposes only.
5. Participating Members shall be entitled to a prompt payment discount ("Prompt Payment Discount") in accordance with the Agreement and may deduct such amount from the payment made provided that Seqirus receives any such payment within the due date specified in the Agreement.
6. For the 2019-2020 Influenza Season, the number of Returnable Doses shall be equal to the percentage(s) listed in the Agreement. Participating Members shall return any Returnable Doses it elects to return to Seqirus or its designee on or before the date set forth in the Agreement in accordance with Seqirus' instructions and at Participating Member's sole cost and expense.
7. For the 2019-2020 Influenza Season, the following Delivery terms for Doses ordered Direct from Seqirus will be in effect.
  - 50% by August 31, 2019
  - 100% by October 15, 2019
8. Seqirus will use commercially reasonable efforts to deliver Product according to the terms set forth in the Agreement.

All terms and conditions of the Agreement, including this 2019-2020 Pricing Notice, are hereby ratified and confirmed in all respects and shall continue in full force and effect.

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

SEQIRUS USA INC.

DocuSigned by:

Yvonne Hilsky

By: \_\_\_\_\_

D6E2650ED7704C0...

Name: Yvonne Hilsky

Title: Director, Pricing and Contracting

By: [Signature]

Title: SPA-C

Date: 1/2/2019

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

By: [Signature]

Date: 1-2-19

MMS16001  
Amendment # 6

## 2019-2020 Influenza Season Pricing and Discounts

Product	Presentation	Initial Price (Contract Price) Per Package/Dose		Firm Dose Disc. Percent	Firm Dose Disc. Price Per Package/Dose		Price After Prompt Pay Per Package/Dose	
Fluad™ Influenza Vaccine Adjuvanted	0.5mL pre- filled syringe (10/pack)	\$445.00	\$44.500	3%	\$431.65	\$43.165	\$423.01	\$42.301
Flucelvax® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$179.58	\$17.958	3%	\$174.19	\$17.419	\$170.71	\$17.071
Flucelvax® Influenza Vaccine QIV	5mL multi-dose vial	\$167.27	\$16.727	3%	\$162.26	\$16.226	\$159.01	\$15.901
Afluria® Influenza Vaccine QIV	0.5mL single-dose syringes (10/pack)	\$152.84	\$15.284	3%	\$148.25	\$14.825	\$145.29	\$14.529
Afluria® Influenza Vaccine QIV	5mL multi- dose vial	\$142.36	\$14.236	3%	\$138.09	\$13.809	\$135.33	\$13.533
Afluria® Influenza Vaccine QIV	0.25mL single-dose syringes (10/pack)	\$152.84	\$15.284	3%	\$148.25	\$14.825	\$145.29	\$14.529