



Pharmaceutical WHOLESALE Services Contract

Minnesota Multistate Contracting Alliance for Pharmacy

SWIFT Contract No. :

This Contract is between MMCAP of Minnesota, acting through its Commissioner of Administration, on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("State" or "MMCAP") and Morris & Dickson Co., LLC, 410 Kay Lane, Shreveport, Louisiana 71115, ("WHOLESALE").

Recitals

1. Under Minn. Stat. § 16C.03 and § 471.59, the Commissioner of Administration, on behalf of MMCAP, is empowered to engage such assistance as deemed necessary.
2. MMCAP, a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c), is in need of pharmaceutical WHOLESALE to distribute pharmaceuticals, OTCs, nutritionals, vaccines (other than influenza vaccines), and other products to its members.
3. The WHOLESALE represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of MMCAP.

Contract

1. Term of Contract and Exhibits

- 1.1 **Effective date:** November 1, 2014, or the date MMCAP obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. **The WHOLESALE must not begin work under this contract until this contract is fully executed and the WHOLESALE has been notified by MMCAP's Authorized Representative to begin the work.**
- 1.2 **Expiration date:** October 31, 2016, or until all obligations have been satisfactorily fulfilled, whichever occurs first. The Contract may be extended for up to an additional three (3) years, at increments determined by MMCAP, on written acceptance by both parties, for a total term not to exceed five (5) years.
- 1.3 **Survival of terms.** The following clauses survive the expiration or cancellation of this Contract: 2. Definitions; 5. Fees and Payment; 6. Conditions of Payment; 8. Notices; 10. Indemnification; 11. Audits; 12. Government data practices; 13. Intellectual Property and Data Rights; 17. Publicity and endorsement; 18. Governing law, jurisdiction, and venue; 19. Data disclosure; 30. Severability; and 36. State Terms and Participation.
- 1.4 **Attachments.** The following *Attachments* are attached and incorporated into this contract, and are set forth in their order of precedence:

Attachment A, Scope of Work

Attachment B, Other Fees

Attachment C, Service Fee Discount Matrix

Attachment D, Wholesalers Returned Goods Policy

Attachment E, Member Participating Agreements (MPA), and its Exhibits, if applicable

2. Definitions

To the extent that they do not diminish, derogate, or otherwise modify the express language set forth in this Contract, the definitions set forth in any exhibits or attachments, as attached and incorporated herein, shall apply to the Contract document.

3. Time

The WHOLESALER must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4. WHOLESALER's duties

The WHOLESALER, who is not a State employee, will perform the duties specified in *Attachment A, Scope of Work*, which is attached and incorporated into this Contract.

5. Fees and Payment

5.1 Additional Fees. Subject to *Attachment B*, no fee, percentage, or other cost may be added to the products purchased under the MMCAP contract unless the fee, percentage, or cost is defined and approved in writing by MMCAP and a formal amendment is executed.

5.2 Fees. Subject to *Attachment C*, as attached and incorporated herein, all changes to the MMCAP Service Fee Matrix will be communicated to MMCAP in writing with a minimum of five (5) business days' notice prior to the effective date of the changes. WHOLESALER service fees may only change on a quarterly or less frequent basis.

5.3 Federal funds. Payments under this contract may be made from federal funds. The WHOLESALER is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the WHOLESALER's failure to comply with federal requirements.

6. Conditions of payment

All services provided by the WHOLESALER under this contract must be performed to the satisfaction of MMCAP and the MMCAP Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

7. Authorized Representative

MMCAP's Authorized Representative is Ms. Debra López-Burandt, MMCAP WHOLESALER Coordinator, 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, 651-201-3053, debra.lopez-burandt@state.mn.us or her successor or designee, and has the responsibility to monitor the WHOLESALER's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, MMCAP's Authorized Representative will certify acceptance on each invoice submitted for payment.

The WHOLESALER's Authorized Representative is Chad Runeberg, Sr. Director Health Systems at the following business address and telephone number, 1776 Woodstead Court, Suite #125, The Woodlands, TX 77380, 281-292-9180, cruneberg@morrisdickson.com or his/her successor. If the WHOLESALER's Authorized Representative changes at any time during this Contract, the WHOLESALER must immediately notify MMCAP.

8. Notices

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

MMCAP WHOLESALER Coordinator
Minnesota Multistate Contracting Alliance for
Pharmacy
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651-201-3053

Morris & Dickson
Mike Casida
Director, Health Systems
1776 Woodstead Court Suite # 125
The Woodlands, TX 77380
Fax: 281-292-9214

9. Assignment, amendments, waiver, and contract complete

9.1 **Assignment.** The WHOLESALER may neither assign nor transfer any rights or obligations under this Contract without the prior consent of MMCAP and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office. MMCAP may not assign or transfer any rights or obligations under this contract to any entity outside the State of Minnesota executive branch, without the prior consent of WHOLESALER and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

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

9.3 **Extraneous Agreements.** Except as set forth in Section 38, the WHOLESALER shall not enter into any additional agreement, with any MMCAP Member, arising from this Contract for similar services, or amend this Contract in any way, without the written authorization of MMCAP's managing director. Nothing herein shall prohibit Wholesaler from responding to solicitations issued by MMCAP Members.

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

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

10. Indemnification

The WHOLESALER must indemnify, save, and hold MMCAP and MMCAP Member, including their agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP or its MMCAP Member, arising out of the performance of this Contract by the WHOLESALER or the WHOLESALER's agents or employees. This clause will not be construed to bar any legal remedies the WHOLESALER may have for MMCAP's or the MMCAP Member'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 WHOLESALER.

11. Audits

11.1 **State Audit.** Under Minn. Stat. § 16C.05, subd. 5, the WHOLESALER's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State, MMCAP, and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Contract.

11.2 **Invoice and Pricing Audit.** MMCAP and MMCAP Members served by this Contract may periodically audit WHOLESALER to determine the validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.

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

12. Government data practices

- 12.1 **Data Practices Act.** The WHOLESALER and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the WHOLESALER under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the WHOLESALER or the State.
- 12.2 **Notification.** If the WHOLESALER receives a request to release the data referred to in this clause, the WHOLESALER must immediately notify and consult with MMCAP's Authorized Representative as to how the WHOLESALER should respond to the request. The WHOLESALER's response to the request shall comply with applicable law.
- 12.3 **Release of MMCAP data.** Except as may be required by Minnesota Data Practices Act, Minn. Stat. Ch. 13, or as provided in Section 13, WHOLESALER shall not release to any third party any MMCAP customer data, sales transaction data, DEA/HIN information, contract pricing, EDI transaction data, reverse distribution data, or payment data.

13. Intellectual Property and Data Rights.

- 13.1 **MMCAP Ownership.** MMCAP owns all rights, title, and interest in MMCAP customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP grants to WHOLESALER an unlimited, non-revocable, nontransferable, fully paid license, for the term of this contract, to (i) release state specific data to an MMCAP Member's State primary contact; (ii) release any of the above data to product manufacturers, when necessary for the performance of this contract or as required by WHOLESALER's agreements with such product manufacturers; (iii) to release any of the above data to other MMCAP-approved third parties, when necessary for the performance of this contract; (iv) to provide MMCAP Member purchase data to aggregators, including IMS Health and NDC Health, subject to WHOLESALER's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (v) to provide MMCAP Member purchase data to other group purchasing organizations of which the MMCAP Member is also a member, provided such data will not include MMCAP-identifiable data. Any MMCAP identifiable data provided hereunder to a third party must identify the data as MMCAP data and subject to Minn. Stat. Ch. 13. WHOLESALER hereby agrees that in the event that an MMCAP Member or MMCAP Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.
- 13.2 **WHOLESALER Ownership.** WHOLESALER owns all rights, title, and interest to any aggregated data not identifiable as arising from this contract and any other intellectual property created for or presented to MMCAP. WHOLESALER grants to MMCAP an unlimited, non-revocable, non-transferable, fully paid, perpetual license, to use all intellectual property created for or presented to MMCAP under this contract.
- 13.3 **Pre-Existing Intellectual Property.** MMCAP and WHOLESALER shall each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. WHOLESALER grants to State an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, non-transferable license to use and modify any pre-existing WHOLESALER intellectual property, including marketing materials and materials contained in solicitation responses provided by WHOLESALER to MMCAP or an MMCAP Member. The

aforementioned license is solely for use by MMCAP and MMCAP Members, and their agents related to an internal business or governmental purposes.

13.4 ***Intellectual Property Warranty and Indemnification.*** Except as otherwise set forth below, WHOLESALER warrants that any materials, software or products produced by WHOLESALER will not infringe upon 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 WHOLESALER. WHOLESALER, at its own expense, will indemnify; defend to the extent permitted by the Minnesota Attorney General's Office, and hold harmless MMCAP against any loss, cost, expense, or liability (including reasonable legal fees) arising out of such a claim, whether or not such claim is successful against MMCAP.

13.4.1 If such a claim has occurred, or in the WHOLESALER's opinion is likely to occur, the WHOLESALER will either procure for MMCAP the right to continue using the materials or products or replacement or modified materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the WHOLESALER, upon written request of the WHOLESALER and at the WHOLESALER's expense. This remedy is in addition to any other remedy provided by law.

13.4.2 In the event of a third party claim of infringement by any material, software or product provided by WHOLESALER or utilized by WHOLESALER in the performance of this contract, but produced by a third party, WHOLESALER's indemnification obligations set forth in Section 13.4 shall apply to the extent that the third party's indemnification obligation to the WHOLESALER is available to MMCAP or WHOLESALER will assist MMCAP in tender of such claim directly to the manufacturer of such material, software or product.

14. Insurance Requirements

A. WHOLESALER shall not commence work under the contract until they have obtained all the insurance described below and MMCAP has approved such insurance. WHOLESALER shall maintain such insurance in force and effect throughout the term of the contract.

B. WHOLESALER is required to maintain and furnish satisfactory evidence of the following insurance policies:

1. **Workers' Compensation Insurance:** Except as provided below, WHOLESALER must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, WHOLESALER will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts WHOLESALER from Workers' Compensation insurance or if the WHOLESALER has no employees in the State of Minnesota, WHOLESALER must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes WHOLESALER from the Minnesota Workers' Compensation requirements.

If during the course of the contract the WHOLESALER becomes eligible for Workers' Compensation, the WHOLESALER must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP with a certificate of insurance.

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

Premises and Operations Bodily Injury and Property Damage
Personal and Advertising Injury
Blanket Contractual Liability
Products and Completed Operations Liability
Other; if applicable, please list _____
State of Minnesota named as an Additional Insured, to the extent permitted by law

3. **Commercial Automobile Liability Insurance:** WHOLESALER is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the WHOLESALER will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

C. Additional Insurance Conditions:

- Any deductible will be the sole responsibility of the WHOLESALER and may not exceed \$50,000 without the written approval of MMCAP. If the WHOLESALER desires authority from MMCAP to have a deductible in a higher amount, the WHOLESALER shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that MMCAP can ascertain the ability of the WHOLESALER to cover the deductible from its own resources.
- WHOLESALER's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of WHOLESALER's performance under this contract;
- If WHOLESALER receives a cancellation notice from an insurance carrier affording coverage herein, WHOLESALER agrees to notify MMCAP within five (5) business days with a copy of the cancellation notice, unless WHOLESALER's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP;

- WHOLESALER is responsible for payment of Contract related insurance premiums and deductibles;
 - If WHOLESALER is self-insured, a Certificate of Self-Insurance must be attached;
 - WHOLESALER's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
 - WHOLESALER shall 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 WHOLESALER's policy limits to satisfy the full policy limits required by the Contract.
- D. MMCAP reserves the right to immediately terminate the contract if the WHOLESALER is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the WHOLESALER. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to MMCAP's authorized representative upon written request.
- E. The successful responder is required to submit Certificates of Insurance acceptable to MMCAP as evidence of insurance coverage requirements prior to commencing work under the contract.

15. Debarment by State, its departments, commissions, agencies, or political subdivisions

WHOLESALER certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. WHOLESALER's certification is a material representation upon which the Contract award was based. WHOLESALER shall provide immediate written notice to MMCAP's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

16. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore WHOLESALER certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. WHOLESALER's certification is a material representation upon which the Contract award was based.

17. Publicity and endorsement

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

17.2 **Endorsement.** The WHOLESALER must not claim that MMCAP, the State of Minnesota, or any Member State endorses its products or services, nor may MMCAP claim that the WHOLESALER endorses its products or services.

18. 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 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 Minn. Stat. § 336, the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. Parties acknowledge that the predominant purpose of this Contract is for the provision of goods.

19. Data disclosure

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the WHOLESALER consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the WHOLESALER to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

20. Payment to subcontractors

To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the prime WHOLESALER must pay all subcontractors, less any retainage, within 10 calendar days of the prime WHOLESALER's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

21. Termination

21.1 Termination by the State without cause. The Commissioner of the Minnesota Department of Administration may cancel this Contract at any time, without cause, upon 30 days' written notice to the WHOLESALER. Upon termination, the WHOLESALER will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

21.2 Termination for cause. Either party may cancel this contract at any time, for cause, upon no less than ninety (90) days' written notice to the other party. Upon notice of termination, the noticed party shall have sixty (60) days to cure any defects.

21.3 Termination for insufficient funding. MMCAP may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the WHOLESALER. MMCAP is not obligated to pay for any services that are provided after notice and effective date of termination. However, the WHOLESALER will be entitled to payment for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP must provide the WHOLESALER notice of the lack of funding within a reasonable time of MMCAP receiving that notice.

22. Non-discrimination (In accordance with Minn. Stat. § 181.59)

The WHOLESALER will comply with the provisions of Minn. Stat. § 181.59 which require:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the WHOLESALER agrees: (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no WHOLESALER, material supplier, or WHOLESALER, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) that no WHOLESALER, material supplier, or WHOLESALER, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of

race, creed, or color; (3) that a violation of this section is a misdemeanor; and (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

23. Affirmative action requirements for contracts in excess of \$100,000 and if the WHOLESALER has more than 40 full-time employees in Minnesota or its principal place of business.

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

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

23.2 Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the WHOLESALER 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.

23.3 Minn. R. 5000.3400-5000.3600.

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

(B) *Disabled Workers.* The WHOLESALER must comply with the following affirmative action requirements for disabled workers.

- (1) The WHOLESALER must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The WHOLESALER 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) The WHOLESALER 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 the WHOLESALER's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (4) The WHOLESALER agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the WHOLESALER'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) The WHOLESALER must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the WHOLESALER is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

(C)*Consequences.* The consequences for the WHOLESALER'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.

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

24. E-Verify certification (In accordance with Minn. Stat. § 16C.075)

For services valued in excess of \$50,000, WHOLESALER certifies that as of the date of services performed on behalf of the State, WHOLESALER and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of the State. WHOLESALER is responsible for collecting all subcontractor certifications and may do so utilizing the *E-Verify Subcontractor Certification Form* available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with WHOLESALER and made available to the State upon request.

25. GPO Representation. MMCAP represents and warrants that it is a "group purchasing organization" as that term is defined under 42 C.F.R. Section 1001.952(j) and that it shall comply with all applicable federal and state laws, rules and regulations, including, but not limited to, the provisions set forth in 42 U.S.C. Section 1320a-7b and the "safe harbor regulations" set forth in 42 C.F.R. Section 1001.952.

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

27. Risk of Loss, Damage, and Shipping Terms. Shipments under this contract shall be FOB Destination, freight prepaid and allowed, to the MMCAP Member's receiving dock or pharmacy, unless otherwise agreed to by the parties in writing. Title to and risk of loss of the products transfers to the MMCAP Member upon delivery to the MMCAP Member, as set forth above.

28. Force Majeure. Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.

29. Default.

29.1 **Failure to Perform.** Upon failure to perform the following services in the time and manner as set forth herein, the following fees shall be paid by WHOLESALER:

- 29.1.1 **Bid Roll.** Upon MMCAP's supplier-wide bid roll effective date, all contracted products shall be loaded, stocked (subject to historical usage), and viewable by all MMCAP Members, or WHOLESALER shall pay the following fee to MMCAP: \$ 2,500/day, until resolved, not to exceed \$25,000 per bid roll.
- 29.1.2 **Reports.** In the event that any report and/or data provided by the WHOLESALER, pursuant to the terms of this Contract, is not received according to schedule, contains incorrect data, incomplete data, or no data, and is more than a minor defect or causes harm to MMCAP's ability to conduct business or its governmental purpose, or WHOLESALER shall pay the following fee to MMCAP: \$ 500/day, until resolved, not to exceed \$5,000 per instance.
- 29.1.3 **Inventory Management and Management of MMCAP Contract Products.** If a contracted NDC (National Drug Code) product is not loaded, stocked, and viewable by all MMCAP Members, as required pursuant to this Contract and within the timelines set forth herein, WHOLESALER shall credit to the MMCAP Member submitting the request an amount equal to twenty-five basis points (0.25%) of previous month's GCN (generic code number) volume class for that Member. WHOLESALER shall credit to the Member within thirty (30) calendar days of the MMCAP Member's original request to stock the product.
- 29.1.4 **Delivery Delays.** Deliveries shall be made by the WHOLESALER in accordance with the time schedules specified in Attachment A or as otherwise agreed upon by the WHOLESALER and MMCAP Member. Where delivery is delayed, WHOLESALER shall credit to the Member a fee of forty five dollars (\$45.00) per order not delivered within 90 minutes of the delivery time scheduled, and for each day the delivery is not received, payable as a credit to the Member within fourteen (14) calendar days of the original delivery date. WHOLESALER shall not be responsible for paying the aforementioned fee for delays outside of its control.
- 29.1.5 **Invoices.** Where WHOLESALER submits subsequent invoices for any fees not related directly to product cost, WHOLESALER shall reference the original invoice number or purchase order number. WHOLESALER shall credit to the Member the amount of forty five dollars (\$45.00) for each subsequent invoice for fees not related directly to product cost submitted that fails to meet the above requirement.
- 29.1.6 **Application of Fees.** The application of fees herein shall not excuse WHOLESALER's performance obligations as set forth in this agreement, nor shall it waive any rights of MMCAP or MMCAP Members to seek any and all available legal and equitable remedies.
- 29.1.7 **Acknowledgement.** WHOLESALER acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP and MMCAP Members whole for any failure of performance by the WHOLESALER, as based upon good faith estimates as agreed to by the parties.
- 30. Severability.** If any provision of the Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP and the WHOLESALER will be relieved of all obligations arising under such provisions. If the remainder of the Contract is capable of performance, it will not be affected by such declaration or finding, and will be fully performed.
- 31. Dispute Resolution.** WHOLESALER and MMCAP Members will handle dispute resolution for unresolved issues using the following procedure.
- 31.1 **Notification.** Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time.

- 31.2 **Documentation.** Both the MMCAP Member and the WHOLESALER will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties. The briefing document must be sent by the WHOLESALER to MMCAP, the MMCAP Member, and the WHOLESALER's MMCAP Primary Account Representative.
- 31.3 **Escalation.** If parties are unable to resolve the issue in a timely manner, as specified above, either the MMCAP Member or WHOLESALER may escalate the resolution of the issue to a higher level of management. Where escalation of the issue proves ineffective, either party may contact MMCAP and/or the WHOLESALER's MMCAP Representative for further resolution. When escalated to MMCAP, a teleconference will be scheduled with MMCAP and the WHOLESALER's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The plan and timeline must be agreed to by all parties – MMCAP, the MMCAP Member, and WHOLESALER.
- 31.4 **Performance while Dispute is Pending.** Notwithstanding the existence of a dispute the WHOLESALER must continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If the WHOLESALER fails to continue without delay to perform its responsibilities under this 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 shall be borne by the WHOLESALER. This section does not apply in the event that a Participating Facility fails to make timely payment of a non-disputed invoice, and where Wholesaler provides immediate notice to the Participating Facility of the delinquency and provides a reasonable opportunity to cure, as specified in Attachment A, Section 4.13 F.
- 31.5 **Member Rights.** In the event an MMCAP Member cannot resolve a dispute with the WHOLESALER, and the MMCAP Member has worked with MMCAP to resolve the dispute, the MMCAP Member(s) may change its prime WHOLESALER even if the rest of the MMCAP Member state does not wish to change its WHOLESALER.
- 31.6 **No Waiver.** This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.
- 32. Adding New Members.** If new states are added as MMCAP Members and opt to participate in this contract, the new MMCAP Member state will select a WHOLESALER to service the MMCAP Members. In the event one or more of said facilities are currently using another MMCAP-contracted WHOLESALER, said facility will be allowed to choose if it will transition to WHOLESALER.
- 33. Required Licenses, Permits, and Registration.** WHOLESALER shall have in place prior to the start of the contract, and must maintain for the life of the contract, all current licenses, permits and registrations required by state, local and federal agencies. WHOLESALERS must make such documentation available upon request by MMCAP.
- 34. DEA License/HIN.** WHOLESALER shall not require an MMCAP Member to have a DEA number in order to obtain products unless making orders for controlled substances. MMCAP Member facilities will have HIN numbers assigned by MMCAP.
- 35. Personnel Changes.** WHOLESALER shall notify MMCAP of changes in the WHOLESALER's key personnel, in advance and in writing. Any employee of WHOLESALER, who, in the opinion of MMCAP, is unacceptable, will be removed from the project upon written notice to the WHOLESALER. In the event that an employee is removed pursuant to a written request from MMCAP's authorized representative, the WHOLESALER will have ten (10) working days in which to fill the role with an acceptable employee.
- 36. State Terms and Participation.**

36.1 WHOLESALER may be required, except as set forth in Section 38, to prepare an MMCAP "Member-requested Participation Agreement" (MPA), which is attached and incorporated as Attachment E, to amend this Contract to provide for laws specific to a state or local jurisdiction. If these circumstances exist, the WHOLESALER must work with MMCAP and the MMCAP Member to prepare the MPA. An MPA must clearly apply only to the requesting location and will not affect the rights of the other MMCAP Members, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein, except in regard to the applicable named MMCAP Member. No verbal or written instructions from MMCAP Members, or any of their staff or officials may be used to change any provision of this Contract. WHOLESALER will immediately report any such requests to the MMCAP Manager who will issue approval or denial in writing.

36.2 WHOLESALER will comply with all local, state, and federal laws, as applicable to each Member State, in the performance of this contract. MMCAP will not be bound by non-Minnesota state-specific terms contained in an MPA when bringing any action. Nothing contained herein will be deemed a waiver of the State of Minnesota's sovereign immunity.

37. **Contract Transition.** Pursuant to the transition as set forth in *Attachment A*.

38. **Texas Department of State Health Services (TX DSHS)**

In the event of a direct contract between Wholesaler and the TX DSHS, the TX DSHS shall not be a party to this Contract, nor shall the terms of this Contract apply thereto, unless otherwise agreed to in writing by formal amendment to this Contract.

Subject to the above, Wholesaler agrees to: 1) administer MMCAP contracts for eligible TX DSHS facilities; 2) report TX DSHS MMCAP purchases to MMCAP per terms of this Contract relating to contract loads and sales reporting; and 3) pay distributor administrative fee on MMCAP account sales. Distributor Administrative fee will not be paid on Prime Vendor 340B Drug Pricing Program Sales, Prime Vendor DSH sales or on drop shipment sales. Distributor administrative fees for non-contract sales to WAC accounts (related to 340B split bill accounts) may be made available to MMCAP upon formal written request by MMCAP for sales to TX DSHS.

1. MORRIS & DICKSON CO., LLC

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

By: Mick C. O'Leary

Title: DIRECTOR HEALTH SYSTEMS

Date: 11/6/14

2. STATE OF MINNESOTA FOR MMCAP

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

By: Sara Tunbary, PharmD, BCPS

Title: Pharmacist Sr.

Date: 11-6-14

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]

Title: Negotiations Manager

Date: 11/7/14

By: _____

Title: _____

Date: _____