

JOINT POWERS AGREEMENT

This Joint Powers Agreement ("**Agreement**") is entered into and by the Minnesota Multistate Contracting Alliance for Pharmacy ("**MMCAP**"), acting through the State of Minnesota ("**Minnesota**") and the Member identified on the signature page of this Agreement, ("**Member**"). This Agreement will be in effect on the date all applicable required signatures are obtained under **Minnesota Statute § 16C.05**.

MMCAP is a free, voluntary, public sector group purchasing organization for government-authorized Members and/or Facilities and is operated by the Office of State Procurement of Minnesota's Department of Administration. MMCAP's mission is to provide its Membership with the best value in pharmaceuticals, healthcare product, and services to government healthcare facilities across the nation.

I. DEFINITIONS

- A. **Days:** Means calendar days.
- B. **Facility or Facilities:** Means state governmental facilities and departments, such as but not limited to, state ran correctional, mental health facilities, and public health facilities.
- C. **Managing Director:** Means an individual designated as such and appointed by Minnesota to lead and oversee MMCAP.
- D. **Member:** Means a State, Facility, municipality, or non-profit organization that has executed a membership application and Member agreement with MMCAP.
- E. **Membership:** Means the joint power cooperative comprised of the MMCAP authorized states, departments, and Facilities in good standing.
- F. **State:** Means one of the recognized fifty (50) states of the United States of America.
- G. **Vendor:** Means a provider of pharmaceuticals, health care supplies, health care services, and/or other MMCAP contract awardees.
- H. **Vendor Contracts:** Means the multistate procurement contract a Vendor enters into with MMCAP, allowing Members to procure pharmaceuticals, health care supplies, health care services, and/or other MMCAP contract awardees from the Vendor.

II. AUTHORIZATION AND PURPOSE

- A. **Authorization:** Minnesota and the Member are empowered to enter into this Agreement pursuant to **Minnesota Statute § 471.59, subd. 10** authorizing governmental units to enter into joint powers agreements whereby one of the governmental units performs on behalf of the other any service or function which the governmental unit providing the service or function is authorized to provide for itself.

By executing this Agreement, the Member is certifying that it is authorized to enter into this Agreement pursuant to the applicable laws, rules and regulations. The designated individual executing this Agreement certifies that they have the authority to represent the Member and is authorized to commit the Member on matters related to MMCAP. The State of Iowa is authorized to participate in the MMCAP cooperative purchasing program by the **Iowa Administrative Rules Section 117.4(4)**.

- B. **Charter:** MMCAP operates under the constraints of the current MMCAP Charter.

- III. **TERM:** The Agreement will be effective upon the date it is fully executed by all parties; and will remain in effect until cancelled by MMCAP or the Member. This Agreement may be cancelled (A) by either party upon thirty (30) Days' written notice to the other party; (B) immediately by mutual written agreement by parties; (C) revocation by the applicable government authority where the Member operates; or (D) immediately upon material breach by one of the parties. The Member is liable for their outstanding obligations at the time of cancellation.

IV. POWERS AND DUTIES OF MMCAP

- A. **Powers:** Under this Agreement, MMCAP and Minnesota as the administrator, will have the power to pursue the scope described above and to perform all the acts necessary for the exercise of said powers, including but not limited to:
1. Maintain and amend the MMCAP Charter;
 2. Implement policies and procedures to achieve MMCAP's mission;
 3. Employ staff and/or contract for services as it deems necessary;
 4. Develop a procurement plan, including the time schedule, specifications, use description, and the solicitation/contract documents;
 5. Issue solicitation for bids from Vendors and make final award determinations;
 6. Negotiate and execute all Vendor Contracts, amendments, and terminations;
 7. Select products and services that the Member(s) have access to under MMCAP;
 8. Establish quality standards and maintain Vendor performance records;
 9. Collect and manage fees collected from Vendors and distribute to Members any unused fees collected from contracted vendors (**Article 6**); and
 10. **Limits:** When using the powers provide to them in this Agreement, MMCAP nor Minnesota will not attempt to cause the Members to violate the Member's laws or federal laws.
- B. **Duties:** Provided the request does not violate Minnesota or federal law, upon reasonable written requests from the Member, MMCAP shall:
1. Provide information to the Member regarding products and services available through MMCAP;
 2. Coordinate any document reviews and make available copies of contract documents as MMCAP is allowed to by law;
 3. Handles administrative protests arising from solicitations in accordance to Minnesota laws and regulations;
 4. Assist in resolving administrative, contractual, or supplier problems that have not been resolved by the Member; and
 5. Comply with all applicable laws, rules, and regulations governing purchasing of pharmaceuticals, healthcare products, and services.

V. POWERS, DUTIES, AND CONVENATS OF MEMBER

- A. **Powers:** As authorized in this Agreement, Member may:
1. Submit written recommendations for solicitations and Vendor Contract(s);
 2. Submit requests to modify MMCAP Vendor Contracts. All modifications must:
 - a. Be related to statutory requirements and/or conflicts with the Member's own laws;
 - b. Be written by Member and provided to MMCAP, who will memorialize and discuss with the Vendor;
 - c. Agreed upon by Vendor;
 - d. Only affect the terms and conditions of the Member and not any other MMCAP member, Membership, MMCAP, and Minnesota; and
 - e. Receive written approval by MMCAP and Minnesota before it is enforceable.
 3. **Limits:** When using the powers provide to them in this Agreement, the Member cannot cause MMCAP or Minnesota to violate Minnesota or federal law.
- B. **Duties:** As part of the Membership of MMCAP, Member will:
1. Adhere to the MMCAP Charter;
 2. Update MMCAP regarding changes to the Member information and contact person;
 3. Will promptly pay MMCAP Vendors for all products or services purchased; and

4. If a State Member, attend MMCAP business meeting(s).

C. **Covenants:** The Member warrants that:

1. It authorizes MMCAP to negotiate Vendor Contracts on its behalf;
2. If the Member is a Member-authorized non-government entity, it has statutory authority under which it may purchase goods and services from the Vendor Contracts through MMCAP;
3. It will comply with all applicable laws, rules, and regulations governing purchasing of pharmaceuticals, healthcare products, and services when utilizing Vendor Contracts through MMCAP;
4. It is required to follow and will be bound by applicable antitrust laws (*Robinson-Patman* (15 U.S.C. 13 (a)) and purchase products for its "own use" as defined by *Abbott Labs v. Portland Retail Druggists* (425 U.S. 1(1976)) and *Jefferson County Pharmaceutical Association, Inc. v. Abbott Labs* (460 U.S. 150 (1983))), thus Member will not resell or divert products obtained under the MMCAP contracts;
 - a. If the Member is exempt, it will obtain an opinion from its legal counsel and notify MMCAP of the decision;
5. When applicable, Member acknowledges that the prices made available under MMCAP's Vendor contracts may represent a discount to price that must be properly and accurately accounted for and reported in accordance with all federal and state laws, including the anti-kickback law (42 C.F.R. § 1320a-7b(b)(3)(A)) and regulations thereunder (42 C.F.R. §1001.952(h));
6. It understands that MMCAP is not liable for any denied pricing, chargeback, refusal of Vendors to honor contract pricing, or failure of Vendors to deliver the products or services;
7. MMCAP does not assume any responsibility for the accountability of funds expended by the Member;
8. Acknowledges that MMCAP is not the manufacturer or distributor of any product or service and MMCAP makes no representations and warranties regarding thereof quality, merchantability, fitness for a particular purpose, condition, or other attribute of the products supplied by Vendors under the Vendor Contracts.

VI. **REDISTRIBUTION:** The Managing Director may require the Vendors (not Members) to pay an administrative fee to MMCAP. The fee will be based on a percentage of sales made by the Vendor. Fees will be utilized to pay for the administrative costs incurred in the operation of MMCAP, as determined by the Managing Director. Any remaining balance of funds shall be returned to Members in good standing, by means of a credit to their wholesaler account proportionate to the Member's contract purchases via the contracted Vendor(s).

VII. **GENERAL PROVISIONS**

- A. **Termination:** MMCAP and Member agree that the previous joint powers agreement that was effective August 3, 2004, and its relating amendments, will be terminated upon the effective date of this Agreement.
- B. **Assignment:** Neither party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.
- C. **Liability:** Each party will be responsible for their own acts and behavior and the results thereof. Nothing in this Agreement will be construed as expanding the limits of liability of the Member beyond the limits of the law of its state. MMCAP's liability is governed by the **Minnesota Tort Claims Act, Minnesota Statutes Section 3.736**, and other applicable laws.
- D. **Financial Duty:** Neither party will assume any responsibility for the accountability of funds expended by the other or the issuance or non-issuance of a purchase order by the other party. Each party will be separately accountable for its own expenditures of public funds made hereunder. This Paragraph will survive termination of the Agreement.
- E. **State Audits:** As required by **Minn. Stat. § 16C.05, subd. 5**, the books, records, documents and accounting procedures and practices of the Member and its employees, or agents relevant to this Agreement will be made available and subject to examination by Minnesota, including the contracting agency/division, Minnesota

Legislative Auditor, and Minnesota State Auditor for a minimum period of six (6) years after the termination of this Agreement.

- F. **Jurisdiction and Venue:** This Agreement, and executed amendments thereto, will be governed by the laws of the State of Minnesota. Venue for all legal proceedings between the State of Minnesota and a Member or Facility arising out of this Agreement, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. Any claims against a Member or any of its Facilities, where the state of Minnesota or MMCAP is not a party, must be brought in the courts, or before an administrative body of the Member in accordance with the laws of that state and will not be negotiated, arbitrated, or settle on its behalf by an of the other states.
- G. **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 expressly agrees 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 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.

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

FOR THE MEMBER:

On behalf of the Member, the undersigned person warrants that they are authorized to execute the contract and legally bind the Member.

Signature: 

Printed: Kathy Harper

Title: Purchasing Agent III

Date: February 25, 2019

FOR THE STATE OF MINNESOTA:

In accordance with Minn. State. 16C.03, Subd.3

Signature: 

Printed: Sara Turnbow

Date: 2-25-19

COMMISSIONER OF ADMINISTRATION, as delegated to the Office of State Procurement:

In accordance with Minn. Stat. 16C, Subd. 2

Signature: 

Printed: Jennifer VanderPlast

Date: 2/25/2019