

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR

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**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**  
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February 27, 2015

**TO:** Executive Departments/Agencies  
(Excludes Department of Education [DOE] and Charter Schools, Office of Hawaiian Affairs [OHA])  
University of Hawaii (UH)  
Hawaii Health Systems Corporation (HHSC)  
(Excludes Regional System Boards and Hospitals)  
Judiciary  
City & County of Honolulu (C&C of Honolulu)  
County of Hawaii

**FROM:** Sarah Allen   
Administrator

**SUBJECT:** **New Price List Contract**  
SPO Price List Contract No. 15-07  
PHARMACEUTICAL WHOLESALE DISTRIBUTION SERVICES CONTRACT  
**MMCAP Contract No. MMS15003**  
Contract Expires: February 29, 2016

This is a new Price List Contract for Pharmaceutical Wholesale Distribution Services – Statewide, SPO Price List Contract No. 15-07. This new price list replaces SPO Price List Contract No. 12-09.

This contract is available on the SPO website: <http://spo.hawaii.gov>; click on *Price and Vendor List Contracts* at the main menu.

If you have any questions, please contact Bonnie Kahakui at (808) 587-4702, or [bonnie.a.kahakui@hawaii.gov](mailto:bonnie.a.kahakui@hawaii.gov).

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

**SPO Price List Contract No. 15-07 (Statewide)**

Replaces SPO PL No. 12-09

Released: 2/27/2015

**PHARMACEUTICAL WHOLESALE DISTRIBUTION SERVICES  
March 1, 2015 –Oct 31, 2016**

**INFORMATION ON MMCAP AND THE PHARMACEUTICAL WHOLE DISTRIBUTION SERVICES CONTRACT**

The State of Hawaii is a member of the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), a voluntary group purchasing organization operated by the State of Minnesota's Department of Administration for government healthcare facilities. The mission of MMCAP is to provide member organizations, through combined purchasing power, to receive the best prices available for pharmaceuticals and related products to eligible government facilities.

The State of Minnesota is the lead agency and contract administrator for the MMCAP pharmaceutical products prime contractor distribution. A competitive sealed proposal was issued on behalf of MMCAP and a contract was awarded to AmerisourceBergen Drug Corporation. The contractor is required to distribute pharmaceutical products as ordered by an eligible health care facility.

The State Procurement Office, on behalf of the executive branch and the purchasing agencies listed below, has joined the MMCAP pharmaceutical prime contractor distribution contract. The MMCAP contract offers a wide range of pharmaceutical products.

For additional information on this contract visit, <http://www.mmcap.org>



**PARTICIPATING JURISDICTIONS.** Agencies of the following purchasing jurisdictions may purchase from this price list contract:

- Executive Departments/Agencies (Excludes Department of Education (DOE) and Charter Schools, Office of Hawaiian Affairs (OHA))
- University of Hawaii (UH)
- Hawaii Health Systems Corporation (HHSC)  
(Excludes Regional System Boards and Hospitals)
- Judiciary
- City & County of Honolulu (C&C of Honolulu)
- County of Hawaii

Participating jurisdictions are not required but may purchase from this price list contract, and requests for exception from the contract are not required. Participating jurisdictions are allowed to purchase from other contractors; however, HRS Chapter 103D, and the procurement rules apply to purchases by using the applicable method of procurement and its procedures, such as small purchases or competitive sealed bidding. The decision to use this contract or to solicit pricing from other sources is at the discretion of the participating jurisdictions.

**POINTS OF CONTACT.** Questions regarding products, ordering, pricing, and status should be directed to the Contractor.

Procurement question or concerns may be directed as follows:

Jurisdiction	Name	Telephone	Fax	E-mail
Executive (Excludes DOE and Charter Schools, OHA)	Bonnie Kahakui	587-4702	586-0570	<a href="mailto:bonnie.a.kahakui@hawaii.gov">bonnie.a.kahakui@hawaii.gov</a>
UH	Mathew Chow Karlee Hisashima	956-2765 956-8687	956-2096 956-2093	<a href="mailto:chowmatt@hawaii.edu">chowmatt@hawaii.edu</a> <a href="mailto:karlee@hawaii.edu">karlee@hawaii.edu</a>
HHSC (Excludes Regional System Boards and Hospitals)	Joe Evanoff	733-4168	733-4460	<a href="mailto:jevanoff@hhsc.org">jevanoff@hhsc.org</a>
Judiciary	Jonathan Wong	538-5805	538-5802	<a href="mailto:jonathan.h.wong@courts.hawaii.gov">jonathan.h.wong@courts.hawaii.gov</a>
C&C Honolulu	Procurement Specialist	768-5535	768-3299	<a href="mailto:bfspurchasing@honolulu.gov">bfspurchasing@honolulu.gov</a>
County of Hawaii	Jeffrey Dansdill	961-8440	961-8248	<a href="mailto:jdansdill@co.hawaii.hi.us">jdansdill@co.hawaii.hi.us</a>

**ELIGIBLE AUTHORIZED PARTICIPATING FACILITIES.** Only eligible authorized facilities, of a participating jurisdiction, are authorized to use this contract. Eligible authorized facilities, wanting to use this contract, are required to complete a *MMCAP Facility Membership Application* and *Facility*

*Membership Agreement* (attached) prior to ordering. Submit a completed and signed application and agreement to the State Procurement Office, Attention Bonnie Kahakui, for verification and submission to MMCAP.

**DOCUMENTS REQUIRED BY CONTRACTOR TO OPEN A NEW ACCOUNT.** Contractor's required forms include, but not limited to:

- AmerisourceBergen Credit Application (including Security Agreement, pages 1-3)
- Pharmacy License
- Declaration of Eligibility for Contract Pricing

Contact the AmerisourceBergen representative for the most updated forms and information regarding opening a new account.

**AUTHORIZED PARTICIPATING FACILITIES.** Each authorized participating facility will be assigned an account manager who will be responsible for building and developing an effective working relationship with the authorized participating facility's staff, including assisting in optimizing the facility's formulary, sharing best practices to improve efficiency and reducing costs. Routine contact with the authorized participating facilities is summarized below:

Average Monthly Net Purchase Volume	Frequency of Contact with Authorized Participating Facility	Type of Contact
\$ 0 - \$75,000	Every month*	Telephone
\$75,001 to \$100,000	Every month Every Quarter**	Telephone On-site
*On-site visits are available upon reasonable request.		
**More frequent on-site visits are available upon reasonable request.		

**CONTRACTOR.** AmerisourceBergen is the only authorized contractor to distribute pharmaceuticals and related products under the Master Agreement with the State of Minnesota and with the State Procurement Office in Hawaii. Pharmaceuticals include but not limited to: prescription, over-the-counter, controlled substances, and limited supplies.

Name: AmerisourceBergen Drug Corporation  
 Contact: Brian Fukunaga  
 Address: AmerisourceBergen Drug Corporation  
 238 Sand Island Access Road  
 Telephone: (808) 382-0782  
 Fax: (808) 848-2981  
 E-mail: [bfukunaga@amerisourcebergen.com](mailto:bfukunaga@amerisourcebergen.com)

**CONTRACTOR CODES** for annotation on purchase orders are obtainable from the Alphabetical Contractor Edit Table available at your department's fiscal office. Departments are cautioned that the remittance address on an invoice may be different from the address of the contractor code annotated on the purchase order. Therefore, when processing an invoice for payment, be sure that the correct contractor code is used.

**CONTRACTOR COMPLIANCE.** Prior to awarding a contract, the SPO verified compliance of the contractor with all laws governing entities doing business in the State pursuant to HRS §103D-310(c), and SPO will monitor compliance throughout the term of the contract via Hawaii Compliance Express (HCE). Therefore, purchasing agencies are not required to verify contractor compliance prior to utilizing a SPO Price or Contractor List contract.

**ORDERING SYSTEM.** Each authorized participating facility will have access to the AmerisourceBergen ordering program which can be accessed online at <https://passport.amerisourcebergen.com>. Contact the AmerisourceBergen representative for a username, password, and training.

**INVENTORY SUFFICIENCY OF MMCAP CONTRACT PRODUCTS.** The contractor is required to sufficiently stock MMCAP Contract Product. Contractor is required to stock inventory of MMCAP Contract Products unless there are fewer than three (3) units sold per month per distribution center. If there is volume of three (3) units or more of an equivalent product, contractor is required to stock inventory of MMCAP Contract Product based on equivalent product sales. MMCAP Contract Products that do not meet the units sold threshold and which are not stocked will be required to be viewable and orderable within contractor's online ordering system. The contractor will not create any unreasonable barriers in order to stock MMCAP Contracted Product. The contractor will work with MMCAP upon request to identify significant trends, including increases and decreases in purchase.

At initial account set-up, based on usage data from MMCAP, the contractor is required to stock a fifteen (15) day's supply of products. Thereafter, the contractor's buying system will be used to manage the demand by stocking inventory to meet said demand. Contractor will carry utilization history (demand) for a minimum of 60 calendar days, decreasing inventory stock of a product that has not been ordered after the 60 calendar period. The contractor is required to maintain inventory stocking in accordance to service level and inventory parameters.

**SPECIAL ORDERS.** An MMCAP Participating Facility may request special order through the contractor. For special orders:

- a. All Special Orders should be requested through the MMCAP Participating Facility's account representative or customer service. No electronic orders will be accepted.
- b. Special requests may be, but are not limited to: 1) special one-time orders, b) government entities placing large orders at the end of their fiscal year, or c) large quantities of identical lot numbers.
- c. Special Orders are handled as either "pre-book" or "drop-ship". Pre-book and drop-ship orders require contractor to place an order directly with the manufacturer on the MMCAP Participating Facility's behalf.
- d. Special Orders are NON-returnable to contractor.
- e. Stockpiling program orders are to be facilitated with a contractor designated resource to provide timely review of the specific items to be purchased, dating, and stocking availability for the order to be fulfilled. Appropriate communication throughout the process, from initiation to delivery, will be provided to the MMCAP Participating Facility as well as the MMCAP Stockpiling Program Coordinator.

**STOCK OUTAGES.** Contractor created stock outages, meaning products ordered by not delivered due to contractor's "at-fault" inability to fulfill.

One remedy available to an ordering MMCAP Participating Facility for a contractor created stock outage will include requirements for the contractor to provide products ordered by not delivered within three (3) business days following the request by the MMCAP Participating Facility to the contractor's customer service, subject to Next Scheduled Delivery Day limitation imposed by the manufacturer. If product is transferred from an alternative distribution center in order to resolve a contractor created stock outage at the distribution center where the product was ordered, the contractor will not be allowed to charge fees attributable to the product transfer. The contractor is required to work with MMCAP Participating Facilities to fast-track product delivery on a case-by-case basis, subject to applicable state Pedigree requirements.

As part of the fast-track process, upon request, contractor may instruct the manufacturer to ship directly to the MMCAP Participating Facility for Next Day Delivery if the product is available from manufacturer and deemed critical by the MMCAP Participating Facility. Drop ship charges may apply. MMCAP Participating Facility may request a refund of the drop ship charges, upon further review and agreement of the contractor.

Another remedy available to an ordering MMCAP Participating Facility if the contractor fails to make prompt shipment of MMCAP Contract Products due to contractor created stock outages, contractor's ordering system review errors, cancellation, backorders, or non-movement, is a failure to supply claim. The ordering MMCAP Participating Facility may choose to buy PRxO Product for the period in which the contractor is unable to provide the MMCAP Contract Product. The contractor will be liable to the MMCAP Participating Facility for any excess cost over the MMCAP Contract Product price and the PRxO Product for failure in supplying the MMCAP Contract Product. This will be in effect for 90 calendar days from the date the contractor is first unable to supply the product to an MMCAP Participating Facility. Credits due to an MMCAP Participating Facility based on excess product procurement costs caused by a contractor stocking failure in creating a Stock Outage or cancellation/backorder will be routed from the contractor back to the Participating Facility in form of an account credit.

In the event MMCAP chooses to process Failure to Supply claims on behalf of MMCAP Participating Facilities, the contractor is to receive 30 days' prior written notice. Contractor agrees to accept electronic claim from MMCAP, and/or MMCAP Members, subject to the execution of a mutually agreeable amendment.

**MANUFACTURER BACKORDERS (MBO).** Contractor's online order entry system will provide real-time inventory status. The contractor's order entry system with either provide notification prior to order of all MBOs or have identifiers on the inventory identifying why a product is unavailable (manufacturer backorder, temporary out-of-stock, discontinued product, etc.).

The contractor will also list all MBOs on its website and the MMCAP Participating Facility can call customer service to make inquiries. Notifications of MBOs will be provided by the contractor either through the contractor's website or contractor generated push e-mail to MMCAP Participating Facilities.

**PRICING.** All prices and price changes will be available to all authorized participating facilities at any time via the contractor's online ordering system.

**340B DRUG PRICING PROGRAM.** AmerisourceBergen is an authorized distributor of the 340B Drug Pricing Program. Authorized participating facilities that are eligible and participating in the 340B Drug Pricing Program will maintain separate purchasing accounts for ordering 340B contract products.

**AUTOMATIC SUBSTITUTION.** Automatic substitution will only be permitted upon request by an authorized participating facility.

**ROUTINE DELIVERY.** Shipments to the State of Hawaii under this contract shall be FOB destination, freight prepaid to the authorized participating facility receiving dock or pharmacy, unless otherwise stated. Delivery service is based on monthly net purchase volume as summarized below. Scheduled delivery days will be communicated at setup.

Deliveries to neighboring island will be charged freight (currently \$1.15 per pound or a flat base rate of \$45.00 whichever is greater. Hazardous material is charged freight at \$12 per delivery). Returns to AmerisourceBergen will be charged a base shipment rate of \$40.00 or \$1.15 per pound, whichever is greater. Same day delivery requests are charged a flat rate of \$150.00 (delivered within 5 hours of request).

Allowable Routine Deliveries: (Contractor will not charge a fuel surcharge)

Average Monthly Purchasing Volume	Number of Free (no-charge) Deliveries per Week
\$0 - \$9,999	1
\$10,000 - \$25,000	3
\$25,001 and up	5

**EMERGENCY DELIVERY.** Emergency deliveries will be assessed actual freight charges plus \$50 handling fee during normal business hours and a \$200 handling fee after normal business hours and on weekends.

Free (no charge) emergency deliveries are as outlined in the table below:

Average Monthly Purchasing Volume	Number of Free (no-charge) Emergency Order Deliveries per Month
\$0 - \$9,999	0
\$10,000 - \$150,000	1
\$150,001 and up	2

**DROP SHIPMENTS.** Contractor will act as a conduit to expedite and simplify the ordering and payment of Drop Shipment Products. Unless otherwise approved by the authorized MMCAP Participating Facility, drop shipments directly from the product manufacturer for recurring orders are prohibited.

Contractor does not charge any additional delivery fees or surcharge for MMCAP Contract and Non-Contract Product Drop Shipments, but contractor will pass through any supplier imposed special handling fees.

Drop shipment products must be phoned into AmerisourceBergen customer service department. Orders for drop shipment products will be placed with the product manufacturer on the same day, subject to the manufacturer's ordering policy.

**SERVICE FEE DISCOUNT MATRIX.** Service fees apply to all products, other than bulky products, based on payment option and average total monthly net purchasing volume.

Payment Term	\$1 to \$500,000	\$500,001 To \$1,000,000	\$1,000,001 To \$2,000,000	\$2,000,001 To \$5,000,000	\$5,000,001 To \$8,000,000	\$8,000,001 To \$12,500,000	\$12,500,001 And Above
30 Day Net Pay*	-1.84%	-2.84%	-3.34%	-3.79%	-4.09%	-4.29%	-4.74%
45 Day Net Pay**	-0.74%	-1.74%	-2.24%	-2.69%	-2.99%	-3.19%	-\$3.64%
* 30 Day Net means that purchasing agency will pay contractor in full for each invoice on or before the 30 <sup>th</sup> calendar day from the date of invoice.							
**45 Day Net means that purchasing agency will pay contractor in full for each invoice on or before the 45 <sup>th</sup> calendar day from the date of invoice.							

**CUSTOMER SATISFACTION/COMPLAINT RESOLUTION.** Contractor and authorized participating facilities will handle dispute resolution for unresolved issues using the following procedures. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such disputes within five (5) business days. Absent resolution after five (5) business days, parties shall proceed to Documentation and Escalation.

**Documentation.** Both the authorized participating facility and contractor will jointly develop a short briefing document, within five (5) business days that describes the issue(s), relevant impact and position of both parties. The briefing document must be sent by the contractor to the MMCAP Office, the authorized participating facility, and the contractor's MMCAP Primary Account Representative.

**Escalation.** If parties are unable to resolve the issue in a timely manner, as specified above, either the authorized participating facility or contractor may escalate the resolution of the issue to a higher level of management. Where escalation of the issue proves ineffective, either party may contact the MMCAP Office and/or the contractor's MMCAP Representative for further resolution. When escalated to MMCAP, a teleconference will be scheduled with the MMCAP Office and the contractor'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 – the MMCAP Office, the authorized participating facility, and contractor. The contractor will have a reasonable amount of time to cure the issue, but in no event longer than thirty (30) days, except by express written agreement of the parties.

**SPO PL Contract No. 15-07 & MMCAP Contract No. MMS15003** shall be typed on purchase orders issued against this price list contract.

**PAYMENTS** are to be made to the contractor's remittance address. Authorized participating facility will be responsible for payment of goods and services. Purchase orders are the only acceptable form of payment. pCard payment will not be accepted.

**GENERAL EXCISE TAX.** The Hawaii General Excise Tax (GET) shall not exceed 4.712% for the Island of Oahu and 4.166% for Maui, Kauai, and Hawaii. The GET is not applied to shipping or delivery charges.

**PRICE LIST CONTRACT AVAILABLE ON THE INTERNET.** The current price catalog and contract information for products are available via the online ordering system provided by the contractor, <https://passport.amerisourcebergen.com>. Login and password is required to access the catalog prices. Contact AmerisourceBergen's representative to arrange for training and overview of the process, if needed.

Contract prices for products are updated automatically on the contractor's online system for all MMCAP contracted products.

**PRICE LIST CONTRACT AVAILABLE ON THE INTERNET** at the SPO website: <http://spo.hawaii.gov>. Click on *SPO Price List/Contractor List Contracts* at the main menu.



## Minnesota Multistate Contracting Alliance for Pharmacy

651.201.2420 [www.mmcap.org](http://www.mmcap.org)

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### Membership Application and Membership Agreement Instructions for Completion

Thank you for your interest in membership with the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP). Processing a new membership application generally takes less than a week after MMCAP receives it. You will receive a welcome letter and copy of the fully executed Membership Agreement after the membership has been activated.

#### Eligibility

Membership in MMCAP is limited to facilities that:

1. Have legal authority to contract with the State of Minnesota, and
2. The State of Minnesota has legal authority to contract with the entity. Minnesota's authority is limited by Minnesota Statutes Section 471.59, subdivision 10 to:
  - Other states
  - Agencies of other states
  - Counties
  - Cities
  - School Districts
  - Entities recognized by the member state's statutes as authorized to use that state's commodity or service contracts (Minnesota Statutes Section 16C.03, subdivision 10 – found at: <https://www.revisor.mn.gov/statutes/?id=16C.03>).

#### Application Check List:

- Application fully completed with each question answered
- Application signed by facility representative
- Member Facility Agreement fully executed by proper authority of the facility applying
- Application and Member Facility Agreement forwarded to the applicable MMCAP State Contact for final processing

If you have any questions, please contact MMCAP at 651-201-2420.



## Minnesota Multistate Contracting Alliance for Pharmacy

### Facility Membership Application

Forward the completed application and executed Member Facility Agreement to your State Contact for final processing. (A list of State Contacts may be found at [www.mmcap.org](http://www.mmcap.org), click on "What is MMCAP," then on "State Contacts.") The State Contact will then forward the authorized form to the MMCAP office for processing.

#### Type or Print Clearly

1. Indicate the specific legal authority under which this facility may purchase goods and services from MMCAP:

\_\_\_\_\_  
(i.e., statutory authority to be able to contract with the State of Minnesota or governing board resolution). Leave blank if you need assistance with this question from the MMCAP State Contact or MMCAP.

2. Facility's Full Legal Name (no abbreviations):

\_\_\_\_\_

3. Complete "Bill To" Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

4. Complete "Ship To" Street Address, if different: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

5. Facility Website: \_\_\_\_\_

6. What type of entity is the facility? (Check one)

- |   |  |
|---|--|
| <input type="checkbox"/> State Government         | <input type="checkbox"/> Non-government Private – for profit |
| <input type="checkbox"/> County/Parish Government | <input type="checkbox"/> Non-government Private – non-profit |
| <input type="checkbox"/> Municipal Government     | <input type="checkbox"/> Federal Government                  |

7. What is the primary purpose of your facility? (Check one)

- |   |   |
|---|---|
| <input type="checkbox"/> Central Purchasing/Business Office | <input type="checkbox"/> Public Safety/First Responders |
| <input type="checkbox"/> Correctional Facility              | <input type="checkbox"/> School/College/University      |
| <input type="checkbox"/> Convalescence/Nursing Facility     | <input type="checkbox"/> Veterinary                     |
| <input type="checkbox"/> Mental Health                      | <input type="checkbox"/> Other _____                    |
| <input type="checkbox"/> Public Health                      |   |

8. Health Industry Number (HIN), if known: \_\_\_\_\_

MMCAP can assist in obtaining this number when the application is processed. Indicate need for assistance on line above.

9. DEA Number, if applicable (required for controlled substances): \_\_\_\_\_

10. Facility's State Pharmacy License Number, if applicable: \_\_\_\_\_

11. Indicate which MMCAP programs the facility intends to use? (Check all that apply)

- Pharmacy Program**
  - Pharmaceutical Wholesaler Services (AmerisourceBergen, Cardinal Health, or Morris & Dickson)
  - Products
    - Prescription Drugs (other than vaccines)
    - Vaccines (other than influenza)
    - Over-the-counter
    - Nutritionals
    - Diabetic Supplies (meters/strips/syringes)
    - Containers and Vials
  - Contract Price Auditing
  - Returned Goods Processing
  - Pharmaceutical Repackaging
- Influenza Vaccine Program**
- Prescription Filling/Pharmacy Service Program**
- Student Health Oral Contraceptives Program**
- Emergency Preparedness/Stockpiling Program**
- Healthcare Products and Services Program**
  - Medical Supplies & Distribution Services
  - Dental Supplies & Distribution Services
  - Drug Testing Kits and Services
  - Laboratory Supplies
  - Condoms

12. If the facility 340B (PHS)\* Eligible?

\*The Federal 340B Drug Pricing Program provides significant pharmaceutical discounts to facilities receiving certain types of federal government funding.

- Yes
- No
- Unsure

13. Within the past year, has this facility been affiliated with a pharmaceutical group purchasing organization (GPO) other than MMCAP? (Please check one.)

- No
- Yes, but the facility is switching to MMCAP. Attach a signed letter on the facility's letterhead stating that it wishes to discontinue your association with its current pharmaceutical GPO and use MMCAP instead.
- Yes and the facility will remain with its current GPO.

Current pharmaceutical GPO Name: \_\_\_\_\_

Products the facility currently purchases: \_\_\_\_\_

14. Which best describes this facility? (Check all that apply)

- Acute Care
  - Adult Daycare
  - Ambulatory Care Pharmacy
  - Assisted Living
  - Clinic (if checked, then check all that apply)
    - city*
    - dental*
    - dialysis*
    - oncology infusion clinic or practice*
    - outpatient*
    - radiology services*
    - state*
    - surgical*
    - WIC (women, infant, children)*
  - Central Purchasing/Business Office
  - Community/Public Health Nursing
  - Corrections
    - city Jail*
    - county Jail*
    - state Prison*
  - Dentist
  - Detoxification
  - Education
    - school district*
    - elementary*
    - secondary*
    - post-secondary*
  - Emergency First Responders
  - Emergency Medicine & Ambulance
  - Emergency Preparedness
  - Health Service
  - Home Health
    - home health provider, non-pharmacy*
    - home infusion*
    - home medical equipment*
  - Hospice
  - Hospital (if checked, then check all that apply)
    - acute care*
    - city/ county/ state*
    - dialysis*
    - long-term care*
    - oncology infusion clinic or practice*
    - outpatient*
    - radiology services*
    - surgical*
  - Juvenile Detention
  - Laboratory services
  - Long Term Care
  - Mail Order Pharmacy
  - Mental Health (if checked, then check all that apply)
    - ICFMR (intermediate care facility for mentally retarded)*
    - inpatient*
    - outpatient*
    - developmental disabilities*
  - No Care Provided
  - Nursing Facility
    - convalescences*
    - nursing home*
    - inpatient*
    - outpatient*
  - Nutrition Services
  - Other (State and Local Gov't) healthcare related:
- 
- Patient Population Served
    - pediatrics*
    - adult*
    - geriatrics*
  - Public Health
  - Public Safety
  - Rehabilitation (if checked, then check all that apply)
    - inpatient*
    - outpatient*
    - skilled nursing facilities*
  - Research/Training
  - Senior Services
  - Skilled Nursing Facilities
  - Specialty Pharmacy/Special Care
  - Student Health
  - Surgery Center
  - University (if checked, then check all that apply)
    - teaching hospital*
    - training or research (clinic research centers)*
    - college student health services*
    - pharmacy school*
  - Urgent Care Center
  - Veterans Home – State
  - Veterinary
    - veterinary medicine*
    - veterinary medicine – university dept.*
    - veterinary zoological medicine*

**Facility Contacts:** Not all facilities will have three contacts. Listing at least one main contact person is required.

15. Designated Facility MMCAP contact person: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

16. Alternate Facility MMCAP contact person: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

17. Facility's Purchasing MMCAP contact person: \_\_\_\_\_

Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

**APPROVALS**

**Applicant Facility:**

The information above is true and correct.

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

Facility Representative

**MMCAP State Contact Review:**

Forward signed application and agreement on to the applicable MMCAP State Contact for final processing. A list of MMCAP State Contacts may be found at [www.mncap.org](http://www.mncap.org), click on "What is MMCAP," then on "State Contacts." Facilities located in Connecticut, Illinois, Massachusetts, Ohio, and Pennsylvania mail directly to [mn.multistate@state.mn.us](mailto:mn.multistate@state.mn.us).

I have reviewed and approve the facility's eligibility for membership in MMCAP.

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

MMCAP State Contact



## Minnesota Multistate Contracting Alliance for Pharmacy

50 Sherburne Avenue, Suite 112, St. Paul, MN 55155

651.201-2420

[www.mmcap.org](http://www.mmcap.org)

### Member Facility Agreement

This Agreement is by and between the State of Minnesota, acting through its Commissioner of Administration on behalf of Minnesota Multistate Contracting Alliance for Pharmacy (“MMCAP”) and

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Facility’s complete legal name (do not use acronyms)

(“Member Facility”).

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Full address including city, state, and zip code

MMCAP is a free, voluntary, public sector group purchasing organization for government-authorized facilities and is operated by the Materials Management Division of the State of Minnesota's Department of Administration. It combines the purchasing power of its members to receive the best prices available for the products and services for which it contracts. Membership in MMCAP is limited to facilities with which the State of Minnesota may contract, as defined by Minnesota Statutes Section 471.59, subdivision 10.

The Member Facility desires to access MMCAP’s programs to purchase products and services for the Member Facility.

#### 1. Term of Agreement and Cancellation

This Agreement, which is required by 42 C.F.R. § 1001.952(j) and Minnesota law, 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 Facility. This Agreement may be cancelled by either party upon 30 days’ written notice to the other party, or immediately upon material breach by one of the parties.

#### 2. Member Facility

The Member Facility:

- A. Certifies it has authority to enter into this Agreement with the State of Minnesota and, where applicable, authorizes MMCAP to negotiate contracts on its behalf. For non-government entities, also certifies it has statutory authority under which it may purchase goods and services from its state’s contracts.
- B. Must comply with all applicable laws, rules, and regulations governing government purchasing of pharmaceuticals, and related products and services when utilizing MMCAP contracts and programs.
- D. Should endeavor, where practical, to purchase its goods and services from MMCAP contracts.
- E. Acknowledges it 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)).
- F. Will not resell (as may be prohibited by law) or divert products obtained under the MMCAP contracts. If there are any questions about the propriety of the use of products purchased from the MMCAP contracts, the Member Facility will obtain an opinion from its legal counsel and notify MMCAP of the decision.
- G. When applicable, acknowledges that the prices made available under MMCAP’s 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)).

- H. Must comply with the terms and conditions of the applicable MMCAP vendor contract data sheets; found on the MMCAP website at [www.mmcap.org](http://www.mmcap.org).
- I. 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. THE MEMBER FACILITY ACKNOWLEDGES THAT MMCAP IS NOT THE MANUFACTURER OR DISTRIBUTOR OF ANY PRODUCT AND SERVICE AND MAKES NO REPRESENTATION AS TO WARRANTY OF QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONDITION, OR OTHER ATTRIBUTE OF THE PRODUCTS SUPPLIED BY VENDORS UNDER MMCAP CONTRACTS.
- J. Must update MMCAP regarding changes to the Member Facility information and contact person information.
- K. Must promptly pay MMCAP-contracted vendors for all products or services purchased. MMCAP does not assume any responsibility for the accountability of funds expended by the member Facility.
- L. May be inactivated from MMCAP membership if there is no participation for 18 consecutive months.

### 3. MMCAP

MMCAP will:

- A. Select products or services for cooperative contracting under the programs offered.
- B. Comply with Minnesota laws, including procurement and data practices, that require fair and open competition.
- C. Make available copies of contract documents.
- D. Maintain vendor performance records.
- E. Assist in resolving administrative, contract, or supplier problems that cannot be resolved by the Member Facility.
- F. Provide information to the Member Facility regarding products and services available through the MMCAP program.
- G. Distribute to Member Facilities any unused administrative fees collected from contracted vendors (Article 4 below); and annually disclose in writing to Member Facilities, and to the Secretary of the United States Department of Health and Human Services upon request, the amounts received by MMCAP from vendors that were directly attributable to the Member Facility's purchases.

### 4. Administrative Fee Collected from MMCAP's Vendors

The MMCAP Managing Director may, pursuant to contract terms and conditions, require the contracted vendors (not Member Facilities) to pay an administrative fee to MMCAP. The fee of not more than three percent will be based on a percentage of sales made through the individual contracted vendor. Fees will be collected by the MMCAP office and used to pay for the administrative costs incurred in the operation of MMCAP as approved by the MMCAP Managing Director. Any remaining balance of funds will be returned to active members by means of either a credit to their wholesaler or distributor account, or other mechanism agreed to by the parties, in an amount proportional to the Member Facility's on-contract purchases.

### 5. Assignment, Amendments, Waiver, and Contract Complete

5.1 **Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a fully executed assignment agreement.

5.2 **Amendments.** Any amendment to this Agreement 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 agreement.

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

**6. Liability**

Each party will be responsible for their own acts and behavior and the results thereof. Nothing in this membership agreement will be construed as expanding the limits of liability of the Member Facility 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.

**7. State Audits**

As mandated by Minnesota Statutes Section 16C.05, subdivision 5, "the books, records, documents and accounting procedures and practices of the [Member Facility] relevant to this Agreement shall be made available and subject to examination by the State of Minnesota, including the contracting agency/division, Legislative Auditor, and State Auditor" for a minimum period of six years after the termination of this Agreement.

**IN WITNESS WHEREOF**, the undersigned parties represent they have the authority to bind their respective party and have signed intending to be bound thereby.

**Member Facility:**  
(Person with legal authority to bind the facility)

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

Title: \_\_\_\_\_

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

**State of Minnesota, through its Commissioner of Administration on behalf of MMCAP:**

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

Title: \_\_\_\_\_

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

**Commissioner of Administration, as delegated to the Materials Management Division:**

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

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