

MMCAP FACILITY MEMBERSHIP AGREEMENT

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

Pacific County dba Pacific County Public Health + Human Services Dept.
Facility's Complete Legal Name

1216 W. Robert Bush Drive, POB 26, South Bend WA 98586 ("Participating Facility").
Facility's Full address with city, state, and zip code

MMCAP is a free, voluntary group purchasing organization for government-authorized health care facilities and is operated and managed 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. Participation in MMCAP is limited to facilities, within a participating member state, with statutory authority to purchase commodities from its state's contracts.

This Agreement is required by, 42 C.F.R. § 1001.952(j), additionally, the State of Minnesota is empowered to enter into this Agreement pursuant to Minn. Stat. § 471.59, subd. 10.

1 Term of Agreement and Cancellation

This 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 Participating Facility. Either party may cancel this Agreement, any time, with or without cause, upon 30 days' written notice to the other party.

2 Participating Facility

The Participating Facility:

- A. Certifies it has statutory authority under which it may purchase goods and services from its state's contracts.
- B. Must comply with all laws, rules, and regulations governing government purchasing of pharmaceuticals and related products and services when utilizing MMCAP contracts and programs.
- C. Must operate within the boundaries established by Robinson-Patman (15 U.S.C. 13 (a)) and "own use" requirements 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)), excluding products purchased under the Prescription Filling Service Program. If there are any questions about the propriety of the use of products, the Participating Facility will obtain an opinion from its legal counsel and notify MMCAP of the decision.
- D. Must comply with the terms and conditions of the applicable MMCAP vendor contracts, found in the MMCAP Catalog at www.mmcap.org.
- E. Must use the MMCAP-contracted wholesaler selected by the home state of the Participating Facility when obtaining pharmaceuticals; except those products that are "direct only" as permitted by MMCAP contract and noted in the MMCAP Catalog.
- F. Should endeavor, where practical, to purchase its goods and services from MMCAP contracts.
- G. Must update MMCAP regarding changes to the Participating Facility's contact person.
- H. Must promptly pay MMCAP-contracted wholesalers or vendors for all products or services purchased. MMCAP does not assume any responsibility for the accountability of funds expended by the Participating Facility.
- I. Will be inactivated from MMCAP membership if there is no participation for 18 consecutive months.

3 MMCAP

MMCAP will:

- A. Select commodities or services for cooperative contracting.
- B. Contract with Product vendors according to Minnesota law.

- 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 Participating Facility.
- F. Provide information via the Internet to the Participating Facility regarding Products and Services.
- G. Distribute to MMCAP Participating Facilities any unused Administrative Fees collected from MMCAP-contracted vendors.

4 Administrative Fee

The MMCAP Manager may, pursuant to contract terms and conditions, require the contracted vendors (not Participating Facilities) to pay an administrative fee. The fee, not more than three percent, will be based on a percentage of sales made by 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 Manager. At the end of the contract year, any remaining balance of funds will be returned to active participating facilities by means of a credit to their wholesaler account or prescription filling services vendor, in an amount proportional to the individual facility's contract purchases via the contracted wholesaler(s) or prescription filling service provider.

5 Assignment, Amendments, Waiver, and Contract Complete

5.1 Assignment. The Participating Facility may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

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, or their successors in office.

5.3 Waiver. If MMCAP 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 shall be construed as expanding the limits of liability of the Participating Facility beyond the limits of the law of its state. MMCAP's liability is governed by the Minnesota Tort Claims Act, Minn. Stat. § 3.736, and other applicable laws.

7 State Audits

As required by Minn. Stat. § 16C.05, subd. 5, "the books, records, documents and accounting procedures and practices of the [Participating 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 have signed this MMCAP Facility Membership Agreement on their behalf intending to be bound thereby.

Participating 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 _____