**Vaccine Brand Choice (VBC) Terms & Conditions – Attachment B-1**

1. Program Description and Definitions

Vaccine Brand Choice (the "**Program**") provides to an Eligible Facility (defined below) the opportunity to earn discounts on the Merck vaccines listed in Exhibit A (hereinafter "Merck Vaccines") commensurate with Eligible Facility's ability to achieve the required performance for the designated performance products in accordance with "Product Performance Calculation and Requirements" below. Unless explicitly authorized by Merck, discounts offered under the Program may not be combined with any other discounts or rebates. By accepting discounts under the Program, the Eligible Facility is agreeing to be bound by the Terms and Conditions of the Program including any modifications to the Program. Merck reserves the right to modify or discontinue the Program, including prices and discounts, in its sole discretion. In the event that Merck modifies the Program, the new Terms and Conditions will automatically apply to the Eligible Facility as of the effective date of the modification. Except to the extent otherwise specifically provided herein, Merck's Terms and Conditions of Sale in effect at the time of purchase for the Product shall govern purchases under this Program.

Vaccine Brand Choice Definitions

"Aggregate Purchases" are valued at (1) wholesale acquisition cost for all formulations of VAQTA® (Hepatitis A Vaccine, Inactivated) 25U/0.5 mL , and RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) and where applicable using the 10-pack vial, prefilled syringe, or tube price per dose (2) wholesale acquisition cost for all formulations of HAVRIX®, and ROTARIX®.

"Calendar Quarter" means January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31.

“Depot Location” is a central storage facility that is under the control of a “Health Care Provider Organization” and is approved by Merck for this Program to acquire and store Merck Refrigerated Vaccines for (1) its own use and/or (2) re-distribution to Eligible Facilities for their own use. Any Eligible Facilities to which the Depot Location re-distributes Refrigerated Merck Vaccines must be wholly owned under a common Health Care Provider Organization.

"Eligible Facility" includes:

Acute Care Facilities (acute care, psychiatric, and rehabilitation hospitals)

Non-Acute Care Facilities (non-acute care long-term care facilities (nursing home facilities – on-site pharmacy, nursing home facilities – off-site pharmacy, retirement centers, skilled nursing facilities, sub-acute care facilities), home health care providers, home infusion providers, hospice providers, ambulatory care providers (outpatient centers, surgery centers, oncology centers, dialysis centers, immediate care centers, postsurgical recovery centers), prisons, staff/group model HMOs, Health Care Provider Organization Retail Pharmacy Location, clinics/medical groups, health departments, and physician practices), and

Depot Location, as defined above.

− These Eligible Facilities may participate in the Program as members of a GPO, if they are participating in a GPO's pharmacy program and they meet the membership eligibility criteria in the member's GPO agreement with Merck.

− Eligible Facilities may also participate in the Program if they are not GPO members.

Eligibility may also be contingent on the availability of data necessary to measure performance (eg, market share) in the Program consistent with the Program Terms and Conditions. Eligibility is evaluated and determined at the location level (eg, the physical site to which product is shipped). Final determination of the Eligible Facility's eligibility to participate in the Program will be made by Merck, in its sole discretion.

“Health Care Provider Organization” means an integrated health system/delivery network, hospital, clinic/medical group, or physician practice that owns Eligible Facilities approved by Merck for participation in this Program.

“Health Care Provider Organization Retail Pharmacy Location" means an outpatient pharmacy that is owned and operated by the Health Care Provider Organization (as defined above), is located within one of the Health Care Provider

Organization medical system buildings or within the Health Care Provider Organization campus, and services outpatients and employees of the Health Care Provider Organization system. Please see Section 10 “Miscellaneous” for information regarding eligibility requirements.

-All other outpatient pharmacy locations of a Health Care Provider Organization, including affiliated pharmacies, are excluded under this definition.

"Hepatitis A Pediatric Vaccine Market," whether or not capitalized means all pediatric formulations of VAQTA, HAVRIX, and any new pediatric, monovalent vaccine containing a hepatitis A antigen.

"IQVIA Quarter" means the quarterly reporting interval of IQVIA data as supplied by IQVIA (formerly known as IMS Health, Inc.) ("IQVIA").

"Measurement Review Period" ("MRP") means the IQVIA Quarter used for measuring the product performance of an Eligible Facility for Program Base Level Price or Discount Level placement in the Program. Product performance (ie, market share) in the MRP determines Discount Level placement in the Program two (2) Calendar Quarters later.

"Other Product Discounts" includes the following Merck Vaccines: VAQTA® (Hepatitis A Vaccine, Inactivated) 50U/1 mL

"Percent Discount Off Catalog" means that, subject to the terms of the Ninety (90) Day Discount (as defined in Section 3), when the Merck Catalog price changes for a product under the Program, the price of that product will also change, so the Eligible Facility will receive the same percent discount off the new Merck Catalog price.

“Preferred Rotavirus Vaccine” means that RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) is designated as a preferred agent in the Rotavirus Vaccine Market for use in medically appropriate patients.

“Preferred Hepatitis A Pediatric Vaccine” means that the pediatric formulations of VAQTA are designated as a preferred agent in the Hepatitis A Pediatric Vaccine Market for use in medically appropriate patients.

"Product Group 1" includes the following Merck Vaccines: GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant), M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live), PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)], ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live), RotaTeq, and ZOSTAVAX® (Zoster Vaccine Live).

"Product Group 2" includes the following Merck Vaccines: PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent), RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)] 5 mcg/0.5 mL, RECOMBIVAX HB 10 mcg/1 mL, RECOMBIVAX HB 40 mcg/1 mL, VAQTA 25U/0.5 mL, and VARIVAX® (Varicella Virus Vaccine Live).

“Refrigerated Vaccine Product” means a Vaccine Product stored in refrigerated temperatures of between 2°C to 8°C (36°−46°F) per the Manufacturer’s Prescribing Information.

"Rotavirus Vaccine Market", whether or not capitalized, means all formulations of RotaTeq, ROTARIX, and any new vaccine containing a rotavirus antigen.

"Vaccine Authorized Prime Vendor"

− For acute facilities, means those wholesalers that act in the capacity as prime vendor for Eligible Facility's Group Purchasing Organization (GPO) and may be listed in the agreement between Merck and Eligible Facility's GPO.

− For non-acute facilities that are members of a GPO and non-acute members of a Merck-approved system, means wholesalers and distributors that act in the capacity as prime vendor for Eligible Facility's GPO and may be listed in the agreement between Merck and Eligible Facility's GPO.

− For non-acute facilities that are not members of a GPO, means distributors for whom Merck has an agreement to act as Merck Vaccine Prime Distributors to administer Program pricing to Eligible Facilities when purchasing a Merck vaccine. The list of Merck Vaccines Prime Distributors may be found on www.merckvaccines.com/Order-Products/Pages/PrimeDistributors.

2. Enrollment in the Program

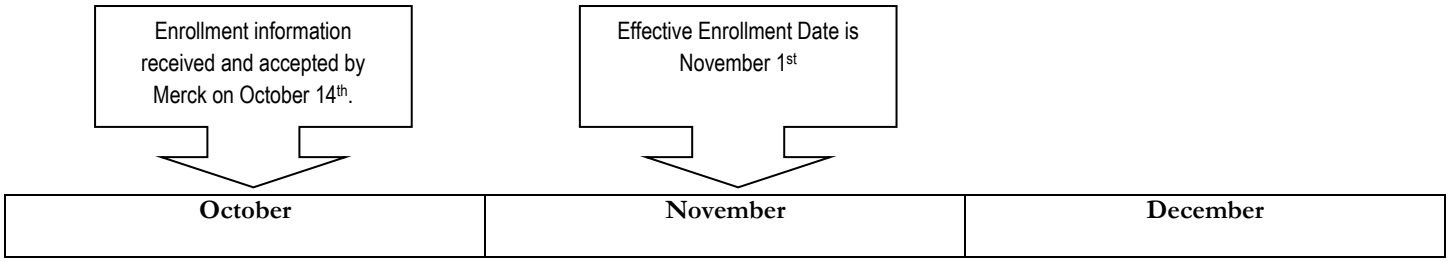
Enrollment information about the Eligible Facility must be submitted to Merck, via Merck's electronic method of enrollment, by the appropriate personnel with authority to manage Program enrollment on behalf of the Eligible Facility.

− Eligible Facility will be enrolled and eligible for the discounts available through the Program on the first (1st) day of the following month, provided the enrollment information is received and accepted by Merck on or before the fifteenth (15th) day of the month in which the enrollment information was submitted.

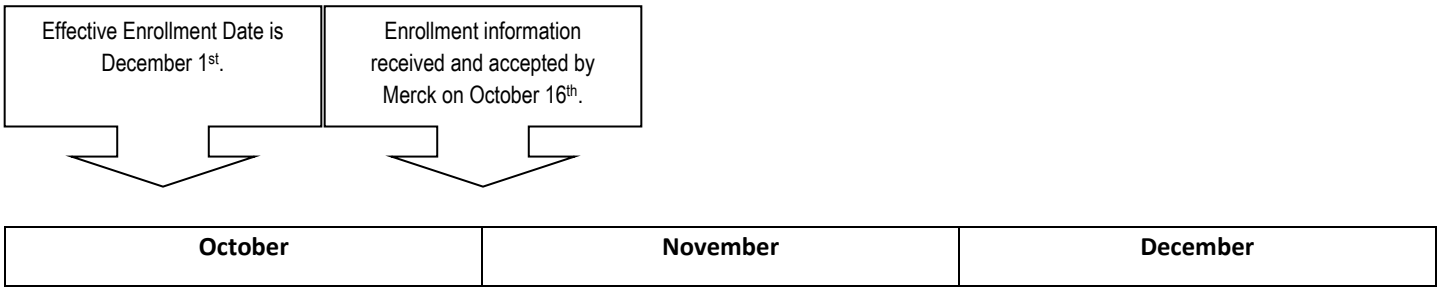
− If the enrollment information is received and accepted after the fifteenth (15th) day of the month, Merck will make reasonable efforts to make the Eligible Facility eligible to receive discounts on purchases the first (1st) day of the following month, at its sole discretion. Otherwise, Eligible Facility shall be enrolled in the Program on the first day of the subsequent month.

Merck's acceptance of the submitted enrollment information is dependent on its accuracy and completeness. The date the program pricing goes into effect is referred to as the Enrollment Date.

For example, if the Eligible Facility submits completed enrollment information on October 14th and Merck receives and accepts the submission, then that facility will have an Enrollment Date of November 1st.




If this facility had, instead, submitted their enrollment information on October 16th to Merck (further assuming that the submission was received and accepted by Merck), then the Eligible Facility would have an Enrollment Date of December 1st.




3. Program Discounts

Product Performance Calculation and Requirements

Merck Vaccine performance (i.e., market share) shall be calculated for an Eligible Facility as further described herein. Market share calculations shall be rounded using standard rounding rules (ie, 0.5% and higher rounds up to the next whole decimal; 0.49% and below rounds down to the whole decimal). As an example, 14.5% rounds to 15%; 14.49% rounds down to 14%.

"Hepatitis A Pediatric Vaccine Market Share" will be calculated for the applicable IQVIA Quarter as follows: the Aggregate Purchases (minus returns) of all pediatric formulations of VAQTA® (Hepatitis A Vaccine, Inactivated) in the Hepatitis A Pediatric Vaccine Market made by the Eligible Facility divided by the Aggregate Purchases (minus returns) of all products in the Hepatitis A Pediatric Vaccine Market made by the Eligible Facility.

"Rotavirus Vaccine Market Share" will be calculated for the applicable IQVIA Quarter as follows: the Aggregate Purchases (minus returns) of all formulations of RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) made by the Eligible Facility divided by the Aggregate Purchases (minus returns) of all products in the Rotavirus Vaccine Market made by the Eligible Facility.

For example, if the Eligible Facility's Aggregate Purchases of VAQTA total $700, and their Aggregate Purchases of HAVRIX total $100, the total Hepatitis A Pediatric Vaccine Market would be $800 ($700+$100). The Hepatitis A Pediatric Vaccine Market Share would be calculated by dividing $700 by $800 and would be 88%. If qualified, the Eligible Facility will be placed in one of the available Program Discount Levels as described below.

Product Group 1 Discount Levels

(Eligible Facility can only participate on one Discount Level in Product Group 1 during a Calendar Quarter):

- To qualify for the Product Group 1 Discount Level, the Eligible Facility must make RotaTeq the Preferred Rotavirus Vaccine at the Eligible Facility and if a formulary exists at the Eligible Facility, such vaccine shall be listed therein as Preferred. An Eligible Facility's Preferred Rotavirus Vaccine will be confirmed as RotaTeq if the facility achieves at least an 80% market share for RotaTeq in the Rotavirus Vaccine Market OR is eligible for the Performance Requirement Exemption as defined below for the applicable IQVIA Quarter. If Eligible Facility qualifies for placement in such level, Eligible Facility will receive the discounts or pricing set forth in Table 1b for the Merck Vaccines in the Product Group 1 Discount Level. Merck reserves the right to audit an Eligible Facility's formulary preferences.

Product Group 2 Discount Levels

(Eligible Facility can only participate on one Discount Level in Product Group 2 during a Calendar Quarter):

To qualify for the Product Group 2 Discount Level, the Eligible Facility must make the pediatric formulation of VAQTA®(Hepatitis A Vaccine, Inactivated) the Preferred Hepatitis A Pediatric Vaccine available to physicians at the Eligible Facility, and if a formulary exists at the Eligible Facility, such vaccine shall be listed as Preferred. An Eligible Facility's Preferred Hepatitis A Pediatric Vaccine will be confirmed as VAQTA if the facility achieves **at least an 80% market share** for the pediatric formulation of VAQTA in the Hepatitis A Pediatric Vaccine Market OR is eligible for the Performance Requirement Exemption for the applicable IQVIA Quarter for the respective product outlined above. If Eligible Facility qualifies for placement in such level, Eligible Facility will receive the discounts or pricing set forth in Table 1 for the Merck Vaccines in the Product Group 2 Discount Level. Merck reserves the right to audit an Eligible Facility's formulary preferences.

For example, if an Eligible Facility's market share during a MRP is as follows: 94% for RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent), and 70% for the pediatric formulation of VAQTA, the customer would qualify for the Product Group 1 Discount Level, and Product Group 2 Base Level discounts set forth in Table 1.

Performance Requirement Exemption: If Eligible Facility does not have any vaccine purchases in a relevant Vaccine Market during the applicable IQVIA Quarter, then the Eligible Facility will be considered as having met the performance requirement for the Merck Vaccine in determining Discount Level placement for the associated Calendar Quarter ("Performance Requirement Exemption").

For example, if a facility does not purchase any vaccine in the Hepatitis A Pediatric Vaccine Market during the applicable MRP, the facility will be considered as having met the performance requirement for VAQTA in the Hepatitis A Pediatric Vaccine Market and would qualify for Product Group 2 Discount Level discounts.

Notwithstanding any provision to the contrary set forth herein, it is the intention of the parties that each individual Merck Vaccine, excluding Merck Vaccines within each Group, shall be treated separately and independently for the purposes of determining the parties' respective rights and obligations in the Program, such that discounts on the Merck Vaccines within an individual Group shall not be contingent upon the product performance achieved for Merck Vaccines within any other Group or other individual Merck Vaccine not within a Group set forth in this Agreement.

In the event that the Eligible Facility does not satisfy the performance requirements in the respective Product Group to qualify for a Discount Level (or does not qualify for a Performance Requirement Exemption for the Merck Vaccine(s)), the

Eligible Facility will remain enrolled in the Program and will receive the Program Base Level price for the applicable Merck Vaccines.

Percent Discount Off Catalog

The Percent Discount Off Catalog (listed in Table 1) is used to determine pricing as set forth in Exhibit A (Vaccine Brand Choice Price Grid). The Merck Catalog Prices listed in Exhibit A are for convenience only; Merck retains the right, in its sole discretion, to increase or otherwise change the Catalog Price for any Merck Vaccine at any time.

Purchases of GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant), M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live), PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)], PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent), ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live), RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)] 5 mcg/0.5 mL, RECOMBIVAX HB 10 mcg/1 mL, RECOMBIVAX HB 40 mcg/1 mL, RotaTeq, VAQTA 25U/0.5 mL, VARIVAX® (Varicella Virus Vaccine Live), and ZOSTAVAX® (Zoster Vaccine Live) by Eligible Facility under the Program shall receive the Percent Discount Off Catalog listed in Table 1 below:

Exhibit A: Table 1

On-Invoice Discount Off Catalog for Product Group 1 Discount Level & Product Group 2 Discount Level

**Table 1**
*On-Invoice Discount Off Catalog for Product Group 1 Discount Level & Product Group 2 Discount Level†*

| Product Group 1 | Program Base Level | Discount Level<br>Meet Performance Requirement for RotaTeq |
|---|---|---|
| Product | On-Invoice Discount | On-Invoice Discount |
| RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent) | [redacted] | |
| GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant) | | |
| M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live) | | |
| ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live) | | |
| PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)] | | |
| ZOSTAVAX® (Zoster Vaccine Live) | | |
| [redacted] | | |
| Product Group 2 | Program Base Level | Discount Level<br>Meet Performance Requirement for VAQTA 25U/0.5 mL |
| Product | On-Invoice Discount | On-Invoice Discount |
| VAQTA® (Hepatitis A Vaccine, Inactivated) 25U/0.5 mL | [redacted] | |
| RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)] 5 mcg/0.5 mL | | |
| RECOMBIVAX HB 10 mcg/1 mL | | |
| RECOMBIVAX HB 40 mcg/1 mL | | |
| PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent) | | |
| VARIVAX® (Varicella Virus Vaccine Live) | | |

† On-Invoice Discount is based on 10-pack vial or tube price.

Purchases of VAQTA 50U/1 mL by Eligible Facility under the Program shall receive the Percent Discount Off Catalog listed in Table 2 below.

Table 2

On-Invoice Discount Off Catalog for products in the “Other Product Discounts” group

Table 2

*On-Invoice Discount Off Catalog for products in the "Other Product Discounts" group*

| Product | On-Invoice Discount |
|---|---|
| VAQTA 50U/1 mL | [redacted]* |

* Percent Discount Off Catalog is based on 10-pack vial.

Ninety Day Discount

For certain eligible Merck Vaccines, when a Catalog Price increase is affected, Merck will provide the Eligible Facility with a ninety (90) day discount (the "Ninety Day Discount"), as of the catalog price increase effective date, for the eligible Merck Vaccine(s) affected.

Merck will provide electronic Notice of the effective date for such price increase(s) (the "Price Increase Date") to Eligible Facilities who have opted-in to email notification of catalog pricing actions via www.merckvaccines.com/pricing-notification.

Starting as of the Price Increase Date, Eligible Facilities shall receive a discount on the price(s) for such vaccine product(s) that shall continue for ninety (90) calendar days thereafter (the "Ninety Day Discount"). The Ninety Day Discount will be equal to the amount of the price increase for the affected vaccine product(s) and will be provided at the time the order is placed during the ninety-day period as an on-invoice discount with the intent that the Eligible Facility will be able to purchase such vaccine product(s) at the pre-increase price during such time period. The Ninety Day Discount only applies to products affected by a catalog price increase.

For example, if Merck increases the catalog price for VARIVAX® (Varicella Virus Vaccine Live) by 3%, an Eligible Facility's invoice for VARIVAX will include application of a 3% Ninety Day Discount (in addition to the facility's performance discounts, if earned) to the catalog price as of the Price Increase Date, and for ninety (90) calendar days thereafter.

4. Measurement Review Period (MRP)

The Eligible Facility's performance for each of the Merck Vaccines with a performance requirement in the Program in the MRP (ie, market share achieved) will determine the Eligible Facility's Discount Level Placement on purchases placed two (2) Calendar Quarters later. (see Table 3 for example).

Table 3

Eligible Facility's Discount Level will be determined by its performance during the applicable MRP. The following is an example of the event timeline for discounts for an Eligible Facility enrolled in the Program:

| 1st Quarter of 2019 | 2nd Quarter of 2019 | 3rd Quarter of 2019 | 4th Quarter of 2019 |
|---|---|---|---|
| Q1 2019Program Discounts based on Q3 2018 as the MRP (Discount Structure in Table 1a) | Q2 2019 Program Discounts based on Q4 2018 as the MRP (Discount Structure in Table 1a) | Q3 2019 Program Discounts based on Q1 2019 as the MRP (Discount Structure in Table 1b) | Q4 2019 Program Discounts based on Q2 2019 as the MRP (Discount Structure in Table 1b) |

An enrolled Eligible Facility will be subject to adjustment of its Program status based on IQVIA Quarter Reconciliations ("Quarterly Reconciliation"). Depending on actual performance achieved, there may be no adjustment required or Eligible Facility may not be eligible for Program discounts. Any changes that may be necessary as a result of the Quarterly Reconciliation review will be made effective on the first day of the second Calendar Quarter after the MRP in which the difference occurred (the "Quarterly Reconciliation Date").

For acute and non-acute care facilities, Merck will use product performance (eg, market share) information derived from IQVIA data to determine whether a Quarterly Reconciliation is required.

Commitment Letter

The Commitment Letter is available for the Program and represents a one-time opportunity for Eligible Facility to receive the highest Discount Level for Product Group 1 and/or Product Group 2 regardless of whether the Eligible Facility meets the market share requirements for that Discount Level in the respective Product Group. The Eligible Facility can choose to submit a Commitment Letter for each of the Products Groups as separate requests or for both Product Groups in the same request. Regardless to the timing of the submission, each Product Group can only be selected and submitted once during the Eligible Facility's participation in the Program and eligibility for discounts pursuant to the Commitment Letter shall not be renewed or extended. Contact your Eligible Facility's GPO and/or Merck representative for the Commitment Letter. The Commitment Letter is also available from the Merck Vaccine Customer Center 1-877-VAX-MERCK (1-877-829-6372).

5. Program Data

For acute and non-acute care facilities:

Eligible Facility agrees to authorize Merck to utilize IQVIA Holdings, Inc. ("IQVIA") data to verify product performance information. Eligible Facility also agrees that it will authorize or continue to authorize distributor(s) and other suppliers of IQVIA data to supply IQVIA with information on all its purchases of products within the Rotavirus Vaccine Market and Hepatitis A Pediatric Vaccine Market. Eligible Facility understands and agrees that such data are required in order for Merck to determine product performance and achievement of discounts hereunder. Discounts will only be paid upon those Eligible Facility purchases for which such data have been received and accepted by Merck. Neither Merck nor Eligible Facility will issue any demand, process, subpoena, or other legal means for the appearance or production of information, witnesses, documents, or testimony of any of IQVIA's data sources for any purpose arising from or relating to the IQVIA data relevant to the Program. Failure of Eligible Facility to authorize release of IQVIA data shall be grounds for termination by Merck of Eligible Facility's participation in the Program.

Data Disputes:

Should Eligible Facility dispute its performance, Program status, or any discounted price extended under the Program, such claims must be made to Merck. The time-period included in any potential data dispute will not exceed 1 year from the date of notification. Final determination of performance, Program Status, or any discounted price extended under the Program will be made by Merck in its sole discretion.

6. Failure to Supply

With respect to Merck Vaccine Products that are used to measure performance in the Program (the "Performance Products"), in the event Merck determines in its sole discretion that (a) Merck has failed, or will be unable, to supply any Performance Product, directly to an Vaccine Authorized Prime Vendor and (b) that such failure to supply has directly caused an Eligible Facility not to receive such affected Performance Product for a period of fifteen (15) or more business days (each a "Failure to Supply"), Merck will notify Eligible Facility and/or the GPO in writing of such affected Performance Product and the effective start date and end date of the Failure to Supply of such affected Performance Product. For the Performance Product in Failure to Supply, the applicable market share requirement in the affected MRP shall be determined based on the purchase data for the MRP immediately preceding the Calendar Quarter in which the Performance Product is placed in Failure to Supply by Merck. If during the period the Performance Product in Failure to Supply qualifies as having met the performance requirement, then the Performance Product in Failure to Supply will be considered as having met the market share requirement for the remainder of the Failure to Supply period.

For example, if a Performance Product is placed under Failure to Supply effective in the 2nd Calendar Quarter of 2019, Merck shall evaluate the Eligible Facility's data from the first Calendar Quarter of 2019 to determine whether the Eligible Facility has achieved the applicable market share requirement for the Performance Product in Failure to Supply for the fourth Calendar Quarter of 2019and each Calendar Quarter thereafter until the performance product is no longer under Failure to Supply. If the Eligible Facility did not qualify as having met the market share during the first Calendar Quarter of 2019 but it achieves the market share requirement for the Performance Product in Failure to Supply during any future quarter in the Failure to Supply period, then that Eligible Facility will be considered as having met the market share requirement for the Performance Product in Failure to Supply for all subsequent Calendar Quarters in the Failure to Supply period.

During the time period the Performance Product is in Failure to Supply, Eligible Facility must use its best efforts to continue to purchase any affected Performance Product, utilizing alternative Merck Vaccine Products (eg, a monovalent vaccine that is a component of a multivalent vaccine) and package configurations (if applicable). During a Failure to Supply situation, Merck reserves the right to modify the performance requirements of the affected Group in the Program at its sole discretion. Additionally, Merck reserves the right to discontinue the affected Group in the Program until further notice immediately upon written notification to the Eligible Facility or its GPO. Nothing in this term shall permit an Eligible Facility to receive discounts in the event that a Failure to Supply results in whole or in part from the fault or negligence of Eligible Facility.

7. Reporting Discounts

Eligible Facility is aware of and will comply with Section 1128(B) of the Act (42 U.S.C. 1320a-7b) and 42 C.F.R. § 1001.952(h) when seeking reimbursement from any government or other entity for products supplied under this Agreement. Specifically, Eligible Facility acknowledges that the Act requires proper disclosure of any discounts, rebates, credits, reimbursement, and other like programs provided for herein and warrant that Eligible Facility will comply with such disclosure requirements.

By enrolling in the Program or by accepting discounts under the Program if automatically enrolled, Eligible Facility represents and warrants that it will comply with all applicable laws and that it is aware of and will comply with Section 1128B(b) of the Social Security Act (“the Act”) (42 U.S.C. §1320a-7b) and 42 C.F.R. § 1001.952(h) with respect to Merck Vaccines purchased at a discount under the Program. Specifically, Eligible Facility acknowledges that the Act requires proper disclosure of any discounts, rebates, administrative fees, credits, reimbursements, and other like programs provided for herein and represents and warrants that Eligible Facility will comply with such disclosure requirements.

Eligible Facility represents and warrants that it will accurately report the net effective discount price and any other information that must be disclosed under applicable law, for each Merck Vaccine for which a discount has been paid under the Program to the US Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, other Federal and State health care programs, enrollees, and other individuals to the extent required under applicable federal or state law. Without limitation of the foregoing, all discounts and other remuneration paid by Merck under the Program and any other information that must be disclosed under applicable law, shall be disclosed by Eligible Facility to the Centers for Medicare and Medicaid Services (CMS) in accordance with (1) CMS guidance (as it may be revised from time to time), (2) any disclosure requirements in Eligible Facility’s pharmacy contracts with Medicare Part D plans or other third parties; and (3) any other disclosure or reporting obligations or requirements imposed by federal or state laws, regulations, or guidance. Confidential treatment shall be requested for any disclosures made to CMS and Medicare Part D Plans to the extent permitted by law.

8. Excluded Entities

Eligible Facility represents and warrants that prior to accepting discounts under the Program, it has screened itself, and its officers and directors against the Exclusion Lists and that it has informed Merck whether it, or any of its officers or directors has been in Violation. After participation in the Program begins, Eligible Facility shall notify Merck in writing immediately if any such Violation occurs or comes to its attention. Merck shall also have the right, in its sole discretion, to terminate Eligible Facility’s enrollment immediately in the event of any such Violation.

For the purpose of this section the term Violation shall mean that either Eligible Facility, or any of its officers or directors has been: convicted of any of the felonies identified among the exclusion authorities listed on the US Department of Health and Human Services, Office of Inspector General (OIG) website, including 42 U.S.C. 1320a-7(a) (http://oig.hhs.gov/fraud/exclusions/authorities.asp); (2) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (http://oig.hhs.gov/fraud/exclusions/listofexcluded.html) or the U.S. General Services Administration’s list of Parties Excluded from Federal Programs (http://www.epls.gov); or (3) listed by any US Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or nonprocurement programs, including under 21 U.S.C. 335a (http://www.fda.gov/ora/compliance_ref/debar/) (each of (1), (2) and (3) collectively the “Exclusions Lists”).

9. Term and Termination

a. Term

Participation in the Program begins the date the Eligible Facility is enrolled. Participation will continue until terminated by Merck or enrolled Eligible Facility.

b. Termination of the Program

Merck may, at its sole discretion, terminate the Program or modify the Program Terms and Conditions for any reason or no reason with prior written notice to Eligible Facility or its GPO. Merck shall have the right, at any time during the term of the Eligible Facility's participation in the Program and at its sole discretion, to immediately increase the prices for any Merck product under the Program. This includes situations where the current contract prices are forecast by Merck to set a new Federal Supply Schedule Price, set a new Medicaid Best Price, or set a price lower than the price of the relevant Merck vaccine(s) under Merck's contract with the US Centers for Disease Control and Prevention (CDC).

c. Termination for Cause

Merck may terminate the Eligible Facility's participation in the Program immediately upon a breach by Eligible Facility of these Program Terms and Conditions.

d. Termination by Eligible Facility

Eligible Facility may terminate its participation in the Program for any reason with thirty (30) days prior written notice to Merck.

10. Miscellaneous

Health Care Provider Organization Retail Pharmacy Location

Health Care Provider Organization represents and warrants that the Health Care Provider Organization and its Retail Pharmacy Locations administer vaccines in accordance with state law. Health Care Provider Organization further represents and warrants that its Retail Pharmacy Locations are (1) owned and operated by the Health Care Provider Organization; (2) located within the Health Care Provider Organization medical system, buildings or campus; and (3) greater than or equal to seventy percent (≥70%) of patients served at the Health Care Provider Organization Retail Pharmacy Location are Health Care Provider Organization system patients or employees.

Ordering Procedures

Acute care facilities: An Eligible Facility must place its individual orders with a Vaccine Authorized Prime Vendor.

Non-acute care facilities: An Eligible Facility may elect to place its individual orders directly with the Merck Order Management Center in accordance with the Merck Terms and Conditions of Sale for Pharmaceuticals and Vaccine Products in effect at the time of purchase or with a Vaccine Authorized Prime Vendor. or the purposes of administering Section 5 of the Program Terms & Conditions, Health Care Provider Organization and Eligible Facility using an Eligible Depot Location represent and warrant that all refrigerated vaccines (competitive vaccines and Merck Refrigerated Vaccines) are shipped directly to the Eligible Depot Location by Merck, other manufacturers, Vaccine Authorized Prime. Vendor, or other distributors/wholesalers. The Eligible Facility receiving such Refrigerated Vaccine Products from an Eligible Depot Location also represents and warrants that it shall comply with all applicable laws, statutes, ordinances, regulations and product specific storage and handling requirements set forth in the applicable Merck Vaccine's package insert.

"Own Use"

Eligible Facility agrees that all product purchases under the Program are for Eligible Facility's "own use" and shall be dispensed in accordance with the requirements of Abbott Laboratories v. Portland Retail Druggists Ass'n., 425 U.S. 1 (1976). Health Care Provider Organization and Eligible Facilities represent and warrant that Merck Refrigerated Vaccines will only be redistributed to Eligible Facilities as authorized and described under this Program. The redistribution of any Merck Refrigerated Vaccines distributed to the Eligible Depot Location shall be strictly limited to Eligible Facilities as authorized and described under this Program for administration of such vaccine to patients of the Eligible Facility. If product purchased under the Program is not dispensed consistent with Eligible Facility's "own use," Eligible Facility will provide

Merck with an accounting for all such dispensing and shall return all discounts attributable to such dispensing to Merck. Such accounting shall be made and return of discounts paid prior to the end of the month following any purchases not for "own use." Product used for purposes other than Eligible Facility's "own use" is not eligible for discounts under the Program. Violation of this "own use" provision shall be a material breach of these Terms and Conditions. Return of discounts is a nonexclusive remedy for violation of this "own use" provision and supplements other legal and equitable remedies to which Merck may be entitled.

Confidentiality

Eligible Facility agrees that it will maintain as confidential the negotiations, existence, pricing, and terms of these Terms and Conditions of the Program for the duration of Eligible Facility's enrollment in the Program and for twelve (12) months thereafter. Breach by Eligible Facility of this confidentiality provision shall be a material breach of these Terms and Conditions. If Eligible Facility is required to disclose information relating to these Terms and Conditions of the Program that is within the scope of this provision by order of court or pursuant to a subpoena or other legally enforceable process, Eligible Facility shall provide Merck with notice of such order, subpoena, or process sufficiently in advance for Merck to protect its interests.

Audit

Merck shall have the right, upon written notice, to review and audit data and other documentation of Eligible Facility, as necessary to verify Eligible Facility’s compliance with its obligations under Vaccine Brand Choice. An independent third-party auditor may, at Merck’s sole discretion, conduct such review and audit, provided that such auditor shall agree to maintain the confidentiality of Eligible Facility confidential data and documentation. The terms of this audit section shall survive termination of Vaccine Brand Choice for a period of three (3) years. If Merck reasonably determines as a result of an audit or otherwise that Eligible Facility received discounts to which it was not entitled under the terms of Vaccine Brand Choice, Eligible Facility shall return such discounts to Merck within thirty (30) days of notification of Eligible Facility by Merck.

Merck's Discretion

Nothing in the Program shall be construed to limit or restrict Merck's right, in its sole discretion, to discontinue the manufacture, sale, or distribution of any Merck Vaccine at any time.

Disputes

Any dispute arising out of or related to these Terms and Conditions and any subsequent modifications of these Terms and Conditions, or the breach, interpretation, enforcement, construction, termination, or validity thereof, including disputes as to the scope of this Disputes clause and disputes arising under the federal or state antitrust laws, shall be settled by mandatory, confidential binding arbitration. The arbitration panel shall consist of three (3) independent and impartial arbitrators, of whom each party shall appoint one arbitrator within ninety (90) days after a demand for arbitration is made; the third arbitrator shall be selected by the two arbitrators so appointed within ninety (90) days after the expiration of the time period for appointment of such two (2) arbitrators. In the event that any arbitrator is not appointed within the prescribed time period, either party may apply to the President of the American Arbitration Association for the appointment of such arbitrator. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. to the exclusion of all state laws and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Philadelphia, Pennsylvania. The arbitration shall be conducted in accordance with the Commercial Rules of the American Arbitration Association or such other rules for alternative dispute resolution as the parties agree. Each party shall pay for all attorneys’ fees and costs it incurs in connection with the arbitration. Each party shall share equally in the costs of the arbitration. Any and all submissions, materials, exhibits, testimony, decisions, awards, or other materials related to the arbitration process or the underlying dispute shall be treated as confidential in accordance with these Terms and Conditions. These Terms and Conditions shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, exclusive of its choice of law and arbitration provisions. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute within the scope of this clause.

The following are registered trademarks of Merck Sharp & Dohme Corp.: GARDASIL®9 (Human Papillomavirus 9-valent Vaccine, Recombinant), M-M-R®II (Measles, Mumps, and Rubella Virus Vaccine Live), PedvaxHIB® [Haemophilus b Conjugate Vaccine (Meningococcal Protein Conjugate)], PNEUMOVAX®23 (Pneumococcal Vaccine Polyvalent), ProQuad® (Measles, Mumps, Rubella and Varicella Virus Vaccine Live), RECOMBIVAX HB® [Hepatitis B Vaccine (Recombinant)], RotaTeq® (Rotavirus Vaccine, Live, Oral, Pentavalent), VAQTA® (Hepatitis A Vaccine, Inactivated), VARIVAX® (Varicella Virus Vaccine Live), and ZOSTAVAX® (Zoster Vaccine Live).

Trademark registrations of other products listed are as follows: ROTARIX (GlaxoSmithKline), and HAVRIX (GlaxoSmithKline).