

Schedule D
Member Pharmacy Terms and Conditions

APCI has entered into an agreement with Merck Sharp & Dohme Corp. (“Merck”) for APCI’s Member Pharmacies to purchase certain Merck vaccines at the prices set forth in this Schedule D (the “Agreement”). To be eligible for participation in the Agreement, Member Pharmacy agrees to terms and conditions set forth in this Schedule D and represents and warrants that it meets the following criteria in order to purchase Merck Vaccines through the Agreement at the time of Enrollment and during the period of its participation in the Agreement. Furthermore, Member Pharmacies purchases through the Agreement are subject to the terms and conditions set forth in the Agreement between APCI and Merck.

1. DEFINITIONS

- a. Merck Vaccines means GARDASIL 9, M-M-R_{II}, PNEUMOVAX 23, RECOMBIVAX HB 10mcg/mL (adult formulation), VAQTA 50U/1 mL (adult formulation), VARIVAX, and ZOSTAVAX.
- b. Member Pharmacy/Pharmacies is defined as an independent, chain, mass merchandiser, or supermarket retail pharmacy.

2. ELIGIBILITY

Member Pharmacy represents and warrants that all vaccinations are administered by trained licensed individuals (eg, pharmacists or contracted third party health care providers) authorized by state laws and regulations to administer Merck Vaccines. Member Pharmacy must be a licensed Retail Pharmacy that routinely administers Merck Vaccines to appropriate patients within the Retail Pharmacy's location. Vaccination that occurs in a convenient care medical clinic in a retail pharmacy is not eligible for enrollment in the Agreement. The Member Pharmacy further represents and warrants that it shall comply with all applicable federal, state, and local laws and regulations, including, but not limited to, the storage, handling, adverse event reporting, distribution, and administration of the Merck Vaccines to consumers. Member Pharmacy maintains proper storage of the Merck Vaccines in accordance with the Merck Vaccine's labeling requirements.

3. DISCOUNTS FOR MERCK VACCINES

- a. The on-invoice discount percentages for the Merck Vaccines set forth in Table 1 below shall be applied to the current Merck catalog price in effect at the time of purchase. The discounts and pricing for Merck Vaccines is set forth in Table 1. In addition to the discounts listed in Table 1, APCI’s Member Pharmacies shall be eligible for the prompt payment discount set forth in the Merck Terms and Conditions of Sale in effect at the time of purchase for direct purchases of ZOSTAVAX. The Merck Catalog Prices listed in Table 1 are for convenience only; Merck reserves the right to modify prices and discounts at any time without advanced notice. Merck shall make available to Member Pharmacies discounts on purchases of the Merck Vaccines covered under this Agreement for use by Member Pharmacies' patients where utilization is on an outpatient basis only. Merck may modify any prices and discounts at any time, at its sole discretion, upon notice by Merck to APCI. Prices will be discounted from the Catalog price in effect on the Effective Date of the Agreement, or the date of the purchase order, whichever is latest. Merck has, in its sole discretion, the right to increase or otherwise change the Catalog prices of any Merck Vaccine at any time. Except to the extent otherwise specifically provided herein, the Merck Terms and Conditions of Sale in effect at the time of purchase shall govern



- purchases under this Agreement. The current Merck Terms and Conditions of Sale are available on MerckVaccines.com[®]
- b. Merck reserves the right to adjust the discounts on Merck Vaccines available under this Agreement in the event that the net effective prices available to Member Pharmacies are forecasted by Merck to set a new Medicaid best price, or a new federal Supply Schedule 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. Except as otherwise noted, when a price increase is effected for any of the Merck Vaccines, Merck will provide Member Pharmacies with a fourteen (14) day discount (the "Fourteen Day Discount"), as of the price increase effective date, for such Merck Vaccine(s). For orders of ZOSTAVAX placed direct with Merck, the Fourteen Day Discount will be provided as a discount, equal to the amount of the price increase, off of the Merck catalog price at the time the order is placed such that Member Pharmacies will be able to purchase Merck Vaccine(s) at the pre-increase price for this fourteen (14) day time period. Notwithstanding anything to the contrary set forth in this Agreement, the Fourteen Day Discount shall be in addition to any other discounts set forth in this Agreement. For orders of ZOSTAVAX placed with an Authorized Wholesaler or Physician Distributor, the orders must be received by the Authorized Wholesaler or Physician Distributor, submitted to Merck, and be processed, shipped, and invoiced within the fourteen (14) day period. For orders of all other Merck Vaccines placed with an Authorized Wholesaler or Physician Distributor, the orders must be received by the Authorized Wholesaler or Physician Distributor, and be processed, shipped, and invoiced within the fourteen (14) day period. Orders not invoiced by an Authorized Wholesaler or Physician Distributor within the fourteen (14) day period will not be eligible for the Fourteen Day Discount. This discount applies to Merck catalog price increases only and does not apply to any other changes in prices or discounts in this Agreement. After the Fourteen Day Discount ends, the Eligible Pharmacy will receive the same percent discount off the new Merck catalog price for that Merck Vaccine. Merck reserves the right to reduce or decline orders for Merck Vaccines eligible for the Fourteen Day Discount during the fourteen (14) day time period.
 - d. Merck shall remove all Member Pharmacies from participation in any other Merck vaccine contract and Member Pharmacies will be eligible for the discounts pursuant to this Agreement only. Member Pharmacies shall seek discounts only for purchases of Merck Vaccines for which other price reductions, discounts, contracts or offers are not available directly or indirectly to APCI or its Member Pharmacies.
 - e. Member Pharmacies warrant that all Merck Vaccines for which any discount is sought are for use by Member Pharmacy patients and have not been resold to any other individual or entity. The resale of all Merck Vaccines purchased under this Agreement shall be strictly limited to resale to patients for administration of the Merck Vaccines at the Member Pharmacy. Violation of this provision is a material breach of this Agreement. Return of discounts by Member Pharmacy to Merck within ten (10) days of the breach is a mandatory but non-exclusive remedy for violation of this provision and Merck may pursue other available legal and equitable remedies. APCI and Member Pharmacy further represent and warrant that Merck Vaccines purchased pursuant to this Agreement shall not be transferred to other entities (including other Member Pharmacy locations).
 - f. In the event that Merck determines that a Member Pharmacy is not in compliance with any portion of the Agreement that pertains to Member Pharmacies obligations hereunder, Merck shall have the right to remove that Member Pharmacy and such Member Pharmacy shall no longer be eligible to purchase Merck Vaccines pursuant to this Agreement.

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Table 1.
Net Effective Discounted Prices of Merck Vaccines Available to APCI for Merck Contract 00152726
Updated: November 15, 2018

Vaccine	NDC	Size	Catalog Price as of November 15, 2018 ^b	On-Invoice Discount off Catalog Price ^b	Net Effective Discounted Price (without FET) ^c
GARDASIL [®] 9 (Human Papillomavirus 9-valent Vaccine, Recombinant) ^a	00006-4119-03	10 single-dose 0.5 mL vials	\$2,163.63	0.10%	\$2,161.47
	00006-4121-02	10 single-dose 0.5 mL prefilled syringes	\$2,163.63	0.10%	\$2,161.47
M-M-R [®] II (Measles, Mumps, and Rubella Virus Vaccine Live) ^a	00006-4681-00	10 single-dose 0.5 mL vials with diluent	\$727.89	2.00%	\$713.33
PNEUMOVAX [®] 23 (Pneumococcal Vaccine Polyvalent)	00006-4837-02	1 single-dose 0.5 mL prefilled Luer-Lok™ syringe with tip cap	\$102.11	2.00%	\$100.07
	00006-4837-03	10 single-dose 0.5 mL prefilled	\$1,001.85	2.00%	\$981.81
	00006-4943-00	10 single-dose 0.5 mL vials	\$1,001.85	2.00%	\$981.81
RECOMBIVAX HB [®] [Hepatitis B Vaccine (Recombinant)] (10 mcg/1 mL) ^a	00006-4995-00	1 single-dose 1 mL vial	\$61.54	34.86%	\$40.09
	00006-4995-41	10 single-dose 1 mL vials	\$604.70	34.86%	\$393.90
	00006-4094-02	10 single-dose 1 mL prefilled syringes	\$604.70	34.86%	\$393.90
VARIVAX [®] (Varicella Virus Vaccine Live) ^a	00006-4827-00	10 single-dose 0.5 mL vials with diluent	\$1,285.48	0.10%	\$1,284.19
VAQTA [®] (Hepatitis A Vaccine, Inactivated) 50U/1 mL Adult Formulation ^a	00006-4841-00	1 single-dose 1 mL vial	\$68.57	13.57%	\$59.27
	00006-4841-41	10 single-dose 1 mL vials	\$674.80	13.57%	\$583.23
	00006-4096-02	10 single-dose 1 mL prefilled syringes	\$674.80	13.57%	\$583.23
ZOSTAVAX [®] (Zoster Vaccine Live)	00006-4963-00	1 single-dose 0.65 mL vial with diluent	\$223.12	2.00%	\$218.66
	00006-4963-41	10 single-dose 0.65 mL vials with diluent	\$2,126.66	2.00%	\$2,084.13

^a Federal Vaccine Injury Compensation Excise Tax (FET) of \$0.75 per dose per vaccine component is applied in addition to stated price.

^b Prices are subject to change as described in the Agreement. Agreement prices are based on current catalog prices.

^c Catalog price subject to change. Discount percentages listed are rounded to the nearest percentage point.



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Merck Confidential Information

4. DUTY TO WARN

- a. Member Pharmacy warrants that it will (1) take all appropriate steps to assure that all vaccines discounted and/or purchased under this Agreement shall be administered to each patient on the basis of an individualized medical judgment by a certified vaccinating pharmacist, or (2) take all appropriate steps to provide to such patient (or to the patient's parent or guardian) meaningful and complete warnings relating to the risks and benefits of vaccination, in form and language understandable to such patient, parent, or guardian.
- b. If any suit asserted against Merck by a third party is based in whole or in part on a claim for failure by Member Pharmacy to properly discharge the responsibilities assumed by it under Section 4.a above, Member Pharmacy shall upon prompt written notice of such claim or action, indemnify Merck and hold Merck harmless for any cost, attorney's fees, and damages associated with the defense of such claim or action and to provide its full cooperation and assistance to Merck in defense of such claim.
- c. In the event of Member Pharmacy's breach of, or failure to carry out, its responsibilities under Section 4.a above, any measure of resulting damages to Merck shall include, but need not be limited to, damages (including money judgments, reasonable attorneys' fees, and other cost) sustained in connection with claims against Merck for personal injuries caused by such breach or failure. This provision shall not limit any other right of Merck to obtain damages of other relief for any breach of this contract or for the settlement of any dispute arising under this contract.

5. PURCHASE DATA

- a. Merck will monitor the purchases for all Merck Vaccines under this Agreement using Merck chargeback data and Merck's own sales data for direct purchases of its vaccines. Merck hereby gives notice to APCI and its Member Pharmacies that discounts will be provided based only upon those Member Pharmacies for which sales data is received, except as set forth below.
- b. If any error is discovered in the data submitted or discounts provided under this Agreement, discounts due hereunder shall be appropriately adjusted to reflect the error and Merck or APCI shall make payment to the other as required to reflect such adjustment within ninety (90) days of notification of error.
- c. Member Pharmacy with a direct account may elect to place its individual orders for ZOSTAVAX directly with the Merck Order Management Center in accordance with the Merck Terms and Conditions of Sale for Merck Vaccines in effect at the time of purchase or with an "Authorized Wholesalers and Physician Distributor" (ie, those Wholesalers and Physician Distributors that act in the capacity as Wholesalers and Physician Distributors for Merck as agreed between Merck and the Wholesaler or Physician Distributor). Merck Vaccines other than ZOSTAVAX may only be ordered through an Authorized Wholesaler or Distributor by a Member Pharmacy.
 - i. Purchasing directly from Merck. To purchase ZOSTAVAX directly from Merck, a Member Pharmacy must have an account in good standing with Merck. If the Member Pharmacy does not already have such an account, it must meet Merck's criteria for opening an account, and open an account.
 - ii. Purchasing through Authorized Wholesalers and Physician Distributors. The prices for Merck Vaccines will be provided to those Authorized Wholesalers and Physician Distributors identified by Merck. Merck anticipates that Authorized Wholesalers and Physician Distributors will request "chargebacks" to Merck based on Member Pharmacy's purchases. To enable Merck to verify the chargebacks, Member Pharmacy must, as a condition to purchasing under this Agreement through an Authorized Wholesalers and Physician Distributor, agree to make available to Merck, upon its request, proof acceptable to Merck of all quantities and prices of Merck Vaccine purchases under this Agreement for the term of participation in this Agreement and three (3) months thereafter. By participating in this Agreement, Member Pharmacy consents to Merck providing information, such as name, address, and Drug Enforcement Agency number (DEA #) and other information necessary to allow Authorized Wholesalers and



Physician Distributors to administer chargebacks through this Agreement. Furthermore, Member Pharmacy understands and agrees that an Authorized Wholesalers or Physician Distributor may use the information described in the preceding sentence to contact you regarding your participation in this Agreement.

- iii. Any controversy, claim or dispute arising out of or relating to the performance, construction, interpretation or enforcement of this Agreement shall, if not resolved through negotiations between the parties, be submitted to mandatory binding confidential arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.
- iv. Member Pharmacy is aware of and will comply with Section 1128B(b) of the Act (42 U.S.C. 1320a-7b) and 42 C.F.R. § 1001.952(h) and 42 C.F.R § 1001.952(j) with respect to Merck Vaccines supplied under this Agreement. Specifically, Member Pharmacy acknowledges that the Act requires proper disclosure of any discounts, rebates, credits, reimbursements, and other like programs provided for herein and represent and warrant that Member Pharmacy will comply with such disclosure requirements. Member Pharmacy 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 this Agreement to the US Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, 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 this Agreement, and any other information that must be disclosed under applicable law, shall be disclosed to the Centers for Medicare and Medicaid Services ("CMS") in accordance with (i) CMS guidance (as it may be revised from time to time), (ii) any disclosure requirements in Member Pharmacy's contracts with Medicare Part D plans or other third-parties; and (iii) 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.

6. CHOICE OF LAW

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to Pennsylvania's choice of law or arbitration provisions, and that the Federal and state courts therein shall have jurisdiction over the subject matter and the parties.

7. ADVERSE EVENTS REPORTING

If Member Pharmacy becomes aware of an adverse event relating to a Merck Vaccine, Member Pharmacy may contact Merck at 1-800-MERCK-90 (1-800-637-2590) to report such information.

8. CONFIDENTIALITY

Member Pharmacy agrees to maintain as confidential the Agreement, including, but not limited to, the pricing and discounts for the Merck Vaccines ("Confidential Information"), except when such disclosure is required by applicable law, regulations, court order or subpoena; however, Member Pharmacy shall provide reasonable advance notice to Merck prior to making a disclosure.

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