

Merck & Co., Inc.

**TERMS AND CONDITIONS FOR PARTICIPATION IN THE  
MERCK ADULT VACCINATION PROGRAM**

**JUNE 19, 2006**

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Merck & Co. Inc. (“Merck”) is pleased to provide the Merck Adult Vaccination Program (the “MAVP”). The MAVP is designed to support increased access to Merck adult vaccines and help enhance the role of pharmacists and vaccine service providers as key members of the healthcare provider network.

The MAVP will provide healthcare professionals (“HCPs”) and consumers with a means of identifying community pharmacies or other vaccine service providers that provide vaccination services for Merck adult vaccines within a geographic area.

**The MAVP Benefits:**

- Community pharmacies or other vaccine service providers enrolled in the MAVP (“Participants”) will be listed in a directory which shall be made available by Merck to HCP’s via the Merck National Service Center at 1-800-Merck-90 beginning on or about August 2006 and through a Merck website(s) on or about September 2006. The directory will include the Participant’s name, address, phone and fax number, and website (if available). HCPs can search or direct their patients, to search for community pharmacies or other vaccine service providers within their geographic location that administer Merck adult vaccines to patients.
- Promotion of the MAVP Participant listing will also occur through Merck sales representatives on or about August 2006 in interested physician offices.
- Resources will be made available to Participants, by Merck and may include information and reference material to help develop vaccination protocols, patient education, website addresses to obtain product information, vaccine storage and handling information and other such information as may be deemed appropriate. The resources will be distributed to Participants via direct-mail or electronic means upon enrollment.

**Enrollment Process:**

The opportunity to participate in the MAVP is being made available by Merck to community pharmacies and vaccine service providers that meet the eligibility requirements defined below as determined by Merck in its sole discretion. Enrollment in MAVP is acquired by going through a formal approval registration with Merck that includes: 1) completing the attached registration form and agreeing in writing to the terms and conditions of the MAVP as set forth herein; and 2) submitting state licensure and/or drug enforcement agency number (DEA #) and/or registration certification for validation by Merck for each pharmacy location and vaccine service provider that you wish to be enrolled in MAVP. **Once you have completed the form and signed the terms and conditions of the MAVP, return the entire completed form and executed terms and conditions to Merck via a Merck representative or fax the document to Merck at (215) 616- 5677. Interested Participants who are unable to return the completed form may contact the Merck National Service Center at (800)-Merck-90 for further instructions. Upon Merck’s approval of your application, you will be sent acknowledgement of your acceptance in MAVP and receive your MAVP resources.**

**MAVP Eligibility Requirements:**

**The Participant agrees to adhere to the following requirements, in order to become enrolled and maintain enrollment in MAVP:**

- a) Maintains a proper storage facility for the vaccines in accordance with the vaccines’ labeling requirements, which include, but are not limited to, a refrigerator and freezer (defined as a frost free freezer that has a separate sealed freezer door and reliably maintains an average temperature of (-15°C or colder)) for vaccine storage. If transportation of the vaccines is required, Participant agrees to store the vaccines in accordance

- with the vaccines' labeling requirements to ensure vaccine integrity before, during and after the transportation of the vaccines.
- b) Employs or uses licensed individuals in accordance with applicable state or federal statute, regulation or other rule to administer Merck adult vaccines. Participant agrees that during the course of your participation in MAVP that the license and/or DEA registration certification for the pharmacy and vaccine service provider as well as the licenses of all individuals administering Merck adult vaccines shall be active and remain in good standing. Merck reserves the right to re-validate the license and/or DEA # registration certifications for all MAVP Participants including all individuals administering Merck adult vaccines not more frequently than once per year.
  - c) Stocks all Merck adult vaccines (including, but not limited to, vaccines covered by third party payors, Medicare Part B and D), or agrees to make a Merck adult vaccine available to customers after receipt of a valid prescription order from a healthcare provider or in accordance with established vaccination protocols.
  - d) When available, agrees to provide claims adjudication and billing services for patients who have insurance coverage for the vaccine and whose insurer or other payor provides reimbursement to the patient (including, but not limited to, third party payors, Medicare Part B & D); and
  - e) Complies with all applicable federal, state and local laws and regulations, including, but not limited to, the storage, handling, transportation, adverse event reporting, distribution and administration of Merck adult vaccines to consumers.

### **Terms and Conditions of the Program:**

#### **Duty to Warn: Participants and individuals licensed to administer vaccines warrant that they will:**

- a) Take all appropriate steps to assure that all Merck adult vaccines shall be administered to each consumer on the basis of an individualized medical judgment by a prescriber, nurse, pharmacist or anyone else licensed to administer vaccines and take all appropriate steps to provide to such consumer (or to the consumer's parent or guardian) meaningful and complete warnings relating to the risks and benefits of vaccination, in form and language understandable to such consumer, 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 Participant to properly discharge the responsibilities assumed by it under paragraph a) above, Participant shall upon prompt written notice of such claim or action, indemnify Merck and hold Merck harmless for any cost, reasonable attorney's fees and damages associated with the defense of such claim or action to the extent arising from the failure by Participant to properly discharge the responsibilities assumed by it under paragraph a) above, and to provide its reasonable cooperation and assistance to Merck in defense of such claim.
- c) In the event of Participant's breach of, or failure to carry out, its responsibilities under paragraph a) or b) 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 costs) 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 or other relief for any breach of these terms and conditions or for the settlement of any dispute arising under these terms and conditions.

#### **Termination**

Merck reserves the right to terminate the MAVP or Participant's enrollment in the MAVP in its sole discretion at any time without notice to Participant. Merck shall provide written notice of such termination to Participant by mail, fax or e-mail.

Participant may terminate enrollment in the MAVP at any time upon providing Merck with written notice via fax at (215) 652-8833. Upon receipt of such notice, Merck shall remove Participant's contact information from all MAVP-related materials and website as soon as reasonably possible.

#### **Changes to the Program**

Merck reserves the right to make changes to the Program in its sole discretion at any time by providing prior written notice to Participant.

### **Publicity**

Participant agrees not to use or reference in any advertising, sales promotion, press release or other communication, any Merck endorsement, direct or indirect quote, code, drawing, logo, trademark, specification, or picture without the prior written consent of Merck.

### **Use of Participant's Name, Logo and Trademark.**

Participant agrees to allow Merck to use Participant's Name, Logo and Trademark on all MAVP and related materials, including, but not limited to, use on Merck websites and promotional materials without permission from Participant. Except as expressly permitted above, any additional use of Participant's Name, Logo or Trademark shall require Participant's prior written approval.

### **Representations and Warranties.**

- a) Participant represents and warrants that (a) all of the information provided by Participant to enroll in MAVP is correct and current; (b) Participant has the authority to enter into this agreement on behalf of all pharmacy and/or vaccine service provider locations listed in the Participant location spreadsheet attached as Appendix 1 hereto; and (c) Participant will comply with all applicable laws, statutes, and regulations.
- b) Participant represents and warrants that it shall act in compliance with all federal, state, and local laws, regulations and licensing requirements, including but not limited to those applicable to patient consent, the practice of pharmacy, testing, and privacy of medical records and medical information confidentiality. Without limitation of the foregoing, Participant represents and warrants that it shall act in compliance with the Federal patients' health information regulations published on December 28, 2000 at 65 FR 82462 and designated as 45 CFR Subtitle A, Subchapter C, Parts 160 and 164, or any amended, modified, supplemental or successor provisions and any other applicable federal regulations (hereinafter collectively "Federal Patient Privacy Regulations") and all applicable state laws, regulations and orders relating to the privacy of medical information ("State Patient Privacy Regulations"). Participant also represents and warrants that Participant and its employees, agents and permitted subcontractors will not at any time disclose to Merck, or any of its employees, agents, or affiliates, any "individually identifiable health information" or "protected health information" as those terms are used in the Federal Patient Privacy Regulations (See 45 CFR Section 164.501) or similar patient information as protected under applicable state laws or regulations..

### **Indemnification.**

The Participant shall indemnify and hold Merck, its affiliates, employees, officers and directors harmless from and against any and all actions, causes of actions, loss, damage or expense, including reasonable attorneys' fees, that Merck may sustain or incur as a result of any claim, suit or proceeding (hereinafter "Legal Claims"), arising out of or in connection with: (1) any actual or alleged negligent or willful act or omission of the Participant, or any of its employees, agents or subcontractors; (2) any actual or alleged violation by the Participant, or any of its employees, agents or subcontractors of any law, statute, ordinance or regulation; and (3) any actual or alleged violation by the Participant, or any of its employees, agents or subcontractors of the representations and warranties under these MAVP terms and conditions.

### **Miscellaneous**

- a) Choice of Law. These terms and conditions 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.
- b) Mutual Undertakings. Merck and Participant understand and agree that the mutual undertakings provided for in the terms and conditions for the MAVP are good and sufficient consideration for each party's obligation hereunder.
- c) Adverse Events Reporting. If you become aware of an adverse event relating to a Merck vaccine product, you may contact Merck at 1-800-MERCK90 to report such information.

## PARTICIPANT REGISTRATION FORM

Please confirm your agreement to become a participant in the Merck Adult Vaccination Program and acceptance of the terms and conditions set forth in this document by having an individual authorized to act on behalf of your organization sign below. Attached as Appendix 1, hereto is a Participation location spreadsheet for you to insert multiple pharmacy locations to be considered by Merck for participation in the Merck Adult Vaccination Program as you would want them to appear in all databases or websites. Vaccine Service Providers will need to list any of vaccine service provider's facilities that provides vaccine services and provide state licensure or DEA # of the individual associated or employed by the Vaccine Service Provider to Merck via fax at: (215) 616-5677 or email the Participant Location Spreadsheet to **MerckAdultVaccinationProgram@merck.com**.

By: \_\_\_\_\_  
{Individual's Signature}

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

Print or Type Contact Individual's Salutation (Mr/Ms/Mrs/Dr.) \_\_\_\_\_

Contact First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_ suffix (i.e. Jr., III, etc.) \_\_\_\_\_

Contact Professional Designation (i.e. M.D., D.O., R.Ph., R.N., etc.): \_\_\_\_\_

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

Contact Address: \_\_\_\_\_

Contact City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Contact Phone: \_\_\_\_\_

Contact Fax: \_\_\_\_\_

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

Business Name (as listed on applicable license): \_\_\_\_\_

Type of Participant (*for classification purposes, please check only one*):

- Community Retail Pharmacy (Chain – 10 outlets or more)
- Community Retail Pharmacy (Independent)
- Community Retail Pharmacy (Mass Merchandiser)
- Community Retail Pharmacy (Grocery/Combo)
- Community Retail Pharmacy (Other) \_\_\_\_\_
- Vaccine Service Provider (VSP)

Pharmacy State License #: \_\_\_\_\_

Vaccine Service Provider State License or DEA#: \_\_\_\_\_

Name of VSP Pharmacist or Physician on State License or DEA# Certification: \_\_\_\_\_

Business Location Address: \_\_\_\_\_

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

Business Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Website Address (if available): \_\_\_\_\_

(All notices and written communications relating to this Program shall be sent to the contact person named above.)

\*By providing your information and signature above, Participant agrees that Merck, the companies with whom Merck collaborates to jointly offer products and services, and the companies working on their behalf may contact you via e-mail regarding product information, site enhancements, special offers, educational opportunities, additional resources, programs and information about Merck. The companies working for Merck have agreed to use this information only at the direction of Merck and also have agreed not to share this information with anyone. Merck will not disclose personal information about you to anyone other than these companies, except as required by law.

Participant can manage all of your contact preferences or request that Merck, the companies with whom Merck collaborates to jointly offer products and services to you, and the companies working on their behalf not contact Participant in the future by calling: 1-800-339-0400.

If you have any questions regarding the above terms and conditions, please contact the Merck National Service Center at 1-800-MERCK-90.