

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Capital Expenditures					
Operating Costs	(7,000)	(3,000)			
External Revenues					
Program Income (County)					
In-Kind Match (County)					
Net Fiscal Impact	<u>* (7,000)</u>	<u>(3,000)</u>			

ADDITIONAL FTE POSITIONS (Cumulative) 0 0 0 0 0

Is Item Included In Current Budget? Yes ___ No X

Budget Account Exp No: Fund ___ Department ___ Unit ___ Object ___
 Rev No: Fund ___ Department ___ Unit ___ Object ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* The products provided by Merial Limited are at no cost to the County. This program will save ACC thousands of dollars each year, although it is not significant enough to reduce ACC's budget due to insufficient funding in other areas that this savings will help offset.

Departmental Fiscal Review: Anita Pedemey for Stephanie Sajnoska

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

[Signature]
 OFMB
 3/12/12
 3/13/12
 2/12/12

[Signature] 3/26/12
 Contract Administration

B. Legal Sufficiency:

[Signature]
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

**TIER 1 SHELTER
PARTNERS IN PROTECTION® PROGRAM AGREEMENT**

This TIER 1 SHELTER PARTNERS IN PROTECTION PROGRAM AGREEMENT (this "Agreement"), executed as of the 1st day of February, 2012 (the "Effective Date"), between Merial Limited, a company limited by shares registered in England and Wales (registered number 3332751), with a registered office at P.O. Box 327 Sandringham House, Sandringham Avenue, Harlow Business Park, Harlow, Essex CM19 5QA, England, and domesticated in Delaware, USA, as Merial LLC with a place of business at 3239 Satellite Boulevard, Duluth, Georgia 30096 ("Merial") and Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, with an address at 7100 Belvedere Road, West Palm Beach, FL 33411 ("Shelter"),

WITNESSETH:

WHEREAS, Shelter is a recognized leader in animal protection and care and provides care and adoption services for thousands of dogs and cats each year; and

WHEREAS, Shelter desires to receive Merial's FRONTLINE® and HEARTGARD® (ivermectin) brand products at no cost to provide to dogs and cats in its care, and to promote the use of those products by adopting owners to help control parasites and improve the health of pets adopted from it (the "Program"); and

WHEREAS, Merial wishes to provide FRONTLINE and HEARTGARD branded products to Shelter and to have Shelter promote its FRONTLINE and HEARTGARD brand products;

NOW, THEREFORE, in consideration of the mutual agreements and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Obligations of Shelter

During the Term of this Agreement, Shelter agrees:

- (a) to maintain its 501(C)(3) status or its status as a publicly supported animal care and control agency, and maintain state licensed kennel facilities;
- (b) to maintain an onsite shelter medical clinic or have regular routine onsite visits and support from a licensed veterinarian;
- (c) that FRONTLINE and/or HEARTGARD branded products provided to Shelter are for application of single doses for each adoptable cat and dog only, and that the applicable products are to be used under the supervision of a licensed veterinarian;
- (d) that the FRONTLINE and/or HEARTGARD branded products provided to Shelter may not be sold or otherwise distributed to any third party in any manner not specifically provided for in this Agreement;
- (e) to exclusively apply FRONTLINE branded products for the prevention of fleas and ticks and/or exclusively provide HEARTGARD branded products for the prevention of heartworms to all cats and dogs expected to be adopted from the Shelter, unless the regular Shelter veterinarian determines that for

medical reasons such as an animal adverse reaction, another product must be used;

- (f) to maintain an effective pet adopter counseling program, and agree to provide counsel with every dog or cat adoption that FRONTLINE branded products are the preferred flea and tick, and/or HEARTGARD branded products are the preferred heartworm preventative treatments of the Shelter;
- (g) to prominently post marketing collateral to be provided by Merial that clearly communicates that FRONTLINE branded products are the preferred flea and tick and/or HEARTGARD branded products are the preferred heartworm preventative treatments of the Shelter and the Shelter veterinarian (or community veterinarian supporting the Shelter), and are used exclusively by the Shelter for all adopted cats and dogs;
- (h) to distribute FRONTLINE and/or HEARTGARD branded product coupons to every new pet adopter, to ask permission to submit their name to Merial, and to instruct pet adopters to visit their veterinarian and to bring those coupons;
- (i) to require that all Shelter adoption counselors, operations personnel and clinical staff attend or participate in introductory program and product training, to be completed onsite by one or more Merial sales or field veterinary services representatives, prior to initiation of Program; and
- (j) to utilize the forms delivered electronically to Shelter by Merial entitled "Merial Partners in Protection® - Account Form, Shelter Contact & Account Information" and "Shelter Location Product, Partners in Protection® Shelter Account Form, Estimated Product Needs" to provide Program information to Merial or its agents.

2. Obligations of Merial

During the Term of this Agreement, Merial agrees:

- (a) to provide the Shelter with an amount of FRONTLINE branded products and/or HEARTGARD branded products that Merial deems appropriate, in its sole discretion, for use in connection with the Program;
- (b) to provide the FRONTLINE branded products and/or HEARTGARD branded products described in Section 2(a) above at no cost to the Shelter;
- (c) to provide the Shelter with such marketing collateral as it deems appropriate for display at the Shelter's adoption centers as described in Section 1(g) above, including the coupons described in Section 1(h) above;
- (d) to provide Shelter with such introductory program and product training as it deems appropriate to allow the Shelter to comply with its obligations in Section 1(i) above;
- (e) to provide Shelter with a new adopter brochure with shelter uniquely coded, high-value product coupons redeemable at any veterinary clinic;

- (f) to provide Shelter with onsite and web-based veterinary, clinical and caregiver staff continuing education programming, including programming that may be requested by the Shelter;
- (g) to provide sponsorship of the Shelter and/or a Shelter event, in the sole discretion of Merial, during calendar year 2012; and
- (h) to provide Shelter with support for 1 - 4 onsite program orientations for Shelter's local community veterinarians

3. Disclaimer of Warranties

ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS, ARE DISCLAIMED BY MERIAL.

4. Confidentiality

- a. Except as required by any party to complete its obligations under this Agreement, or as required by applicable law, each party (the "Recipient") agrees that it will not use, disclose, or publish articles concerning any confidential or proprietary information disclosed to it by or on behalf of the other party (the "Discloser") without the prior written consent of the Discloser and will hold all documents containing confidential or proprietary information in a safe and secure manner so as to prevent their inadvertent disclosure to third parties. The Confidential Disclosure Agreement, effective the 1st day of January, 2012 (the "CDA"), between Merial and Shelter is hereby incorporated by reference, including the definition of Confidential Information set forth therein, and Merial and Shelter shall abide by the terms set forth in the CDA as if those terms were part of this Agreement for the Term of this Agreement.
- b. The Recipient will respect and abide by all obligations it may have arising with respect to confidential, proprietary or trade secret information of the Discloser. The Recipient certifies that it has no outstanding agreement or obligation that is in conflict with any of the provisions of this Agreement, or which will impair, impede or conflict with the performance of the services.
- c. The Shelter shall not reveal its participation in this Agreement or any of the terms in this Agreement to any third party without the prior written consent of Merial, unless required by law.
- e. The provisions of this Article 4 shall survive any termination, expiration or cancellation of this Agreement.

5. Representations and Warranties

- a. Each party represents and warrants that it has the full power and authority to enter into this Agreement and to perform all of its obligations hereunder without violating the legal or equitable rights of any third party.

- b. Each party recognizes the great value of the goodwill associated with the other party's logo and trademarks ("Marks") and acknowledges that such Marks and all rights and goodwill therein belong exclusively to the other party or its licensors. Each party represents and warrants that it will not use, in any way, the Marks or name of the other party, except solely to perform obligations as required under this Agreement, and that none of the other party's Marks shall be used in any way which could cause harm to the goodwill associated with such Marks.
- c. No party shall do anything to attack the title rights of the other party or its licensors, as the case may be, in the other party's Marks or attack the validity of this Agreement.

6. Ethical Conduct

Neither party shall knowingly commit any act that is or shall be an offense involving the violation of any public policy, law or regulation, or otherwise engage in any conduct that intentionally or willfully violates any public policy, law or regulation or that brings either party into public disrepute, contempt, scandal or ridicule, or which injures the successes of either party or any of its products or services. At the time of any such act or at any time after either party learns of such act, that party shall have the right, in addition to its other legal and equitable remedies, to immediately terminate this Agreement.

7. Indemnification

Merial shall indemnify, defend and hold harmless Shelter, its officers, directors, agents, and employees from and against any and all claims, demands, actions, causes of action, fines, losses or damages whatsoever and any cost and expense related thereto, including reasonable attorney's fees, arising from the performance of this Agreement or otherwise resulting from the work, services, equipment or materials furnished to, or on behalf of Shelter, to the extent such liability results from the acts or omissions of Merial.

8. Term and Termination

- (a) This Agreement shall be deemed effective from the Effective Date through and until December 31, 2012 (the "Term").
- (b) Merial may immediately terminate this Agreement should Shelter make any statement or claim regarding Merial that is not previously approved in writing by Merial and which is materially inconsistent with statements that have been approved or provided by Merial.
- (c) Merial may immediately terminate this agreement if it determines, in its sole discretion, that Shelter or any of its employees or agents has misused or sold any free product that has been delivered to Shelter pursuant to this Agreement, or if it determines, in its sole discretion, that Shelter has failed to abide by the exclusivity set forth in Section 1(e) above.
- (d) Merial may terminate this agreement if it determines, in its sole discretion, that Shelter no longer meets the qualifications for the Program pursuant to

Sections 1(a), (b) or (f) above or that Shelter has failed to meet its obligations under Sections 1(c), (d), or (g) – (j) above.

- (e) Termination shall not extinguish obligations and liabilities of the parties accrued prior to termination.
- (f) Shelter may terminate this Agreement without cause, by providing Merial ten (10) days written notice of its intent to terminate this Agreement and return to Merial any unused product.

9. Independent Contractor

The parties expressly intend that with regard to the provisions of this Agreement they are independent contractors, and no party hereto shall receive any other benefits besides those expressly provided for herein. Further, it is the express intent of the parties hereto that no agent, servant, contractor, or employee of one party be deemed an agent, servant, contractor, or employee of the other party. No party is granted any express or implied right or authority by the other party to assume or create any obligation or responsibility on behalf of, or in the name of, the other party, or to bind the other party in any manner whatsoever. All personnel of Shelter rendering services pursuant to the Agreement shall be employees or agents of Shelter. Regardless of anything else contained in or implied from this Agreement, any employee of Shelter who may be performing the services herein described shall remain an employee of Shelter, subject at all times to Shelter's policies and procedures, and in no way shall such employee be deemed an employee of Merial.

10. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of Florida. Venue for any legal action shall be held in Palm Beach County, Florida.

11. Integration

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or verbal, other than the CDA. No waiver, modification or addition to this Agreement shall be valid unless in writing and signed by the parties. If any part of this Agreement is rendered invalid or unenforceable, such rendering shall not affect the validity or enforceability of the remainder of this Agreement.

12. Publicity

Except as may be otherwise provided herein, neither party shall release or distribute any materials or information containing the name or Marks of the other party without the prior written approval of an authorized representative of the other party, which approval shall not be unreasonably withheld. If the non-releasing party does not provide notice to the releasing party within ten (10) days of receipt of materials from the releasing party, such approval shall be deemed granted.

13. Inspector General Language

Shelter has established the Office of the Inspector General in Palm Beach County *Code, Section 2-421 - 2-440*, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Merial, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

**PALM BEACH COUNTY
BOARD OF COUNTY
COMMISSIONERS:**

By: *James McCall*
Purchasing Director 2/13/12

**APPROVED AS TO TERMS
AND CONDITIONS**

By: *Vincent Bonicelli*
Department Director

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

By: *[Signature]*
County Attorney

MERIAL LIMITED:

By: *Theresa Frost-Plimpton*
Name: THERESA FROST-PLIMTON
Title: Director, Customer Marketing

MERIAL LEGAL
2/1/12
SDS