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Minnesota Department of Administration  
Office of State Procurement  
50 Sherburne Avenue, Suite 112 Administration Building, St. Paul, MN 55155  
Phone: 651.201.2420

**Sanofi Pasteur, Inc.**

**Agreement Number: MMS2000294**

**Prepared on: June 17, 2020**

**Definitions**

1. **Administrative Fee:** Means (1.5%) of Contract Pricing for Products or as listed on **Attachment A**, which will supersede Prefix A.
2. **Agreement:** Means the resulting agreement that is reached between MMCAP Infuse and the Vendor.
3. **Authorized Wholesaler(s):** AmerisourceBergen Drug Corporation, ASD Specialty Healthcare, LLC, Cardinal Health, FFF Enterprises, Inc., McKesson Medical-Surgical Government Solutions, LLC, Morris & Dickson Co., LLC.
4. **Class of Trade:** All Members are eligible for contract pricing.
5. **Contract Pricing:** Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership as set forth on **Attachment A** and any subsequent amendment to this Agreement.
  - A. **Non-Fixed Pricing:** Means all Products identified as such on **Attachment A** or any subsequent amendment to this Agreement.
  - B. **Wholesale Acquisition Cost (WAC) Minus** - a percentage or dollar amount off WAC that changes by providing MMCAP Infuse prior written notice of the price change along with the new WAC and contract price.
6. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
7. **Failure to Supply (FTS):** Deleted in its entirety.
8. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
9. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
10. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **Onboarding Date:** Means the Vendor must allow new Members to access to the Agreement within seven (7) days of notice by MMCAP Infuse and/or the completion of the required paperwork on **Attachment C**.
12. **Order Form:** Means the document or electronic platform Member utilizes to obtain Products.
13. **Primary Account Representative:** Mackenzie Fetterman, Deputy Director, Government Accounts, [Mackenzie.Fetterman@sanofi.com](mailto:Mackenzie.Fetterman@sanofi.com), 570-957-3381
14. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in **Attachment A**.
15. **State:** Means one of the recognized fifty (50) states of the United States of America.

**AGREEMENT FOR MMCAP INFUSE NO. MMS2000294**<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

THIS Agreement is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration (“**Minnesota**”) on behalf of MMCAP Infuse (“**MMCAP Infuse**”) and Sanofi Pasteur, Inc., a corporation with an address of 1 Discovery Drive, Swiftwater, PA 18370 (“**Vendor**” or “**Sanofi**” or “**Sanofi Pasteur**”).

**Contract Term:**

1. **Effective Date:** July 1, 2020, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** June 30, 2024.
3. The Contract Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

**AGREEMENT COMPONENTS**

The following components are the Agreement; all referenced Prefix and Attachments, are attached and incorporated into this Agreement.

1. **Prefix A:** Definitions
2. **Attachment A:** Products and Pricing
3. **Attachment B:** Further Discounts– Vax Value Program
  - Exhibit A:** List of Practice Locations
  - Exhibit B:** Sanofi Pasteur Product Category Definitions
  - Exhibit C:** Vaccines and Products for Vax Value
  - Addendum A to Exhibit C:** Tier Selection Pricing
4. **Attachment C:** Not applicable
5. **Attachment D:** Required Reporting
6. **Attachment E:** MN Statutory Language

**ARTICLE I**  
**PRICING AND CHANGES**

- 1.1 **Notices.** All notices under this Article must be sent to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).
- 1.2 **Pricing Structure:** Pricing for Products are listed on **Attachment A** and will remain in effect during the Contract Term.
- 1.3 **Fixed Pricing.** Reserved. Price Reductions. After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must notify MMCAP Infuse before they can take effect.
- 1.4 **Non-Fixed Pricing.** All Non-Fixed Pricing requires notice of increases be submitted to MMCAP Infuse at least thirty (30) days before the requested increases may take effect. Vendor cannot increase prices until one hundred twenty (120) calendar days after the Effective Date of the Agreement. In the event of any price reductions, Vendor will advise MMCAP Infuse as set forth on Paragraph 1.3.
- 1.5 **Wholesale Acquisition Cost (WAC) Minus Percentage or Dollar Pricing.** If specifically noted on **Attachment A** that the prices are a percentage or price off WAC, the price may be changed by providing MMCAP Infuse at least five (5) business days’ prior written notice of the price change along with the new WAC and pricing. Notices of WAC increases must be sent to MMCAP Infuse. In the event Vendor does not notify MMCAP Infuse of a WAC increase, Vendor must honor wholesalers’ chargebacks for the most recent previous pricing until such time as MMCAP Infuse receives notice of the WAC increase.
- 1.6 **Notice to MMCAP Infuse:** Vendor must provide justification for all price increases. In the event Vendor does not notify MMCAP Infuse of a price increase, Vendor must honor wholesalers’ chargebacks for the most recent previous Contract price until such time as MMCAP Infuse receives notice of and approves the price increase.
- 1.7 **Notice to Authorized Wholesalers.** The Vendor must notify any and all Authorized Wholesalers of price changes. If Vendor fails to send price notification(s), Vendor agrees to honor all chargebacks at the lower Contract Pricing until such time the Authorized Wholesalers receive notice of and approves the price change. Vendor must confirm with MMCAP Infuse that price changes have been sent to the Authorized Wholesalers.
- 1.8 **Competitive Pricing.** Deleted in its entirety.
- 1.9 **Vendor’s Right of First Refusal on Equivalent Products.** If an equivalent product’s market price is less than the Contract Pricing, MMCAP Infuse will provide ten (10) days to the Vendor to match the price. If the Vendor does not match the price or fails to respond, MMCAP Infuse reserves the right to dual award or re-award the Product(s).
  - A. In the event Vendor increases the Contract Pricing, MMCAP Infuse reserves the right to obtain quotes from other vendors and to dual or re-award a Product to the vendor offering the best value.
- 1.10 **Value-Added Programs.** Members must be offered any programs normally offered to the Vendor’s general customer base (e.g., rebates, tiered pricing, continuing education courses, marketing information, etc.) at the same or lower cost as that offered to the general customer base.

- 1.11 **Product Dating.** All Products supplied to MMCAP Infuse Authorized Wholesalers or directly to MMCAP Infuse Members must have an expiration date of at least six months later than the delivery date, unless the unique stability characteristics of the product require a shorter dating period. However, all Products supplied must still be usable on the date received by the Members.
- 1.12 **Annual Bid Cycle.** Deleted in its entirety.
- 1.13 **Changes.** Any changes to this Agreement, including but not limited to product additions/deletions, price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed by the effective date of the amendment. With the exception of changes to Contract Pricing which are subject to Paragraph 1.7, Vendor must send confirmation of amendment changes, including but not limited to additions/deletions, NDC changes, Product removals, etc., to the Authorized Wholesalers within two (2) business days of the time that documentation of the change is received by the Vendor from MMCAP Infuse. If MMCAP Infuse's Authorized Wholesalers do not receive the notification(s), Vendor agrees to honor all chargebacks at the Contract Pricing from the effective date indicated on the amendment. Vendor-generated Product offers and notifications may be used as amendments to **Attachment A** by submitting to MMCAP Infuse a letter on Vendor's letterhead with the following elements (**Offer Letter**):
- A. Offer Date
  - B. MMCAP Infuse Contract Number
  - C. Action (e.g., addition, deletion, price change, NDC conversion)
  - D. NDC Number
  - E. Product Description
  - F. Packaging
  - G. Most recent previous Contract Price
  - H. New Contract Price
  - I. Pricing Type
  - J. Effective Date
  - K. Signature of an individual authorized to bind Vendor's change to contract.

Upon written acceptance by MMCAP Infuse, Offer Letter will automatically amend **Attachment A** of this Agreement. If MMCAP Infuse indicates that aspects of the Offer Letter conflict with Agreement at that time, Paragraph 11.5 will apply to any subsequent conflicts and/or issues that may arise subsequently. If MMCAP Infuse executes the Offer Letter and provides counters, the Vendor has fifteen (15) days to object to MMCAP Infuse's counters before they are deemed as accepted by Vendor. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP Infuse will draft all amendments. Vendor must countersign the amendments drafted by MMCAP Infuse to be incorporated into the Agreement. Amendments must be countersigned by the Vendor by the earlier of the following (A): fifteen (15) days; or (B) the Expiration Date.

## **ARTICLE II SUPPLYING AND AVAILABILITY**

- 2.1 **Authorized Wholesaler Requirements.** Vendor will notify the Authorized Wholesalers of the initial Products and Contract Pricing and any subsequent changes.
- A. All sales of Products to Members must be through the Authorized Wholesalers or directly from Vendor, as described in Article III Payment, Direct Orders, and Delivery. Vendor must establish and maintain chargeback agreement(s) with the Authorized Wholesalers.
  - B. Vendor must notify MMCAP Infuse immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect the Contract Products' availability. Notices must be sent to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).
- 2.2 **Dual Award.** MMCAP Infuse reserves the right to award or dual award Products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by Authorized Wholesalers, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by Members, recall situations, product availability and shortages, quality concerns, failure to supply situations, and in situations that are in the best interest of MMCAP Infuse and its Members.
- 2.3 **First DataBank, Inc.** All contracted prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc., unless such designation is expressly waived by MMCAP Infuse.
- A. If NDC codes are not applicable (e.g., OTC products), Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]). If the Product does not have an NDC number or a UPC code, Vendor must use its product number with leading zeroes (e.g., product #90024 = 00000-0900-24).
  - B. Vendor must report Products to Authorized Wholesalers using only these approved formats.

- 2.4 **Product Discontinuation.** With the exception of a recall, if the Vendor assigns, discontinues, or deletes a Product during the Agreement, Vendor must provide written notice to MMCAP Infuse and Authorized Wholesaler at least sixty (60) days prior. If the Vendor removes a Product, Vendor will honor Contract Pricing until the Authorized Wholesalers' inventories are depleted or a mutually agreed upon removal date.
- 2.5 **Price Audits and Corrections.** In the event of a Contract Pricing error that is attributable to the Vendor, Vendor agrees to accept credit/rebills for the past twelve (12) calendar months. When MMCAP Infuse discovers an error in pricing, it will notify Vendor.
- 2.6 **Product Recalls.** Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.
- 2.7 **Returned Goods/Credits.**
- A. **Indirect sales:** Product(s) not purchased directly from Vendor should be returned to the site of purchase under their terms of sales. Indirectly purchased product(s) can be returned to Sanofi Pasteur upon expiration for destruction only.
  - B. **Direct Sales:** All returns must comply with federal and state laws and regulations. With the exception of the products listed below, Vendor offers 100% credit (credit based on the invoice purchase price) upon expiration on all listed Vendor Product(s) purchased directly from Vendor that are returned within 1 year after the expiration date. All expired Product(s) must be shipped prepaid to:
 

Sanofi Pasteur c/o Inmar, Inc.  
4332 Empire Road, South Dock,  
Fort Worth, TX 76155.

    - i. Collect shipments will not be accepted. All returns must have a Return Authorization form completed on the Inmar portal at <https://returns.healthcare.inmar.com>. Please contact Vendor Customer Service for instructions on returning product due to physical defect or for purchases not made directly from Vendor. All Product(s) manufactured by Vendor and returned to Vendor at Inmar, Inc. will be destroyed. If Members have any questions regarding the Return Authorization or Return Goods Policy, please contact Customer Service at Vendor's headquarters at 1-800-VACCINE (1-800-822-2463).
    - ii. Vendor's Return Goods Policy is subject to change without prior notification, and does not provide any return rights for:
      - Imogam® Rabies-HT, Rabies Immune Globulin (Human) USP, Heat Treated
      - YF-VAX®, Yellow Fever Vaccine
    - iii. Vendor reserves the right to designate additional specific Products or Product configurations as not returnable for exchange or credit.
    - iv. Further, Vendor shall not be responsible for, and shall not accept returns of, Product(s) adversely affected by force majeure conditions, including but not limited to power outages, flood or other utility or weather-related occurrences.
    - v. Vendor Representatives are not permitted to deliver or pick up Product(s) from Members for return.
    - vi. Vendor Representatives may offer information about the return policy; however, the ultimate decision and the responsibility for selecting the items and making the return rest with the Member. Vendor's Products supplied through the federal Vaccines for Children program of any other government program contract where Product(s) are purchased under special conditions will not be exchanged or replaced. Vendor will continue to accept these product(s) for proper disposal.
- 2.8 **Backorders.** Vendor must provide written notice of all Product backorders expected to last longer than thirty (30) calendar days and/or inability to supply situations to MMCAP Infuse within twenty-four (24) hours of the knowledge of the situation. Notices must include the reason(s) for and the expected duration of the issue. Notices must be sent to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).
- 2.9 **Failure to Supply (FTS).** Deleted in its entirety.

### **ARTICLE III**

#### **PAYMENT, DIRECT ORDERS, AND DELIVERY**

- 3.1 **Conditions of Payment.** All Products provided by the Vendor under this Agreement must be performed to the satisfaction of MMCAP Infuse and the Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for work found by MMCAP Infuse to be unsatisfactory or performed in violation of federal, state, or local law.
- 3.2 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), credit card, or P-Card as a payment method and Member will initiate this process with its financial institution. Arrangements for establishing payment via Electronic Funds Transfer (EFT) may be made by contacting Sanofi Pasteur, Credit Services at 1-800-822-2463.

- 3.3 **Federal Funds.** Payments under this Agreement may be made from federal funds. The Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with federal requirements.
- 3.4 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Members in good standing with MMCAP Infuse. Vendor may use their own Order Forms. To the extent that the terms of any Order Form(s) conflict with the terms of this Agreement, the terms of this Agreement supersede. Each Member will be responsible for payment for Products to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Member. Vendor agrees to invoice the Members as established in this Agreement.
- A. The use of obtaining a Product from the Order Form constitutes a binding contract. All Products furnished will be subject to inspection and acceptance by the ordering entity after delivery. No substitutions or cancellations are permitted without written approval of the Member. Back orders, failure to meet delivery requirements, or failures to meet specifications in the Order Form and/or the Agreement authorizes the ordering entity to cancel the order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the Vendor.
- 3.5 **Termination of Individual Orders.** Members may terminate, immediately or as identified by Member, individual Order Forms, in whole or in part, upon written notice to Vendor upon the occurrence of any of the following events:
- A. The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Products to be purchased under the Order Form;
- B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Contract Items under the Order Form are prohibited, or the Member is prohibited from paying for the Products from the planned funding source; or
- C. Vendor commits any material breach of this Agreement or Order Form.
- Upon receipt of written notice of termination, Vendor will stop performance under the Order Form as directed by the Member. If a standing Order Form is terminated, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.
- 3.6 **Jurisdiction and Venue of Orders.** Upon completion of the Dispute Resolution process outlined in this Agreement, and solely with the prior written consent of MMCAP Infuse and the State of Minnesota Attorney General's Office, the Member may bring a claim, action, suit, or proceeding against Vendor. The Member's request to MMCAP Infuse to bring the claim, action, suit, or proceeding must identify the desired jurisdiction, venue, and governing law. As it applies to purchases made by a Member, nothing in the Agreement will be construed to deprive the Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Agreement or afforded by the Member's law.
- 3.7 **Shipment for Products.** Vendor must distribute and deliver the Products covered under this Agreement to all Members, including the states of Alaska and Hawaii. If the Member account is in good standing, the Vendor will at no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination, freight prepaid is allowed, unless otherwise agreed to by Vendor and Member. Vendor will not add any fuel surcharges to the purchase under this Agreement. Notwithstanding the foregoing, emergency orders, rush orders, orders for products not regularly stocked by Vendor's local servicing distribution center, products dropped shipped from Vendor's contracted supplier, and orders not regularly scheduled are subject to an added shipping and handling charge determined by Vendor and disclosed to Member before a purchase is made.
- A. Delivery Schedule: Upon request from Member, Vendor will work with Member to establish a routine delivery schedule. Delivery for stock items will occur within three (3) business days, from the date the Product is ordered. It is understood that deliveries to Alaska or Hawaii may take longer. All expedited deliveries will be made next day, or on the next scheduled delivery day (excluding Alaska and Hawaii), unless communicated otherwise. Should any Member have a question regarding a shipment, please contact a Sanofi Pasteur Representative or call Customer Account Management at Sanofi Pasteur's corporate headquarters, toll-free at 1-800-VACCINE (1-800-822-2463), Monday through Friday, between 8:30 AM and 6:00PM Eastern Time.
- B. Hazardous Materials: Vendor will only ship hazardous materials as allowed by the appropriate government regulations.
- C. Damaged Products: All damaged Products will be reported to Vendor's customer service department and applicable credits will be issued within ten (10) days from date of notification of the damaged item.
- D. Lost Products: All lost Products will be reported to Vendor's customer service department. Vendor will issue credit within ten (10) days of notification of lost Product; alternatively, re-shipment of missing Product will occur immediately after notification.
- E. No Minimum Order Requirements: During the Agreement, there will be no minimum order requirements or extra charges assessed to orders, regardless of order size or payment amount.
- F. Special Conditions for Products: If applicable to the Products offered under this Agreement, Vendor will maintain appropriate temperatures and environmental conditions in accordance with manufacturer requirements for delivery of the Products to the Members. All refrigerated Products will be shipped in returnable coolers or disposable coolers with appropriate packaging to maintain the required temperature range. Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used

if they are required by the manufacturer. If Member refuses Products that have been inadequately packaged, the Member will notify Vendor's customer service department to log the complaint. Any costs associated with the return of Product due to improper packaging or transport, will be at the expense of the Vendor.

- 3.8 **Invoicing.** Vendor will submit an invoice with each order.
- A. **Invoice Fields:** At a minimum, Vendor's invoice will contain the following fields:
- i. Member name and Vendor-assigned account number for the Member;
  - ii. Invoice line number and Member's order number (Member must provide an order number at the time of order for this to appear on Vendor's invoice);
  - iii. Bill to and ship to address;
  - iv. Invoice date;
  - v. Vendor's SKU item number, Product name/description and packaging as associated with NDC number (if applicable to this Agreement);
  - vi. Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), and total invoice price; and
  - vii. Applicable omit codes (e.g., manufacturer backorder, manufacturer discontinued, etc.).
- B. **Invoice Disputes:** Member will notify Vendor of any known dispute with an invoice within fifteen (15) days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the Member appropriately, and provide a corrected invoice. Where the above is prohibited by a Member state's applicable law(s), the Vendor shall comply with requirements of that state's law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Agreement pricing within thirty (30) days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.
- i. In the event that applicable state law mandates set-off by a Member, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.
- 3.9 **Payment Terms.** Direct terms are 2% - 30/Net 31 for any items shipped, including partial shipments. Prompt payment discount does not apply to any appropriate Federal Excise taxes/Surcharges. An additional 1% savings is available for all orders placed online through [www.vaccineshoppe.com](http://www.vaccineshoppe.com).
- 3.10 **Credits and Rebills.** Vendor will process credits and rebills as notifications are received from a Member. In the case of an invoice dispute, Vendor will promptly issue credits/rebills, after the Dispute Resolution process set forth in this Agreement.
- A. Vendor credits are valid until they are refunded or the account has used payment.
  - B. In the event of a facility closure, or other extreme event where the Member will not be making another purchase through Vendor, the Member may cash out its credit(s).
  - C. If directed by a Member, a credit can be transferred from one account to another account.
  - D. The Vendor will take all commercially reasonable steps to ensure that credits that become available close to the end of the Member's fiscal year, are activated for use by the Member no later than five (5) days before the end of the fiscal year.
  - E. Vendor's credit memo will contain, but is not limited to the following information:
    - i. original order number and invoice number;
    - ii. itemized listing of the Product affected;
    - iii. any new invoices associated with the credit; and
    - iv. Net credit amount available to the Member.
- 3.11 **Price Audits and Corrections.** In the event of a Contract Pricing error that is attributable to the Vendor, Vendor agrees to process credit/rebills for the past six (6) calendar months. When a Member or MMCAP Infuse discovers an error in pricing, they will notify Vendor.

## ARTICLE IV TERMINATION, CANCELLATION, AND REMEDIES

- 4.1 **Cancellation.** MMCAP Infuse may cancel this Agreement any time, without cause, upon sixty (60) days' written notice to the other Vendor.
- 4.2 **Termination for Cause.** Either party may terminate this Agreement at any time on the basis the other party breached this Agreement. The moving party must provide written notice to the other party, which upon the receiving party has sixty (60) days to cure the defects. Upon sixty days (60), the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.
- 4.3 **Termination for Insufficient Funding.** MMCAP Infuse may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Products covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Products that are provided after notice and effective date of termination. However, the vendor will be entitled to payment, determined on a pro rata basis, for

Products satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any costs, fees, or other charges if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP Infuse must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP Infuse receiving that notice.

- A. For orders made by a Member, Vendor agrees to the applicable statutory terms of the applicable Member if the Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Products.
- 4.4 **Force Majeure.** Parties will not be considered in default in the performance of its obligations in the Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.
- 4.5 **Breach.** In the event of a breach of this Agreement, MMCAP Infuse and Members reserve the right to pursue any other remedy available by law. Vendors may be removed from the Vendor's list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 4.6 **Failure to Perform.** Upon failure to perform the following items in the time and manner as set forth herein, the following fees shall be paid by Vendor:
- A. Late Administrative Fee Payments: As provided for in statute for late payments to the State of Minnesota.
- 4.7 **Dispute Resolution.** Vendor and MMCAP Infuse will handle dispute resolution for unresolved issues using the following procedure.
- A. Notification. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time.
- B. Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP Infuse or Vendor may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action.
- C. Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.
- D. No Waiver. This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

## **ARTICLE V**

### **MEMBERSHIP**

- 5.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Products, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition. Vendor's documents and/or procedure for implementing and transitioning Members to this Agreement is set forth on **Attachment C**.
- 5.2 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Contract Term.
- A. New Members. The Vendor must allow new Members to access to the Agreement the Onboarding Date. As new Members are added, MMCAP Infuse will provide Vendor with monthly e-mail notices announcing a new Membership list has been posted.
- B. Removing Members. Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member. If MMCAP Infuse does not receive notification that a Member has been removed from Contract Pricing, Vendor will honor Contract Pricing for the Member for thirty (30) days after MMCAP Infuse receives the written notice.
- 5.3 **Membership Eligibility.** Upon request, Vendor will send an electronic eligibility list identifying which Members are eligible for contract pricing to: [MMCAP\\_Infuse.Contracts@state.mn.us](mailto:MMCAP_Infuse.Contracts@state.mn.us).
- A. If the Vendor has eligibility requirements, Vendor must provide MMCAP Infuse access to Vendor's online contract and eligibility management system in addition to providing MMCAP Infuse the algorithm it uses to categorize a Member's into a class of trade.
- 5.4 **Non-Solicitation.** During the term of this Agreement, Vendor will not solicit any Members or prospective Members to enter into or negotiate a separate contract or agreement for the same or substantially equivalent products and services offered in this Agreement without MMCAP Infuse's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and services covered by this Agreement.

- 5.5 **DEA License/HIN.** Unless the Member purchases a controlled substance, the Vendor may not require that a Member have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from Member.
- 5.6 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

## ARTICLE VI AGREEMENT MANAGEMENT

- 6.1 **Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. In the event that the Primary Account Representative is unresponsive or does not meet MMCAP's Infuse needs, the Vendor will assign another Primary Account Representative upon MMCAP Infuse's request. The Primary Account Representative will be responsible for:
- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
  - B. Timely response to all MMCAP Infuse inquiries
  - C. Performance of the business review as described in Paragraph 6.2.
  - D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- 6.2 **Business Reviews.** Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

## ARTICLE VII WARRANTS, COVENANTS, AND DUTIES OF VENDOR

- 7.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.
- 7.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse.
- 7.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish Products that have not been adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.
- 7.4 **cGMP** Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act. If the Vendor receives a 483 or similar type warning letter for any Product, it must be provided to MMCAP Infuse within ten (10) days of receipt by Vendor.
- 7.5 **Debarment.** Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide immediate written notice to the MMCAP Infuse if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion: Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.
- 7.6 **Indemnification.** Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Except for causes due to MMCAP Infuse's or Members' sole negligence, Vendor will defend and hold harmless MMCAP Infuse, including MMCAP Infuse's, Members, agents, directors, employees, attorneys, and other representatives during and after this Agreement from and against all actual and potential claims relating to loss, liability, damage, costs and expenses (including attorneys' fees and legal costs), causes of action, regulatory proceedings, suits, demands, or judgements relating to Vendor's:
- A. Intentional, willful, or negligent acts or omissions;

- The most current version  
<http://www.state.mn.us/MMCAP/Contracts/Default.aspx>
- B. Fraud and or deceit;
  - C. Actions that give rise to strict liability;
  - D. Breach of contract;
  - E. Breach of warranty;
  - F. Violations of federal, state, or local laws, orders, and/or policies;
  - G. Employees or subcontractors' criminal and civil claims; and/or
  - H. Failure to pay fees, charges, expenses, taxes, or other debts to third parties.

7.7 **Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota, and/or the antitrust laws of any Member unless otherwise assigned directly to that Member by Vendor with MMCAP Infuse's approval.

### **ARTICLE VIII ADMINISTRATIVE FEE**

8.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on all contract purchases (minus any credits and exclusive of excise tax) made through the MMCAP Infuse Authorized Wholesalers or directly with the Vendor. The Vendor will submit a check payable to "Financial Management & Reporting – MMCAP Infuse" for an amount equal to 1.5% of MMCAP Infuse Members' purchases for all Products.

- A. Vendor must provide Administrative Fee data to MMCAP Infuse within ten (10) business days, but not later than thirty (30) days, after the end of each calendar month. The administrative fee must be paid as soon as is reasonable after the end of each quarter, but no later than forty-five (45) calendar days after the end of the quarter. The Vendor will submit a check payable to:

Financial Management & Reporting – MMCAP Infuse  
50 Sherburne Avenue, Suite 309  
St. Paul, MN 55155

- B. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.

8.2 **Reporting.** The Vendor must submit a monthly Administrative Fee Data Report that includes both direct (sales made direct from Vendor to Member) and indirect purchases (sales made through an Authorized Wholesaler). The Administrative Fee Data Report must contain the fields detailed below. All Administrative Fee Data Reports must be sent to: [mmcap.infuse@state.mn.us](mailto:mmcap.infuse@state.mn.us) within ten (10) business days at the end of each month, but no later than thirty (30) days after the end of the month. The required items for the reports are found on **Attachment D**.

- A. Administrative Fee Data Report fields:
  - i. MMCAP Infuse Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)
  - ii. MMCAP Infuse Assigned Manufacturer Number
  - iii. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
  - iv. Invoice Date (Point of Sale Date)
  - v. Invoice Number
  - vi. MMCAP Infuse Participating Facility Name
  - vii. Vendor's Account Number for the MMCAP Infuse Facility
  - viii. MMCAP Infuse Participating Facility DEA Number, if applicable
  - ix. MMCAP Infuse Participating Facility HIN Number, if applicable
  - x. MMCAP Infuse Participating Facility Address
  - xi. MMCAP Infuse Participating Facility City
  - xii. MMCAP Infuse Participating Facility State
  - xiii. Product's NDC (Use all 11 digits (00076888888))
  - xiv. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
  - xv. Credit Indicator (C = credit)
  - xvi. Contracted Units (The number of units purchased on contract.)
  - xvii. MMCAP Infuse Contracted Unit Price
  - xviii. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
  - xix. Vendor Contracted Sales (Contracted Units \* Contracted Unit Price. Report in dollars)  
Administrative Fee Payment Amount (Administrative Fee Decimal Percentage \* Vendor Contracted Sales. Report in dollars)

**ARTICLE IX**  
**INTELLECTUAL PROPERTY**

- 9.1 **MMCAP Infuse Ownership.** MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an affiliate, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IQVIA and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP Infuse or a Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.
- 9.2 **Vendor Ownership.** Vendor owns all rights, title, and interest to any aggregated data not identifiable as arising from this Agreement and any other intellectual property created for or presented to MMCAP Infuse. Vendor grants to MMCAP Infuse an unlimited, non-revocable, non-transferable, fully paid, perpetual license, to use all intellectual property created for or presented to MMCAP Infuse under this Agreement.
- 9.3 **Pre-Existing Intellectual Property.** MMCAP Infuse and Vendor will each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. The Vendor grants Minnesota a perpetual, irrevocable, non-exclusive, royalty free license for Vendor's pre-existing intellectual property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Agreement. The aforementioned license is solely for use by Members, and their agents related to an internal business or governmental purposes.
- 9.4 **Intellectual Property Indemnification.** The Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless MMCAP Infuse, at the Vendor's expense, from any action or claim brought against MMCAP Infuse to the extent that it is based on a claim of an infringement upon the intellectual property rights of others. The Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Vendor's or MMCAP Infuse's opinion is likely to arise, the Vendor must, at the MMCAP Infuse's discretion, either procure for the MMCAP Infuse the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the MMCAP Infuse will be in addition to and not exclusive of other remedies provided by law.
- 9.5 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.
- A. **Marketing.** Any direct advertising, marketing, or direct offers with Members must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.
- B. **Endorsement.** The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

**ARTICLE X**  
**INSURANCE**

- 10.1 **Notice.** The Vendor is required to submit Certificates of Insurance acceptable to MMCAP Infuse as evidence of insurance coverage requirements prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below and MMCAP Infuse has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with

The rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP Infuse, and copies of policies must be submitted to MMCAP Infuse. The Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

#### 10.2 **Additional Insurance Conditions.**

- A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP Infuse with respect to any claim arising out of Vendor's performance under this Agreement;
- B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify MMCAP Infuse within five (5) business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP Infuse;
- C. Vendor is responsible for payment of Agreement related insurance premiums and deductibles;
- D. If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- E. Vendor's policy(ies) shall include legal defense fees in addition to its liability policy limits;
- F. Vendor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
- G. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.

#### 10.3 **Coverage.** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- A. Workers' Compensation Insurance: Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
  - i. \$100,000 – Bodily Injury by Disease per employee
  - ii. \$500,000 – Bodily Injury by Disease aggregate
  - iii. \$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements. If during the course of the Agreement the Vendor becomes eligible for Workers' Compensation, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.

- B. Commercial General Liability Insurance: Vendor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Agreement. Insurance minimum limits are as follows:
  - i. \$5,000,000 – per occurrence
  - ii. \$5,000,000 – annual aggregate
  - iii. \$5,000,000 – annual aggregate – Products/Completed Operations
  - iv. The following coverages shall be included:
    - a. Premises and Operations Bodily Injury and Property Damage
    - b. Personal and Advertising Injury
    - c. Blanket Contractual Liability
    - d. Products and Completed Operations Liability
    - e. MMCAP Infuse named as an Additional Insured, to the extent permitted by law
- C. Network Security and Privacy Liability Insurance, Including Ransomware (or equivalent): Vendor will maintain insurance to cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
  - i. \$2,000,000 – per occurrence
  - ii. \$2,000,000 – annual aggregate
- D. Professional/ Technical, Errors and Omissions, and or Miscellaneous Liability Insurance: This policy will provide coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Vendor's services required under the Agreement. Insurance minimum limits are as follows:
  - i. \$2,000,000 – per occurrence
  - ii. \$2,000,000 – annual aggregate

- 11.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.
- 11.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales a Member.
- A. Invoice and Pricing Audit. MMCAP Infuse and Members served by this Agreement may periodically audit validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
- B. Costs. Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 11.3 **Assignment.** The Vendor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP Infuse and a fully executed assignment agreement.
- 11.4 **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 this Agreement, or their successors in office.
- 11.5 **Order of Precedence.** Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, order forms, website use of terms, Offer Letters, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this section, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.
- 11.6 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.
- 11.7 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP Infuse and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding, and will be fully performed.
- 11.8 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 11.9 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

[END OF AGREEMENT, SIGNATURE PAGE FOLLOWS]

**VENDOR: Sanofi Pasteur, Inc**

The Vendor certified that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

**STATE OF MINNESOTA FOR MMCAP INFUSE**

In accordance with Minn. Stat. § 16C.03, subd. 3

Name: Mackenzie Fetterman  
Signature: *Mackenzie Fetterman*  
Title: Deputy Director, Government Accounts  
Date: 6/19/2020

Name: DocuSigned by: James Babbitt  
Signature: *James Babbitt*  
Date: DDE5B1490A484FC 6/19/2020

**COMMISSIONER OF ADMINISTRATION**

In accordance with Minn. Stat. § 16C.05, subd. 2  
Sara Turnbow

Name: DocuSigned by:  
Signature: *Sara Turnbow*  
Date: 694A6F1D2CF64DE... 6/19/2020

[Signature Page]

**VAXVALUE AGREEMENT**

Member Name:	<Enter Member Name>
Address:	
Primary Contact & Title:	
Email of Primary Contact:	
Agreement Number:	
Term (3 years):	Month 1, 2020 – Month XX, 2023
Measurement Periods:	Year 1- XXX-XXX Year 2- XXX-XXX Year 3- XXX-XXX
Group Purchasing Organization:	<b>MMCAP Infuse</b>
Wholesaler/Distributor:	
Wholesaler/Distributor Address:	

**VaxValue Agreement for <Enter Member Name>**

1. **<Enter Member Name>** is defined to include any office locations (“Practice Locations”) through which **<Enter Member Name>** carries out professional services. Practice Locations are listed in Exhibit A, and references to **<Enter Member Name>** shall include its Practice Locations. **<Enter Member Name>** and its Practice Locations are part of the same legal entity, and constitute a single "buyer," for purposes of the federal health care program anti-kickback law discount exception, 42 U.S.C. § 1320a-7b(3)(A), and safe harbor, 42 C.F.R. § 1001.952(h).
2. According to its immunization protocol, **<Enter Member Name>**, a Member of **MMCAP Infuse** (for itself and, as applicable, its participating Practice Locations) selects (the “Products”) and commits to the Product Category Offer as set forth in Table 1 and based upon the terms and conditions set forth herein:

**Product Category Offer - Table 1**

<b>Qualifying Product Categories and Product Sales Measurement</b>		
	<b>TIER 1</b>	<b>TIER 2</b>
	Must Meet or Exceed 3 of 3 Qualifying Product Categories	Must Meet or Exceed 2 of 3 Qualifying Product Categories
<b>Pediatric:</b> Pentacel, *Pentacel® formulated with Vero cell-derived IPV, Daptacel, Quadracel, ActHIB	80% Category Product Sales	80% Category Product Sales
<b>Boosters:</b> Adacel, Tenivac	80% Category Product Sales	80% Category Product Sales
<b>MenACWY:</b> Menactra, *MenQuadf	80% Category Product Sales	80% Category Product Sales

\* These two products are currently licensed. Available shipping and pricing information will follow in a subsequent update. Addendum AA will be attached to your agreement upon product availability. The format will be consistent with your current pricing addendum. Addendum AA will include Pentacel® formulated with Vero cell-derived IPV and MenQuadfi.

Pricing for current contract year will correspond to meeting or exceeding 80% of Category Product Sales for each Qualifying Product Category for the previous 12 months in Table 1. The pricing for each consecutive year will be based on meeting or exceeding the prior year's Category Product Sales for each Qualifying Product Category.

3. Category Sales are defined as follows:
  - Total Sanofi Pasteur Inc. product purchases (net of any returns, excluding Influenza) of a given Product Category and all competitive vaccines as described in Exhibit B
  - Category Sales are projected based on current membership roster for a twelve (12) month period and will be recalculated each year of this Agreement.
  - Category Sales will be validated by <Enter Member Name> and Sanofi Pasteur within 30 days of execution of this Agreement.
  - In the case of a shortage in a particular Product Category such situations will be reviewed and once mutually agreed upon between Sanofi Pasteur, Inc. and the Member then the Member will be considered to have met the requirements for that Category.

Sanofi Pasteur Inc. may utilize third party sales data to determine Category Sales as identified above and in Exhibit B. Upon availability, Sanofi Pasteur Inc. will utilize Category Sales data as supplied by IQVIA to determine compliance to Product Sales Measurement as identified in this Agreement.

4. Sanofi Pasteur Inc. offers two pricing Tiers. Tiered pricing will be determined for each year based upon the previous twelve (12) months' Category Sales performance in each Qualifying Product Category. Tier evaluation will be based on the following:
  - a. **Tier 1:** Pricing listed in Exhibit C will be earned by meeting or exceeding the qualifying product sales measurement for three (3) out of three (3) Qualifying Product Categories.
  - b. **Tier 2:** Pricing listed in Exhibit C will be earned by meeting or exceeding the qualifying product sales measurement for two (2) out of three (3) Qualifying Product Categories.
5. Initial Tier status determination and evaluation periods:

<Enter Member Name> will initially be placed in the Tier that corresponds to similar current contract level which should be equivalent to meeting or exceeding 80% of Qualifying Product Category Sales for the previous 12 months.

- a. Achievement of Qualifying Product Category Sales will be evaluated on a semi-annual basis. Once the initial Tier is defined, the first review of Qualifying Product Category performance will occur six (6) months after the commencement of this Agreement and every six (6) months thereafter. This will provide an opportunity for both <Enter Member Name> and Sanofi Pasteur Inc. to clearly assess the trends toward meeting or exceeding the agreed upon number of Qualifying Product Categories.
- b. Achievement and determination of Qualifying Product Categories and establishing the agreed upon Tier for the second and third years of the Agreement will be assessed on an annual basis and will occur twelve (12) months and twenty-four (24) months after the commencement of this Agreement. An Amendment defining the Tier level for each of the second and third years of this Agreement will be issued to <Enter Member Name> at the commencement of the second and third years of this Agreement, respectively.
- c. For customers where a Qualifying Product Category Sale is zero, <Enter Member Name> will be placed in a Tier based on the one or more Qualifying Product Category or Categories being met.

<Enter Member Name> will indicate Tier level and Product Category commitment on Page 6 below signature line.

6. Sanofi Pasteur Inc. will review variances from Product Sales Measurements based on market conditions.
7. <Enter Member Name> shall, in connection with this Agreement, comply with all applicable federal and state laws, rules, and regulations. As part of the cost reporting process or otherwise, <Enter Member Name> may be obligated to report and provide information concerning any discounts provided under this Agreement pursuant to 42 U.S.C. § 1320a-7b(b)(3)(A) and/or 42 C.F.R. § 1001.952(h)(1), other federal or state laws, or agreements with third party.
8. Product pricing is stated in Exhibit C which is inclusive of Tier 1 and Tier 2. These prices are subject to change with thirty (30) days written notice during the term of this Agreement based upon market conditions and/or changes to catalog prices. Provided that <Enter

**Member Name** meets or exceeds the Qualifying Products and Product Sales Measurement set forth in Table 1 above, Sanofi Pasteur agrees that any price increase on any of the Qualifying Products listed in Addendum A excluding Influenza vaccine, will not exceed a total of four percent (4%) within any calendar year (January-December) of this Agreement.

9. Payment terms are 2% 90, net 91 days.

### ADDITIONAL TERMS

10. The term of this Agreement may be renewed for an additional thirty six (36) month period as mutually agreed upon by both parties.
11. **Practice Locations:** **<Enter Member Name>** shall (1) provide Sanofi Pasteur Inc. with a complete list of Practice Locations participating in this Agreement, and (2) promptly advise Sanofi Pasteur Inc. of any changes, additions or deletions to the list as they occur. All such information must be submitted in an electronic format provided by Sanofi Pasteur Inc. (Exhibit A) via email. The document must contain the required fields as outlined in Exhibit A. Sanofi Pasteur Inc. will process any changes, additions and deletions relating to Exhibit A within forty-five (45) days of receipt. Sanofi Pasteur Inc. reserves the right to exclude certain proposed Practice Locations from coverage under this Agreement upon notice to **<Enter Member Name>**. Sanofi Pasteur Inc. further reserves the right to cancel or amend this Agreement should **<Enter Member Name>** not meet Sanofi Pasteur Inc.'s requirements as outlined in this section. In such event, Sanofi Pasteur Inc. agrees to provide thirty (30) days' written notice to **<Enter Member Name>** and work with **<Enter Member Name>** during said period to resolve outstanding issues.
12. Either **<Enter Member Name>** or Sanofi Pasteur Inc. shall have the right to cancel this Agreement upon thirty (30) days written notice. Any benefit earned through the date of cancellation will be issued as specified by the Agreement.
13. Sanofi Pasteur Inc. reserves the right to limit orders (by NDC) for **<Enter Member Name>**, within any given month, to no more than one hundred and fifty percent (150%) of a Practice Location's average monthly purchases and also one hundred and fifty percent (150%) of **<Enter Member Name>**'s Agreement in its entirety, calculated over the previous six months.
14. **<Enter Member Name>** will provide written notice to Sanofi Pasteur Inc. should the price of any contract product become noncompetitive as a result of an alternative competitive offer, and Sanofi Pasteur Inc. will be offered the right to match the competing price within thirty (30) days of such notice.
15. **<Enter Member Name>** shall promptly advise Sanofi Pasteur Inc. of any discrepancies in pricing. Sanofi Pasteur Inc. will process credit adjustment requests due to an error in pricing, excluding requests based on Practice Location affiliation, upon such notification. Credit adjustments due to Practice Location affiliation will be considered upon written notice to Sanofi Pasteur Inc., and will be limited to the two (2) month period prior to receipt of the written notification. Sanofi Pasteur Inc. reserves the right to deny credit adjustments based upon incomplete and/or inaccurate documentation.
16. Sanofi Pasteur Inc. shall pay an Administrative Fee to **MMCAP Infuse** based on **<Enter Member Name>**'s achievement of the Product Sales Measurements of Products as outlined herein, pursuant to the Contract between MMCAP and Sanofi Pasteur Inc.
17. **<Enter Member Name>** certifies to Sanofi Pasteur Inc. that (1) Products sold to **<Enter Member Name>** under this Agreement shall be dispensed to patients, physicians and/or employees of **<Enter Member Name>** and (2) **<Enter Member Name>** is operating in each instance, both on the effective date of this Agreement and on the date said Product is dispensed, either as:
- (i) the exclusive provider of said product to patients, physicians or employees; or
  - (ii) a nonprofit institution, eligible for all purposes under the Nonprofit Institutions Act, 15 U.S.C. § 13c, for which purchases of said product are made for said **<Enter Member Name>**'s "own use"; or
  - (iii) a for-profit organization, for which purchases of said product are made for **<Enter Member Name>**'s "own use" as defined in *De Modena, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, 743 F.2d 13888 (9 Cir. 1984), applying the holding of the U.S. Supreme Court in *Abbott Laboratories, et al. v. Portland Retail Druggist Association, Inc.*, 425 U.S. 1 (1976).

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18. **<Enter Member Name>** shall purchase all Products hereunder from Sanofi Pasteur Inc. on a direct purchase basis; provided, however, that **<Enter Member Name>** may make such purchases on a non-direct basis through a wholesaler and/or distributor that is able to communicate contract sales information to Sanofi Pasteur Inc. in a form acceptable to and approved by Sanofi Pasteur Inc. Should **<Enter Member Name>** choose to purchase on a non-direct basis, **<Enter Member Name>** will supply the names/addresses of its wholesalers and/or distributors to Sanofi Pasteur Inc. Contract Products purchased through a wholesaler and/or distributor may be subject to a mark-up. This mark-up is negotiated solely between **<Enter Member Name>** and its designated wholesaler and/or distributor.
19. Following the execution of this Agreement, **<Enter Member Name>** shall promptly notify all Practice Locations of the implementation of this Agreement, including the following:
- a. Practice Locations will be responsible for inspection of all Products upon its receipt, immediately notifying Sanofi Pasteur Inc. of any Product that is damaged or unusable. Such Product shall be returned to Sanofi Pasteur Inc. in accordance with Sanofi Pasteur Inc.'s General Terms and Conditions of Sale. All Products must be stored and handled as described in each product's approved labeling.
  - b. Permit Sanofi Pasteur Inc. or its authorized representatives to examine or replace inventory as mutually agreed upon and shall permit Sanofi Pasteur Inc. or its authorized representative's access to **<Enter Member Name>**'s Practice Locations in order to provide information or service materials.
  - c. **<Enter Member Name>** agrees to meet with representatives from Sanofi Pasteur Inc. at a minimum of every six (6) months to review current and trending contract compliance and performance.
  - d. At or about the conclusion of the Agreement term, Sanofi Pasteur Inc. shall propose Product pricing for the renewal term of this Agreement and review it with responsible **<Enter Member Name>** representatives.
  - e. **<Enter Member Name>** and Sanofi Pasteur Inc. agree that the terms of this Agreement may not be shared or reproduced in a manner inconsistent with the terms of this Agreement, such obligation shall survive the termination or expiration of this Agreement.
20. With respect to any promotional programs or offers, Sanofi Pasteur Inc. shall have the sole right and responsibility for establishing and modifying the terms and conditions with respect to the sale of the Products, including any terms and conditions relating to or affecting the price at which the Products will be sold, any discounts attributable to payments on receivables, distribution of the Products, credit to be granted or refused, and the like.
21. All sales of Product hereunder are subject to the Terms and Conditions established in the Contract between MMCAP and Sanofi Pasteur Inc. in effect at the time of shipment. More information can be found at [www.vaccineshoppe.com](http://www.vaccineshoppe.com) and [www.mmcap.org](http://www.mmcap.org). In the event of any conflict between those Terms and Conditions and the terms set forth herein, the terms of this Agreement shall control.
22. Neither party may assign or transfer its rights nor obligations under this Agreement without the prior written consent of the other party hereto, provided that, Sanofi Pasteur Inc. may assign this Agreement to any affiliate or to a third party which purchases all, or substantially all, of the assets of the business to which this Agreement relates.
23. Sanofi Pasteur Inc. shall indemnify, defend, and hold harmless **<Enter Member Name>**, against and in respect of any and all claims, losses, costs, expenses, liabilities and damages, (including reasonable attorneys' fees) in connection with, arising out of or based upon any claim of an alleged defect in any of the products supplied hereunder (collectively, the "Claims"), except to the extent that any such Claim is caused by **<Enter Member Name>**'s negligence, recklessness or willful misconduct, or from breach of any of **<Enter Member Name>**'s representations, warranties or certifications.

***As a condition to Sanofi Pasteur Inc.'s indemnification, <Enter Member Name> shall give Sanofi Pasteur Inc. notice of any Claims (including a copy of any such Claim served upon <Enter Member Name>), promptly after such Claim was served and shall cooperate with Sanofi Pasteur Inc. and provide all such information to Sanofi Pasteur Inc. as shall be reasonably necessary for the defense (or settlement) of such Claims. <Enter Member Name> agrees to cooperate with Sanofi Pasteur Inc. in all respects with the conduct of the defense of the Claims, and shall not compromise or otherwise settle any such Claim without Sanofi Pasteur Inc.'s prior written consent.***

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- 24. The terms and conditions of the **MMCAP Infuse** agreement shall apply to this Agreement. In the event of any conflict between this Agreement and the **MMCAP Infuse** agreement, the terms of this Agreement shall control.
- 25. Unless otherwise notified in writing to the contrary, any notice or written disclosure required or permitted by the terms hereof to be given any party hereto shall be effectively delivered for all purposes if delivered personally, electronically (either via e-mail or facsimile), or if mailed, upon deposit in the United States mail, postage prepaid, and if directed to **<Enter Member Name>** or any of its Practice Locations, properly addressed to **<Enter Member Name>** at the address listed in this document on page 1 and the signature page. If directed to Sanofi Pasteur, properly addressed to: Sanofi Pasteur Inc., Discovery Drive, Swiftwater, PA 18370, ATTN: Director, Contract Development and Analytics. EMAIL: [contract.administration@sanofipasteur.com](mailto:contract.administration@sanofipasteur.com).

**This Agreement, its Exhibits and Addendum constitute the final written expression of all terms and conditions of the Agreement relating to the transactions described herein. This Agreement, its Exhibits and Addendum supersede all previous communications, representations, and agreements, promises, or statements, either written or verbally communicated, with respect to such transactions. No addition to or modification of any provision of this Agreement, its Exhibits and Addendum will be binding unless made in writing and signed by the parties to the agreement or their authorized representatives.**

This document is issued by Sanofi Pasteur Inc. located at Discovery Drive, Swiftwater, Pennsylvania 18370-0187 and is binding only upon endorsement by its Head of Sales.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year so indicated below, with full authorization to do so.

**<Enter Member Name>**

**SANOFI PASTEUR INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

**<Enter Member Name>**'s initials below indicate Tier level and Product Category commitment:

	Tier 1	Tier 2
Pediatric		

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Boosters		
MenACWY		

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**Exhibit A**

**List of Practice Locations**

Provide a list of Practice Locations as requested by **Sanofi Pasteur Inc.** and updates in an electronic format (Excel) acceptable to **Sanofi Pasteur Inc.** The Excel file may be sent via e-mail.

**Required**

HIN, DEA, and GLN

Customer Segment (pediatric, FP, IM, etc.)

Name

Address

City

State

Zip

Phone

Start Date

End Date (if known)

Contact Person

Add, Delete, Change

**Optional**

Sanofi Pasteur Inc. Customer Number

Accurate as of July 9, 2020  
**EXAMPLE**  
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**Exhibit B**

**Sanofi Pasteur Product Category Definitions**

<b>Therapeutic Class</b>	<b>Product Category</b>	<b>Sanofi Pasteur Qualifying Products</b>	<b>Competitor Measured Products used to determine Category Sales</b>	<b>Category Sales Measurement</b>
Pediatric Acellular Pertussis and HIB containing Vaccines	Pediatric	Pentacel, Pentacel® formulated with Vero cell-derived IPV, Daptacel, Quadracel, ActHIB	All forms of Pediarix, Infanrix, Kinrix, PedvaxHIB, and Hiberix	80% Category Sales
Tdap and Td Vaccines	Boosters	Adacel, Tenivac	Boostrix and MassBiologics Td	80% Category Sales
Meningococcal MenACWY Vaccines	MenACWY	Menactra, MenQuadfi	Menveo	80% Category Sales

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**EXAMPLE**  
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**Addendum A to Exhibit C**

**Products and Pricing**

*Based on Tier level selected, Addendum A will be attached to the fully executed agreement*

**ATTACHMENT D****Reporting Requirements****Table 1: Required Data Field for Sales Data Report**

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP Infuse -assigned facility ID
B	MMCAP Infuse Member Name
C	Vendor Distribution Center Code
D	Vendor-assigned Account number for MMCAP Infuse Member (this should be the ship-to account number)
E	Invoice Number
F	Invoice Line Number
G	Purchase Order Number
H	Invoice date (MMDDYYYY)
I	Buyer name or equivalent of buyer ID for person submitting the invoices (if available)
J	Vendor's (distributor) SKU item number
K	NDC of purchased Product as stored in First DataBank, Inc. (Required for pharmaceutical Products)
L	LabelName/Product Description
M	Unit Dose (Required for pharmaceutical Products)
N	Pack Size
O	Unit
P	Case Size
Q	Dose (Required for pharmaceutical Products).
R	Strength (Required for pharmaceutical Products).
S	Route (Required for pharmaceutical Products).
T	Unit Price (99999.9999)
U	Quantity Ordered (not Vendor repackaged or re-bundled quantity)(99999.9999)
V	Quantity Shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)
W	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999.9999)
X	Type of transaction (MMCAP Infuse contract purchase, other contract purchase (340B, PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
Y	Bill to Address 1
Z	Bill to City
AA	Bill to State (2 alpha postal code)
AB	Bill to Zip (standard 5-4 format, no dash necessary)
AC	Ship to Address 1
AD	Ship to City
AE	Ship to State (2 alpha postal code)
AF	Ship to Zip (standard 5-4 format, no dash necessary)
AG	Service Fee (99999.9999)
AH	MMCAP Infuse Contract Number (MMS2000294)
AI	Admin Fee
AJ	Credit Indicator (C for credit)
AK	MMCAP Infuse -Assigned Wholesaler Code ( <b>Codes will be assigned to PPV's during implementation period of the contract</b> )
AL	Manufacturer Name (MFG Name)
AM	Class of Trade

AN	340b Purchase
AO	<a href="http://www.mnd.admin.state.mn.us/MMCAP/Contracts/Default.aspx">http://www.mnd.admin.state.mn.us/MMCAP/Contracts/Default.aspx</a>
AP	Manufacturer Part Number
AQ	List Price
AR	UNSPSC Code (XXXXXXXX)
AS	UNSPSC Description
AT	GLN
AU	GTIN

1. **Government Data Practices.** Parties to this Agreement must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (Data Practices Act), as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Vendor or MMCAP Infuse.
  - A. Notification. If the Vendor receives a request to release the data referred to in statute, the Vendor must immediately notify and consult with MMCAP Infuse as to how the Vendor should respond to the request.
  - B. Indemnification. Vendor agrees to indemnify, save, and hold Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement.
  - C. Release of MMCAP Infuse Data. Except as may be required by Data Practices Act, Vendor will not release to any third party any MMCAP Infuse customer data, sales transaction data, DEA/HIN information, contract pricing, EDI transaction data, reverse distribution data, or payment data.
2. **Data Disclosure.** Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Vendor consents to disclosure of its, federal employer tax identification number to federal and state agencies, and state personnel involved in the payment of State of Minnesota and Member obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
3. **Non-discrimination.** The Vendor will comply with the provisions of Minn. Stat. § 181.59.
4. **Affirmative Action Requirements.**
  - A. Covered contracts and vendors. If the Agreement exceeds \$100,000 and the Vendor employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principal place of business, then the Vendor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than forty (40) full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
  - B. Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (**Commissioner**) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
  - C. Minn. R. 5000.3400-5000.3600.
    - i. General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
    - ii. Disabled Workers. The Vendor must comply with the following affirmative action requirements for disabled workers.
      - a. The Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
      - b. The Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
      - c. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

- d. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- e. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- iii. **Consequences.** The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or Minnesota.
- iv. **Certification.** The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075).** For services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.
6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
7. **Contingency Fees Prohibited.** Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
8. **Diverse Spend Reporting.** If the total value of this Agreement may exceed \$500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.
9. **Retainage for Minnesota Government Units.** Under Minn. Stat. § 16C.08, subd. 2 (10), no more than ninety percent (90%) of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by a Minnesota agency head. The balance due will be paid when the Minnesota agency head determines that the Vendor has satisfactorily fulfilled all the terms of this Agreement.

Accurate as of July 9, 2020

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Sanofi Pasteur  
MMS2000294