



STAFF REPORT

Report To: Board of Supervisors **Meeting Date:** July 7, 2022

Staff Contact: Carol Akers, Purchasing & Contracts Administrator and Nicki Aaker, Health & Human Services Director

Agenda Title: For Possible Action: Discussion and possible action regarding authorization to purchase vaccines utilizing the Minnesota Multistate Contract Alliance for Pharmacy (“MMCAP”) joinder contract with GlaxoSmithKline (“GSK”) for a not exceed amount of \$99,284 through June 30, 2023. (Carol Akers, cakers@carson.org and Nicki Aaker, naaker@carson.org)

Staff Summary: The Carson City Department of Health and Human Services utilizes MMCAP Contract No. MMS2000177 to purchase vaccinations and immunization supplies from GSK for vaccination through Clinical Services and Public Health Preparedness Community vaccination efforts. This will be funded from the Health and Human Services Private Vaccine and Community Vaccine & Outreach revenue accounts through June 30, 2023.

Agenda Action: Formal Action / Motion **Time Requested:** Consent

Proposed Motion

I move to approve the purchase authority as requested.

Board's Strategic Goal

Efficient Government

Previous Action

N/A

Background/Issues & Analysis

This is an annual request. The purchase amount exceeds \$50,000 and therefore requires Board of Supervisors' approval pursuant to City policy.

Contract being utilized: (Joinder) MMCAP Contract # MMS2000177 (expires June 30, 2024).

Applicable Statute, Code, Policy, Rule or Regulation

NRS 332.115 and 332.195

Financial Information

Is there a fiscal impact? Yes

If yes, account name/number: Grant Fund - Operating Supplies 2756800-501225 / Private Vaccine – G680020004 and Community Vaccine & Outreach – G680020027

Is it currently budgeted? Yes

Explanation of Fiscal Impact: Funding is provided by the Private Vaccine and Community Vaccine & Outreach program income accounts and restricted prior year funding from vaccine and clinic accounts. If approved, the accounts will be reduced by up to \$99,284. The available budget for FY 2023, after projected restricted roll-forward amounts, is \$774,599. See Vaccines Funding Worksheet attached.

Alternatives

Do not approve the purchase authority and/or provide alternative direction to staff.

Attachments:

[FY23 BOS Vaccines Funding Worksheet.pdf](#)

[GSK MMCAP Contract No. MMS2000177_Expires 6.30.24.pdf](#)

Board Action Taken:

Motion: _____

1) _____

2) _____

Aye/Nay

(Vote Recorded By)

FY23 VACCINE FUNDING (over \$50K each)

		Joinder Contract Amounts	Current Available Funding
Program Revenue - Health Restricted Funds			
G680020004 G-SUPPLIES	Private Vaccine	\$ 98,446	\$ 261,919
G680020027 G-SUPPLIES	Community Vaccine & Outreach	\$ 57,006	\$ 512,680
TOTAL		\$ 155,452	\$ 774,599

FY23 EXPENDITURES BY VENDOR	
GlaxoSmithKline	\$ 99,284
Sanofi Pasteur Inc.	\$ 56,168
TOTAL	\$ 155,452

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Revenue Account Fund Availability	
G680020004 - Private Vaccine Revenue	
FY21 Budget (carry forward)	\$ 126,325
FY22 YTD expenses	\$ (160,898)
FY22 encumbrances	\$ (23,634)
FY22 YTD revenue	\$ 170,126
FY23 est revenue	\$ 150,000
Total	\$ 261,919

G680020027 - Comm Vaccine & Outreach Rev	
FY21 Budget (carry forward)	\$ 426,924
FY22 YTD expenses	\$ (65,608)
FY22 encumbrances	\$ (13,542)
FY22 YTD revenue	\$ 64,907
FY23 est revenue	\$ 100,000
Total	\$ 512,680



MMCAP Infuse
Minnesota Department of Administration
50 Sherburne Avenue, Suite 112 Administration Building, St. Paul, MN 55155

Attention Confidentiality Protections in this Contract:

Re: GlaxoSmithKline, LLC MMS2000177

The following contract contains language that protects the terms and pricing found in this contract.
Please review Article 11.3 to ensure your compliance.

If you have any questions, please contact MMCAP at 651-201-2420.



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

GlaxoSmithKline LLC
Agreement Number: MMS2000177

Prepared on June 12, 2020

PREFIX A
Definitions and Acronyms
Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** Means one and a half percent (1.5%) of Contract Pricing for Products or as listed on **Attachments A & B-1**, 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 Eligible Members (as defined below) 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 **Attachments A & B-1** and any subsequent amendment to this Agreement.
 - A. **Fixed Pricing:** Means Vendor cannot increase the Contract Pricing for the Products identified on **Attachments A & B-1** or any subsequent amendment to this Agreement during the Contract Term.
 - B. **Non-Fixed Pricing:** Means all Products identified as such on **Attachments A & B-1** or any subsequent amendment to this Agreement.
 - C. **Wholesale Acquisition Cost (WAC) Minus** - a percentage or dollar amount off WAC that changes by providing MMCAP Infuse 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
 - A. **Eligible Member:** Member that has been approved by Vendor to be eligible for Contract Pricing Under this Agreement.
 - B. **Participating Member:** An Eligible Member who is participating in CCS Plus.
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 Eligible Members to access to the Agreement within fifteen to thirty (15 to 30) days from the date MMCAP Infuse notifies Vendor and/or Member completion of the required paperwork on **Attachment C** in accordance with **Article V**.
12. **Onboarding Forms:** GSK GROUP PURCHASING ORGANIZATION MEMBERSHIP DECLARATION w/ SURVEY.
13. **Primary Account Representatives:** Mike King, National Account Director, Mike.X.King@gsk.com – 803-361-9514; Babatunde Adedeji, Contract Development Manager, Babatunde.a.adedeji@gsk.com, 215-751-6786.
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. MMS2000177

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 GlaxoSmithKline LLC, a limited liability company with an address of 5 Crescent Drive, Philadelphia PA 19112 and Five Moore Drive, Research Triangle Park, NC 27709 (“**GSK**” or “**Vendor**”).

WHEREAS, GSK is in the business of researching, developing, manufacturing and marketing prescription pharmaceutical products in the United States;

WHEREAS, MMCAP Infuse is a group purchasing organization in the business of negotiating and maintaining contracts with manufacturers of various products (including but not limited to pharmaceutical products) for the purpose of making such products available to its members at negotiated prices; and

WHEREAS, the predominant purpose of this Agreement is to delineate the terms and conditions by which Eligible Members will be permitted to purchase GSK Products at Contract Prices (as defined below).

NOW, THEREFORE, for and in consideration of the mutual promises and obligations contained in this Agreement, the parties, intending to be legally bound, agree as follows:

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, unless earlier terminated pursuant to the Termination Section.
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
Vaccines, HIV and other pharmaceuticals
3. **Attachment B:** CCS Plus Program
Attachment B-1: CCS Plus Program Pricing
4. **Attachment C:** GSK Declaration Form
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. If to GSK, all notices will be sent to:

GlaxoSmithKline LLC

5 Crescent Drive
NY0300
Philadelphia, PA 19112
Attention: Babatunde Adedeji
Contract Development Manager
babatunde.a.adedeji@gsk.com

With a copy to:
GSK Legal Counsel
GlaxoSmithKline LLC
42 Moore Drive
Research Triangle Park, NC 27709

- 1.2 **Pricing Structure:** Pricing for Products are listed on **Attachments A & B-1**.
- a. **General.** Except as provided in subsections B and C of this Section 1.2, the Contract Prices to be offered to MMCAP Infuse Eligible Members will be current Wholesale Acquisition Cost (**WAC**) at the time of purchase less the discount stated on **Attachment A**. In the event of a change by GSK in such Product's WAC, the Product's Contract Price shall immediately, automatically, and without notice, be changed to equal such Product's new WAC price. Vendor will make commercially reasonable efforts to send notices of WAC increases to: MMCAP_Infuse.Contracts@state.mn.us. Vendor will provide written notice to MMCAP Infuse prior to the removal of any Products from **Attachments A & B**. If Products are being removed from the market, Vendor will honor Contract Pricing until MMCAP Infuse-Authorized Wholesalers' and Vendor's inventories are depleted.
 - b. **HIV Products.** For Products indicated for the treatment of HIV offered under this Agreement on behalf of ViiV Healthcare, an affiliate of Vendor (**ViiV**), the Contract Prices to be offered to MMCAP Infuse Eligible Members will be equal to such Product's WAC at the time of purchase, notwithstanding anything to the contrary in the Agreement. **Attachment A** lists the current ViiV Products offered herein.
 - c. **Vaccines.** For GSK Products that are vaccines, the Contract Prices to be offered to MMCAP Infuse Eligible Members will be those set forth on **Attachment A** and **Attachment B-1**. Attachment A reflects the pricing under Vendor's MMCAP Infuse CCS Agreement (MMCAP Infuse CCS). This program does not require performance and such prices shall remain fixed, except that GSK may adjust such prices once within each calendar year. Notice of any change in Contract Price for any GSK Product will be sent to MMCAP Infuse thirty (30) days prior to the effective date of the price change. **Attachment B-1** reflects the pricing under Vendor's CCS Plus Portfolio Program. The Product and Pricing exhibit on this **Attachment B** sets forth the eligibility, contract prices and performance requirements for Eligible Members with respect to its purchases of GSK Vaccines under this program as of the Effective Date, as defined on **Attachment B**.
- 1.3 **Fixed Pricing.** Reserved.
- 1.4 **Non-Fixed Pricing.** Reserved.
- 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 at any time without providing MMCAP Infuse prior written notice of the price change along with the new WAC and pricing. Written notice will be provided to MMCAP Infuse after the WAC increase has taken place. Notices of WAC increases must be sent to MMCAP Infuse.
- 1.6 **Notice to MMCAP Infuse:** 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 MMCAP Infuse and Vendor amend the price increase into the Agreement.
- 1.7 **Notice to Authorized Wholesalers.** The Vendor must notify any and all Authorized Wholesalers of price changes. 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.** Deleted in its entirety.
- 1.10 **Value-Added Programs.** Deleted in its entirety.
- 1.11 **Product Dating.** All Vaccines Products supplied directly by GSK to Members must have an expiration date of at least six (6) months later than the delivery date unless the unique stability characteristics of the vaccine product(s) requires a shorter dating period. However, all other Products supplied (including ViiV Products) must still be usable on the date received by the MMCAP Infuse Member.
- 1.12 **Annual Bid Cycle.** Deleted in its entirety.

1.13 **Changes or Deletions.** Any changes to this Agreement involving product additions/deletions, including but not limited to price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed. With the exception of changes to Contract Pricing which are subject to *Paragraph 1.2*, 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 **Attachments A and B** by submitting to MMCAP Infuse a letter on Vendor's letterhead with the following elements (**Offer Letter**):

- d. Offer Date
- e. MMCAP Infuse Contract Number
- f. Action (e.g., addition, deletion, price change, NDC conversion)
- g. NDC Number
- h. Product Description
- i. Packaging
- j. Most recent previous Contract Price
- k. New Contract Price
- l. Pricing Type
- m. Effective Date
- n. 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 & B** of this Agreement. If MMCAP Infuse indicates that aspects of the Offer Letter conflict with Agreement at that time, *Paragraph 11.10* 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 (with the exception of GSK Vaccines) to Members must be through the Authorized Wholesalers unless previously authorized in writing by MMCAP Infuse. Notwithstanding anything to the contrary in this Agreement, MMCAP Infuse hereby agrees that MMCAP Infuse Members may place orders for any of the Vendor vaccines listed on **Attachments A & B** either through MMCAP Infuse Authorized Wholesalers or directly from Vendor through www.gskvaccinesdirect.com (the "**GSK Direct Website**") and that Vendor shall be permitted to fulfill any orders placed directly with Vendor through the GSK Direct Website. MMCAP Infuse Members purchasing vaccines directly from the Vendor will sign-up, accept, and abide with terms and conditions of the GSK Direct Website. Direct sales to Members are described in *Article III Payment, Direct Orders, and Delivery*.
- B. Vendor must establish and maintain chargeback agreement(s) with the Authorized Wholesalers.
- C. Vendor must notify MMCAP Infuse immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect the Products' availability. Notices must be sent to: 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 the MMCAP Infuse and its Members.
- 2.3 **First DataBank, Inc.** All 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 and where possible the Vendor should give at least thirty (30) days' notice. 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.** The Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.
- 2.8 **Backorders.** Vendor will post supply updates for vaccine Products on the Vendor's <https://www.gskdirect.com/gsk/en/USD/> website.
- 2.9 **Failure to Supply (FTS).** Deleted in its entirety.

ARTICLE III PAYMENT, DIRECT ORDERS, AND DELIVERY

- 3.1 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT) as a payment method and Member will initiate this process with its financial institution.
- 3.2 **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.
- 3.3 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Eligible Members in good standing with MMCAP Infuse. Eligible Member shall maintain an adequate financial condition satisfactory to GSK and substantiate such a condition with audited financial statements or as otherwise requested by GSK. If, in GSK's judgment, at any time before shipment, financial condition becomes impaired or unsatisfactory to GSK, GSK may delay, deny and/or require cash payment or appropriate security before shipment. 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.

- B. The Order Minimum in effect as of the Effective Date of this Agreement is the following: GSK may assess handling fee of \$25 on order of less than \$600 (excluding taxes). GSK reserves the right to adjust the handling fee without notice.

3.4 **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 Products 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.

3.5 **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.

3.6 **Shipment for Products.** Vendor must distribute and deliver the Product covered under this Agreement to all Eligible Members, including the states of Alaska and Hawaii. If the Eligible Member account is in good standing, the Vendor will at no time, refuse to deliver to any Eligible Member without the prior written approval by the Eligible 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 Eligible Member. GSK shall prepay all carrier charges and insurance against the MMCAP Infuse Member's risk of loss or damage to GSK products during carriage. GSK reserves the right to change this policy. 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 Eligible Member before a purchase is made.

- A. Delivery Schedule: Vendor will ship the product ordered to the address specified at the time of order in accordance with and subject to the terms and conditions of the GSK Direct Website. Upon request from Eligible Member, Vendor will work with Eligible 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.
- 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. If product arrives in broken or damaged condition, the MMCAP Infuse Eligible Member shall insist upon carrier's agent noting the damage or breakage on the delivery receipt.

- 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. The MMCAP Infuse Participating Facility shall immediately report to Vendor any in-transit loss or shortage of Vendor products. The MMCAP Infuse Eligible Member shall report all claims within fourteen (14) days of the receiving date. Proper documentation must accompany all claims. If appropriate, Vendor will issue credit to the MMCAP Infuse Eligible Members for the claim. Vendor reserves the right to change this policy.
- E. 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.

3.7 **Delivery for Services.** Deleted in its entirety.

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 Rounding: Vendor agrees to round down if the third digit after the decimal is four (4) or less. Vendor agrees that any rounding will occur at the Member invoice unit price.
- C. 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.** MMCAP Infuse Members shall pay for all regular orders, with payment to be received by Vendor no later than thirty (30) days for cash payments or EFT payments from the date of the invoice. Unauthorized deductions are not permitted and are in violation of this offer and may result in delayed shipments. MMCAP Infuse Members shall pay for purchases of GSK Products by check made payable to Vendor or by electronic fund transfer (EFT). Payment must be sent to the following address:

GlaxoSmithKline Financial, Inc.
 P.O. Box 740415
 Atlanta, GA 30374-0415

If GSK does not receive payment within thirty (30) days from the date of invoice, GSK may elect to withhold shipment of GSK products. For further information on EFT, contact GSK Customer Financial Services at 866-334-7111.

- 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 Products affected;
 - iii. any new invoices associated with the credit; and
 - iv. Net credit amount available to the Member.

ARTICLE IV **TERMINATION, CANCELLATION, AND REMEDIES**

- 4.1 **Cancellation.** Either party may cancel this Agreement any time, without cause, upon thirty (30) 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 thirty (30) days to cure the defects. Upon thirty days (30), 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. Notwithstanding the foregoing, all Members under this Agreement will do their best to make sure that there are funds appropriated to pay for any Products to be purchased before the purchase order is issued for such purchase.
- 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, acts of terrorism, or civil commotion, novel regulations or laws of any government after the Effective Date, product or materials shortage, destruction of product facilities and materials, fire, earthquake or storm, failure of public utilities or common carrier, failure or fluctuations of air conditioning, heat, power or communications equipment or lines, computer program or software failure, and any other causes beyond the reasonable control of the parties (each a "**Force Majeure Event**") 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. In the event that any Force Majeure Event delays a party's performance for more than thirty (30) days following notice by such party pursuant to this Agreement, the other party may terminate this agreement immediately upon written notice to such party.

- 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.** Deleted in its entirety.
- 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 thirty (30) days.
 - 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. Termination Rights. In the event that either party cannot resolve the dispute with either party may cancel this Agreement upon sixty (60) days' written notice to the other party.
 - E. 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 Eligible Members to access to the Agreement by the Onboarding Date. As new Eligible Members are added, MMCAP Infuse will provide Vendor with monthly e-mail notices announcing a new Membership list has been posted.
 - B. Removing Members. MMCAP Infuse can access Vendor's E-Commerce Solutions website at any time to track membership removals. In addition, MMCAP Infuse can subscribe to notifications on the same website for visibility when there are contract changes which includes but is not limited to removal of members from their contracts.
- 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.
 - A. For MMCAP Infuse CCS Agreement, Eligible Members shall include City/County/State health care facilities that are in good standing with GSK currently identifying MMCAP Infuse as their primary group affiliation (**Participating Members**). Participating Members may not have multiple group affiliations with GSK unless specifically approved by GSK. The Eligible Members of City/County/State include (subject to GSK's discretion):

- City/County/State hospitals;
- City/County/State clinics;
- City/County/State non-health related offices;
- City jails, detention centers, fire Departments;
- County or State correctional facilities; and
- City/County/State residential schools, colleges and universities without a hospital and other city, county, state and municipal owned or run public agencies and entities, non-profit organizations with statutory authority to purchase from state contracts

In addition to the requirement stated above, Eligible Members participating on the CCS Plus Portfolio Program must also meet the following conditions (i) do not prevent their wholesalers and distributors from reporting purchasing data to the GSK third party data source; (ii) permit GSK sales force access to their clinics for the promotion of GSK products where permissible; (iii) have entered into an agreement with MMCAP Infuse pursuant to which such physician office or clinic has authorized MMCAP Infuse to act as its agent for negotiating vaccine pricing; (iv) have been determined by GSK to be eligible for the pricing available under this Agreement. Participating Members will be limited to immunizing sites only.

- B. 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.
- C. GSK will determine the eligibility of the Member utilizing the following requirements. GSK may declare that a Member shall no longer be eligible as a Member under this Agreement if any of the following requirements for eligibility are no longer met.
 - i. Must have an in-house/in-patient pharmacy or dispensary, which dispenses to Member's patients only;
 - ii. Must employ a staff pharmacist, which may include physician dispensing unit;
 - iii. Must have dispensations limited to prescriptions by:
 - a. physicians employed by or on the professional staff of the Member or
 - b. Member's staff with prescribing privileges
 - iv. Must report all discounts received pursuant to this Agreement as may be required under 42 CFR § 1001.952 (h); and
- D. Members certify on MMCAP Infuse and/or GSK's MMCAP Infuse Declaration Form (See Declaration Form **Attachment C**) or a form acceptable to GSK, that any GSK Product purchased under this Agreement are offered solely for such member's "own use" and shall not be acquired for the purpose of competing against private enterprise. For purposes of this section, the term "own use" shall be as defined by the United States Supreme Court in its opinions reported at Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), and Jefferson County Pharmaceutical Association, Inc. v. Abbott Laboratories, et al., 103 S. Ct. 1011 (1983).
- E. Participating Membership Changes. GSK shall determine which of MMCAP Infuse's current Members identified on MMCAP's Membership Roster are eligible for Contract Pricing and terms of Agreement and into which class of trade each belongs. New Eligible MMCAP Infuse Members will only become eligible for the Contract Prices under this Agreement as determined by GSK. In order to be added to this Agreement, Eligible Members shall complete a GSK Declaration Form, which notice shall include the institution name, DEA/HIN or other acceptable identification numbers, name of department contact, telephone number of department contact, email address of department contact, address of the institution, Type of Business designation, and Own Use certification. Eligible Members will be added to Contract Pricing and terms of agreement upon verification by GSK, and eligibility will be effective based solely upon the eligibility effective date in GSK's contract system, not to exceed thirty (30) days from the date of Declaration Form submission for paper-based submissions and not to exceed fifteen (15) days from the of the Declaration Form submission for electronic submissions via the GSK Direct website. MMCAP Infuse will notify GSK in writing if they wish to remove any Eligible Members and GSK will, upon verification, notify MMCAP Infuse of the removed Eligible Member along

with the effective date(s). GSK may rely upon the conclusion of a third-party data source as to the membership group to which a proposed member belongs. Vendor will notify the Authorized Wholesalers, MMCAP Infuse, and the MMCAP Infuse Member whether it agrees to extend the terms of this Agreement to such proposed Eligible Members and the effective date of such addition.

F. Membership Declaration Form. Vendor's Group Purchasing Organization Membership Declaration Form is attached and incorporated as **Attachment C**.

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.

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 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 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;
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 **Failure to Manufacture in Compliance with GMP.** Vendor hereby agrees to indemnify and hold MMCAP Infuse and Members (**Purchaser**) harmless from and against any claim, loss, liability, damage, , or expense , including reasonable attorneys' fees (hereinafter, "**Loss**"), arising directly from any claim regarding Vendor's failure to manufacture such products in compliance with FDA Good Manufacturing Practices (**GMP**), provided that Purchaser provides notice and cooperation as set forth below. This indemnity does not extend to any portion of the loss due to Purchaser's own conduct, such that the Loss, or any part thereof, would not have occurred but for Purchaser's conduct. This indemnity does not extend to anyone other than Purchaser, and no third party, including any person or entity having an ownership, affiliate, agency, or employment relationship with Purchaser shall have any rights under this provision.
- 7.8 **Infringement.** Vendor agrees that it shall indemnify and hold Purchaser harmless from and against any claim, loss, liability, damage, cost, expense, including reasonable attorneys' fees, by or to a third party arising directly from any claim that the Products furnished under this Agreement, infringe any existing patent, trademark, copyright, or other proprietary right of any third party, provided that Purchaser provides notice and cooperates as set forth below. This indemnity does not extend to any portion of the loss due to Purchaser's own conduct, such that the Loss, or any part thereof, would not have occurred but for Purchaser's conduct. This indemnity does not extend to anyone other than Purchaser and no third party, including any person or entity having an ownership, affiliate, agency, or employment relationship with Purchaser, shall have any rights under this provision.
- 7.9 **Notice, Cooperation and Conduct of Litigation.** MMCAP Infuse shall promptly notify Vendor of any claim asserted against it for which indemnification is sought, and shall promptly deliver to GSK a true copy of any such claim including but not limited to, a true copy of any summons or other process, pleading or notice issued in any lawsuit or other proceeding to assert or enforce such claim. Where acceptance of the obligation to indemnify is deemed proper by GSK, GSK reserves the right to control

the investigation, trial and defense of such lawsuit or action (including all settlements and negotiations to effect settlement) and any appeal arising therefrom and to employ or engage attorneys of its own choice. Purchaser may, at its own cost, participate in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. Purchaser, its employees, agents, servants and representatives shall provide full cooperation to GSK at all times during the pendency of the claim or lawsuit, including, without limitation, providing GSK with all available information concerning the claim.

7.10 **Limitation of Damages.** To the extent allowable by statute, in no event shall GSK be liable for loss of profit or use, incidental or consequential damages in any claim asserted by MMCAP Infuse Members under this Agreement.

7.11 **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.

7.12 **Anti-Bribery and Corruption.** GSK is committed to the highest ethical standards and requires that all GSK employees and third parties acting for or on behalf of GSK conduct their activities in compliance with all anti-corruption laws and regulations. MMCAP Infuse and GSK agree that MMCAP Infuse is not a third party acting for or on behalf of GSK. Notwithstanding the foregoing, MMCAP Infuse agrees that nothing in this Agreement requires that MMCAP Infuse make improper payments or other transfer of value to any private or government official or entity for the purpose of influencing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist GSK in obtaining or retaining business.

7.13 **Regulatory Reporting Requirements.**

A. Compliance with Anti-Kickback Provisions. To the extent applicable, MMCAP Infuse and Eligible Members will comply with applicable provisions of 42 U.S.C. 1320a-7b prohibiting illegal remuneration (including any kickback, bribe, or a prohibited cost incentive or discount) and the applicable provisions of any similar state law, rule or regulation prohibiting the payment of such illegal remuneration. MMCAP Infuse or such Eligible Members will comply with the applicable requirements set forth at 42 C.F.R. 1001.952(h) by, among other things, appropriately reporting the discounts described in this Agreement in the costs claimed to or charges made under the Medicare, Medicaid, TRICARE/CHAMPUS, or any other Federal health care program or state funded health care program, and providing information and documentation regarding any discount and/or rebate that may be provided under this Agreement, upon request, to the Secretary of the Department of Health and Human Services and/or a State agency.

B. GPO Safe Harbor. To the extent applicable and required on the Effective Date, MMCAP Infuse represents, warrants, and covenants that it satisfies and will continue to satisfy the requirements of 42 U.S.C. §1320a-7b(b)(3)(C) and 42 C.F.R. §1001.952(j), including that (i) it is acting as a "group purchasing organization" as defined in 42 C.F.R. §1001.952(j); (ii) it maintains and will continue to maintain written agreements with each of its members that state that participating vendors will pay an administrative service fee (**ASF**) of three percent (3%) or less of the purchase price of the goods provided by such vendors; and (iii) it will disclose in writing at least annually to its members, and to the Secretary of Health and Human Services upon request, the amount received from such vendors with respect to sales made to Members. MMCAP's eligibility for an ASF as specified in this Agreement, and any attached Exhibits, shall be contingent upon MMCAP Infuse's compliance with its representation, warranty and covenant as specified in this paragraph.

C. Other Reporting Requirements. Vendor and MMCAP Infuse agree that Vendor, pursuant to 42 C.F.R. section 1001.952 (h) and (j), has informed MMCAP Infuse and Members of their federal statutory and regulatory reporting obligations.

D. Compliance with State Laws. MMCAP Infuse and its Members shall comply with applicable reporting requirements to any health care corporation, health care insurer, other third party reimbursing, or any patient imposed pursuant to the following law Minn. Stat. § 62J.23

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 will pay an Administrative Fee on all contract purchases (minus any credits) 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, minus any credits. The Administrative Fee must be paid no later than forty-five (45) after the end of the quarter. Notwithstanding anything within the agreement to the contrary, no ASF shall be paid by GSK to MMCAP Infuse for sales of all products in the HIV therapeutic class that are marketed by ViiV now or in the future, unless such products are otherwise expressly specified in a separate ASF pricing exhibit for the provision of the GPO obligations by MMCAP Infuse.

A. Vendor must provide Administrative Fee data to MMCAP Infuse within forty-five (45) business days after the end of each calendar quarter. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar quarter, but no later than forty-five (45) calendar days after the end of the calendar 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 quarterly 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 quarterly Administrative Fee Data Report must contain the fields detailed below. Vendor agrees that for indirect sales, chargeback or sales data received from Authorized Wholesalers will be utilized to create the Administration Fee Data Report and if additional reports are needed to support creation of the Administration Fee Data Report, Vendor agrees to bear the cost of any special reporting that may be required by the Vendor in its relationship with the Authorized Wholesalers. All Administrative Fee Data Reports must be sent to: mmcap.infuse@state.mn.us at the end of each quarter , but no later than forty-five (45) days after the end of the quarter. 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 unlimited, 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 **Vendor Obligations.** The Vendor must perform all acts, and take all steps necessary to ensure that all intellectual property rights created for MMCAP Infuse or Member are the sole property of the MMCAP Infuse or Member, and that neither Vendor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Vendor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities.
- 9.5 **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.
- 9.6 **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. Notwithstanding the aforementioned, each party agrees that it will not use for its own commercial purposes any trademark, service mark, or corporate name of the other party hereto without the prior written consent of the other party. GSK and MMCAP Infuse may use or indicate the Agreement status in selected promotional activities directed to Member including, but not limited to written communication, presentation items, and academic and physician detailing. In addition, MMCAP Infuse will work with GSK to notify Member physicians of the formulary status of GSK Products and to develop and implement pull-through programs and patient compliance programs.

- 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 insurance requirements and retains all 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

**ARTICLE XI
GENERAL TERMS**

- 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**
- A. MMCAP Infuse Audits Rights. 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.
- i. 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.
- ii. 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.
- B. GSK Audit/Records Rights. During the Term of this Agreement and for two (2) years thereafter, GSK shall have the right to or the right to engage an independent firm to audit MMCAP Infuse and its Members to verify their performance and compliance with their obligations under the Agreement. GSK or such independent auditing firm will be authorized to access to information including all systems and processes reasonably necessary to perform procedures pursuant to this section of the Agreement, including the right upon reasonable prior written notice to MMCAP Infuse, to audit, or to engage an independent firm to audit, documentation at MMCAP Infuse business locations during normal working hours. MMCAP Infuse and its Members shall have the right to specify certain confidential or proprietary information that should not be disclosed to GSK; provided, however, that information shall be made available on an unrestricted basis to the auditing firm, as necessary, for such firm to perform procedures requested by GSK pursuant to this section of the Agreement unless statute prevents MMCAP Infuse or Member from sharing with the auditor or GSK.. Any and all information required will be requested by GSK and/or the independent auditing firm from MMCAP Infuse and its Members, and MMCAP Infuse and its Members will make all reasonable efforts to ensure the requested information is made available to the independent auditing firm within a specified period of time as agreed to by GSK and MMCAP Infuse and its Members.
- C. MMCAP Infuse Record Retention. Unless mandated by Minnesota's retention record, MMCAP Infuse shall for the Term of this Agreement plus two (2) years, keep and maintain accurate records with respect to its Members, all information relating to the purchase of Products by Members and all such other information that is necessary to verify MMCAP Infuse and the Members' performance and compliance with their obligations under the Agreement. MMCAP Infuse shall upon written request allow GSK to inspect, at reasonable times, all such information and shall furnish such information to GSK consistent with the forgoing paragraph, provided, however, that under no circumstances shall MMCAP Infuse be required to disclose information contrary to applicable law or in violation of patient confidentiality.
- 11.3 **Confidential Information.** During the term of this Agreement and for a period of three (3) years following the date of expiration or termination of this Agreement, MMCAP Infuse agrees to make best effort to keep the terms of this Agreement non-public. If the situation arises where disclosure is requested, notification of a request to release would be sent immediately to the Vendor's Authorized Representative. Vendor will acknowledge receipt of the notification within five business days or MMCAP Infuse will be free to release the information. Upon notification to MMCAP Infuse, Vendor, at its own expense, may pursue an action to enjoin the disclosure of information considered by the Vendor to be "confidential information." Without prior notice, MMCAP Infuse may release the following information:

- A. Contract release and contract documents to MMCAP Infuse Members;
- B. Contract Pricing to MMCAP Infuse's Authorized Wholesalers for use in the Authorized Wholesaler's ordering, invoicing, and reporting systems;
- C. Contract Pricing to other third parties under non-disclosure agreement or contract with MMCAP Infuse to perform specific tasks such as auditing and data analysis; and
- D. Member State Attorneys General or auditors requiring contract or pricing data to perform their duties.

11.4 **Assignment.** The rights and/or obligations of each party under this Agreement may not be assigned, delegated, transferred, conveyed or sold, by operation of law or otherwise, without the prior written consent of the other party, except that GSK may assign, delegate, transfer, convey or sell its rights and/or obligations to (A) a parent, subsidiary, or affiliate or to an entity into which GSK is consolidated or merged with, (B) another party as part of a corporate reorganization, (C) a purchaser of all or substantially all of its assets, or (D) any party that purchases from GSK the right to manufacture, market or distribute a Product, or that acquires, or succeeds to the interests of GSK. In a change of control, GSK will use reasonable efforts to ensure MMCAP Infuse executes an assignment agreement or amendment with the assignee within thirty (30) days of the change of control. MMCAP Infuse may assign to another agency or branch of government within the state of Minnesota.

11.5 **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.

11.6 **Own Use.** MMCAP Infuse represents and warrants that its Eligible Participating Members are not in the business of and do not engage in the wholesale or retail resale of pharmaceutical products, and that each of its Eligible Participating Members is purchasing each GSK Product at the Contract Price made available under this Agreement solely for dispensing to and solely for use by each such Eligible Participating Member's patients incidental to the healthcare services provided by the Eligible Participating Member in connection with its designated business entity type as set forth in the Declaration Form(s). MMCAP Infuse further represents and warrants that it shall inform each Eligible Participating Member that such Eligible Participating Member may not engage in retail sales of GSK Products purchased under this Agreement, and that all GSK Products purchased under this Agreement are exclusively for the Own Use of such Eligible Participating Member in connection with its designated business entity type as set forth in the Declaration Form(s). If an Eligible Participating Member fails to observe the terms of this Section, GSK may, at its option, immediately terminate the eligibility of such MMCAP Infuse member to participate in this Agreement.

11.7 **Storage and Handling Requirements.** GSK expects that Eligible Members will take such precautions as are necessary to prevent the GSK Products Eligible Members receive from falling into the hands of those who may not lawfully possess or handle them, and shall fully comply with local, state and federal laws applicable to the storage, and shipment of pharmaceutical products and/or vaccines.

- A. Eligible Members shall maintain all federal, state and local licensure or registration necessary for the lawful handling and use of all vaccines and shall immediately notify GSK of any denial, revocation or suspension of any such licensure or registration or any changes in the Vaccines which Eligible Members are authorized to handle and use.

- B. Eligible Members shall handle and store GSK Products in a clean and orderly location and in a manner that will assure that the proper rotation and quality of such products are maintained. Eligible Members shall comply with GSK criteria on storing and shipping GSK products that require special handling. Eligible Members shall allow physical inspection of storage facility at any time GSK requests.

11.8 **Best Price.** If Vendor determines in good faith (e.g., if there is any change in any GSK Product's WAC or change in legislation) or GSK receives any notice, opinion, determination, or ruling from the Centers for Medicare and Medicaid Services ("CMS" f/k/a the Health Care Financing Administration) that the discounts and rebates provided under this Agreement may establish a lowered federal "Best Price," or increased "Unit Rebate Amount" pursuant to Section 1927 (c) of the Social Security Act (Public Law 74-271, 42 U.S.C. Section 1396r-8(c)), (collectively, "a **Best Price Impact**") then GSK reserves the right to immediately make any and all adjustments to the GSK Product discount and/or rebate, so as to avoid establishment of a Best Price Impact and to eliminate and correct such effect. Upon discovery, GSK will provide timely written notice to MMCAP Infuse and the affected Members if this occurs. In the event

of such a Best Price Impact, Vendor reserves the right to immediately make any and all adjustments to a Product's or Products' discounts, so as to avoid establishment of the Best Price Impact and to eliminate and correct such effect, upon prior notice to MMCAP Infuse. This includes Vendor's right to offset current or future ASF that may be due to MMCAP Infuse, and/or the responsibility for repayment of such ASF by MMCAP Infuse.

- 11.9 **HIPAA.** GSK and MMCAP Infuse acknowledge that the United States Department of Health and Human Services published final medical records privacy regulations under 45 C.F.R. Part 164 (**HIPAA Rules**). The parties further acknowledge that MMCAP Infuse and/or the Eligible Members may be a "Covered Entity" under the HIPAA Rules and as such may have access to "Protected Health Information" within the meaning of the HIPAA Rule. MMCAP Infuse shall comply, and shall require all Eligible Members to comply, with the HIPAA Rules. It is the parties' intent that neither MMCAP Infuse, nor any third party, will provide to GSK any data that contain any Protected Health Information or any other information that would allow GSK to identify an individual patient.
- 11.10 **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. For the MMCAP Infuse Members purchasing vaccines directly from the GSKDirect website, such purchases are governed by the Terms of Sale and Term of Use of the website unless in direct conflict with this Agreement.
- 11.11 **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.
- 11.12 **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.
- 11.13 **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.
- 11.14 **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: GlaxoSmithKline LLC

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.

Jennifer Costello

Name: _____
 Signature: DocuSigned by: Jennifer Costello
 Title: VP, PURCHASER ACCOUNTS
 Date: 6/17/2020

STATE OF MINNESOTA FOR MMCAP INFUSE

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

Name: _____
 Signature: DocuSigned by: Jennifer Vanderplaats
 Date: CD83E8166C06717/2020

COMMISSIONER OF ADMINISTRATION

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

Sara Turnbow

Name: _____
 Signature: DocuSigned by: Sara Turnbow
 Date: 694A6F1D2CF64DE... 6/17/2020

ATTACHMENT B

MMCAP Infuse CCS PLUS PORTFOLIO PROGRAM

I. Program Overview and Eligibility

- A. CCS Plus Portfolio Program.** MMCAP Infuse has the ability to create a CCS Plus Portfolio Program for their Members who would like to be evaluated for discounts as a group in the aggregate. Members may only participate in either the existing MMCAP Infuse CCS or the CCS Plus Portfolio Program; a Participating Member may not participate in both programs. The CCS Plus Portfolio Program includes both financial and other benefits as follows:
1. **Financial Benefit.** The CCS Plus Portfolio Program provides for discounted Contract Pricing.
 2. **Price Commitment.** Vaccine price increases shall be limited to one price increase per NDC per calendar year.
 3. **Price Predictability.** Price increases for Pediarix, Infanrix, Kinrix, Boostrix, Rotarix, and Menveo shall not exceed 4% per NDC per year.
- B. Eligibility for Program and Discounts.** Participating Members shall be consistent with the terms of Article V of the Agreement.
1. **Member Eligibility.** In order to be eligible for participation under a CCS Plus Portfolio Program, GSK must be able to validate that GSK's third party data vendor is able to provide market share information for each potential Participating Member.
 - i. GSK at its option may elect to add Eligible Members to this CCS Plus Portfolio Program prior to verification of third party market share information. In the event GSK is unable to verify third party market share information for Participating Member that has been previously added to the CCS Plus Portfolio Program, GSK shall have the right to remove such unmatched Participating Member from the CCS Plus Portfolio Program.
 2. **Data Requirements.** GSK must be able to confirm to its satisfaction third party sales data alignment for a minimum of fifty-five percent (55%) of a CCS Plus Portfolio Group's Participating Members' total sales (the "Minimum Third Party Sales Data Alignment Rate").
 - i. If GSK is unable to confirm to its satisfaction the third party sales data alignment consistent with the Minimum Third Party Sales Data Alignment Rate, then GSK shall have the right, in its discretion, to delete Participating Members for whom GSK is unable to confirm third party sales data alignment in order to achieve the Minimum Third Party Sales Data Alignment Rate, or to terminate the respective CCS Plus Portfolio Program with thirty (30) days' notice.
- C. Member Listing.** Participating Members will be limited to immunizing sites only.
1. **Sign Up Process.** GSK approved new Participating Members will be added to the CCS Plus Portfolio Program after receipt and acceptance by GSK of a MMCAP Infuse CCS Plus Portfolio Program Membership List from MMCAP Infuse, regardless of verification of third party market share information, provided that GSK shall have up to thirty (30) days to add new Participating Members. MMCAP Infuse can also request the removal of Participating Member(s) from the group contract no later than fifteen (15) days prior to the beginning of a contract performance Evaluation Period in order for the Participating Member's purchases to not be considered as part of the current Evaluation Period.
 2. **Termination from Program.** Upon expiry or termination of the CCS Plus Portfolio Program, or if the Participating Member is removed from the CCS Plus Portfolio Program at the request of MMCAP Infuse, the Participating Member will be automatically enrolled in MMCAP Infuse CCS with GSK without any action required by MMCAP Infuse or the Eligible Member. The Participating Member may discontinue participation in the MMCAP Infuse CCS or change to another GSK contract (subject to GSK approval) at any time.

II. Program Details

A. The CCS Plus Portfolio Program has one offering.

- i. The group of MMCAP Infuse Participating Members (“the Group”) must achieve the required Aggregate Market Share Performance Level in the three GSK Performance Categories as outlined in II.B Performance Criteria below to be entitled to CCS Plus Portfolio Program Contract Pricing (see Section III).
- ii. The Group’s Participating Members are eligible for discounts on all GSK Vaccines listed in Section III. CCS Plus Portfolio Program Contract Pricing.
- iii. Upon termination of the CCS Plus Portfolio Program, Participating Members of MMCAP Infuse will be enrolled automatically in the existing MMCAP Infuse CCS without any action required by MMCAP Infuse or the Participating Member. The Participating Member may discontinue participation in the MMCAP Infuse CCS or change to another Vendor contract (subject to Vendor approval) at any time.

B. Performance Criteria

The Group’s performance will be evaluated in accordance with the Performance Criteria set forth below.

Performance Criteria Table

PERFORMANCE CATEGORY	GSK PRODUCT	AGGREGATE MARKET SHARE PERFORMANCE LEVEL	THERAPEUTIC CLASS
Pediatric	PEDIARIX INFANRIX KINRIX HAVRIX PEDIATRIC* ROTARIX* HIBERIX* (PGC – 756)	≥ 80%	Pediatric Acellular Pertussis Vaccines and Combination HIB vaccine (PGC 666)
PERFORMANCE CATEGORY	GSK PRODUCT	AGGREGATE MARKET SHARE PERFORMANCE LEVEL	THERAPEUTIC CLASS
Adult	BOOSTRIX ENGERIX-B ADULT* HAVRIX ADULT TWINRIX RABAVERT* (PGC – 770)	≥ 80%	Adult Hepatitis and Tdap Vaccines and Rabies Vaccine (PGC 771)
PERFORMANCE CATEGORY	GSK PRODUCT	AGGREGATE MARKET SHARE PERFORMANCE LEVEL	THERAPEUTIC CLASS
Adolescent	MENVEO BEXSERO (PGC – 744)	≥ 70%	Meningococcal Vaccines Class (PGC – 745)

* Sales of Engerix B Adult, Havrix Pediatric, Rotarix, Hiberix, and Rabavert are included in the performance calculations within their respective categories. Competitive purchases will not be measured for these brands.

C. Evaluation Periods

- a. A Group's performance will be evaluated on a semi-annual basis with each period being considered an Evaluation Period.
 - i. Each Evaluation Period will be a six (6) month period, with the exception of the Initial Evaluation Period.
- b. **Initial Evaluation Period and Ramp-up.**
 - i. New Participating Members in the CCS Plus Portfolio program will be given a "Ramp-up" Period before being evaluated.
 - a. The Initial Evaluation Period will be the Ramp-up Period.
- c. **Contract Extensions**
 - i. Evaluation Periods will cross contract extensions.
 1. As an example, if the contract is extended past 06/30/24, the Evaluation Period of 01/01/24 through 06/30/24 will determine the pricing for the Pricing Period 10/01/24 through 03/31/25 and the Evaluation Period of 07/01/24 through 12/31/24 will determine the pricing for the Pricing Period beginning on 04/01/25.
- d. **Aggregate Market Share Performance Level**
 - i. The Group's performance during an Evaluation Period shall be based on the Aggregate Market Share Level for a given Performance Category. Aggregate Market Share Performance Level will be calculated by dividing the aggregate sales (in WAC dollars) of GSK Vaccines purchased by the Group's Participating Members in a given GSK Product Category, by the aggregate sales (in WAC dollars) of all vaccines purchased by the Group's Participating Members within the corresponding Therapeutic Class.
 - ii. In the event that GSK is unable to supply any of the GSK Vaccines identified in the Performance Categories above for thirty (30) consecutive calendar days or longer during the Evaluation Period, then GSK may, in its sole discretion adjust the Aggregate Market Share Performance Level for such Therapeutic Class for such Evaluation Period.
 - iii. Calculations will be based on GSK sales data and sales data provided by a third party data vendor of GSK's election. GSK reserves the right to change third party data vendors at any time at its own discretion.

D. Pricing Periods

- a. The Group's Participating Member's will be entitled to CCS Plus Portfolio Program Contract Pricing for the Pricing Period based on the performance during the corresponding Evaluation Period.
 - i. Each Pricing Period will be a six (6) month period, with the exception of the Initial Pricing Period and the Final Pricing Period.
 - ii. After the Initial Pricing Period, each Pricing Period will begin three (3) months after the end of each corresponding Evaluation Period, as long as the performance criteria for that Evaluation Period are met.
- b. **Initial Pricing Period**
 - i. The Initial Pricing Period which started on 07/01/2019 will be fifteen (15) months ending on 9/30/2020
 - ii. There will be no performance criteria for the CCS Plus Portfolio Program Eligible Participating Members to receive program discounts for the Initial Pricing Period.

- E. Example of Evaluation Period and Pricing Period Table.** By way of example, the table below shows the Evaluation Periods and corresponding Pricing Periods for a CCS Plus Portfolio Program with an effective date of July 1, 2019:

EVALUATION AND DISCOUNT PERIOD EXAMPLE TABLE

Evaluation Period	Pricing Period
N/A	07/01/19 through 09/30/20
07/01/19 through 06/30/20 (“Ramp-up Period”)	10/01/20 through 03/31/21
07/01/20 through 12/31/20	04/01/21 through 09/30/21
01/01/21 through 06/30/21	10/01/21 through 03/31/22
07/01/21 through 12/31/21	04/01/22 through 09/30/22
01/01/22 through 06/30/22	10/01/22 through 03/31/23
07/01/22 through 12/31/22	04/01/23 through 09/30/23
01/01/23 through 06/30/23	10/01/23 through 03/31/24
07/01/23 through 12/31/23	04/01/24 through 09/30/24
01/01/24 through 06/30/24	10/01/24 through 03/31/25
07/01/24 through 12/31/24	04/01/25 through 09/30/25
01/01/25 through 06/30/25	10/01/25 through 03/31/26

F.Failure to Perform

1. **Evaluation Period.** A Group must fail two consecutive Evaluation Periods following the Ramp-up Period to have the program terminated.
 - i. If the Group does not achieve the required Aggregate Market Share Performance Level for any two consecutive Evaluation Periods following the Ramp-up Period, the Group will be terminated and Participating Members will no longer be eligible to receive the Contract Pricing under the CCS Plus Portfolio Program.
 - ii. Upon termination of the CCS Plus Portfolio Program, Participating Members of the MMCAP Infuse Program will be enrolled automatically in the MMCAP Infuse CCS Agreement with GSK without any action required by MMCAP Infuse or the Participating Member. The Participating Member may discontinue participation in the MMCAP Infuse CCS or change to another GSK contract (subject to GSK approval) at any time.
2. **Re-acceptance into the Program.** A Group may be re-accepted into a CCS Plus Portfolio Program at GSK’s discretion pending GSK’s receipt and approval of the signed MMCAP Infuse CCS Plus Portfolio Program from MMCAP Infuse (“Initial List”). Subject to change at GSK’s discretion, there will be no Ramp-up Period and the Evaluation Period to determine discounts will begin at the start of the next calendar quarter after the receipt and approval of a completed MMCAP Infuse CCS Plus Portfolio Membership List from MMCAP Infuse.

IV. GSK Market Definitions

Therapeutic Class	GlaxoSmithKline Measured Products	Market Definition Competitor Measured Products*
Pediatric Acellular Pertussis Vaccines, Hib Vaccine and Combination Hib vaccine	GSK acellular pertussis or combination vaccine product containing acellular pertussis marketed during the term of this Agreement, GSK Hib vaccine and GSK combination Hib vaccine, GSK Pediatric Hepatitis A and Rotavirus vaccine product marketed during the term of this Agreement. (Currently Pediatric Havrix, Rotarix, Pediarix, Infanrix, Kinrix, and Hiberix) (PGC-756)	All forms of Pentacel, Daptacel and Quadracel, and any other vaccine or combination vaccine containing acellular pertussis marketed in the US during the term of this Agreement (PGC-666)
Adult Hepatitis and Tdap Vaccines and Rabies Vaccine	All forms of GSK tetanus toxoids, reduced diphtheria toxoids and acellular pertussis vaccine and any GSK Adult Hepatitis A or B or combination vaccine and GSK Rabies vaccine product marketed during the term of this Agreement. (Currently Boostrix, Adult Havrix, Adult Engerix-B, Twinrix, and RabAvert) (PGC-770)	All forms of Adult Vaqta, Adacel, and any other tetanus toxoids, reduced diphtheria toxoids and acellular pertussis vaccine and any other Adult Hepatitis A vaccine product marketed in the U.S. during the term of this Agreement. (PGC-771)
Meningococcal Vaccines	GSK meningococcal vaccine product marketed during the term of this Agreement (Menveo and Bexsero) (PGC - 744)	All forms of Menactra and Trumenba vaccine product marketed in the U.S. during the term of this Agreement. (PGC-745)

***Note:**

PGC= Product Group Code

- a) In all Therapeutic Classes, only prescription forms of the products listed are included.
- b) Unless otherwise specified, all dosage forms, strengths, and brand name variations of the products for the therapeutic purpose are included.
- c) All original manufacturer products listed by brand name, as defined above, are included in the relevant Therapeutic Class.
- d) Therapeutic Class percentages are figured in sales dollars using Wholesaler Acquisition Cost prices for GSK and competitive products.

GROUP PURCHASING ORGANIZATION MEMBERSHIP DECLARATION w/ SURVEY

In order to take advantage of prices and/or rebates under a Group Purchasing Organization (GPO) or Alliance with GSK contracts, GSK requires an eligible facility to designate only ONE GPO whose contract(s) said facility will access to purchase GSK products. **The GPO designation listed below, if different from current files, will remove facility from their current GPO (or other segment) within 30 days of notification.**

Multiple GPO designations, even for different product groups, will not be honored. Designations may be changed but will require thirty (30) days advance written notice to GSK. GSK reserves the right to refuse to extend a contract price to a facility that has failed to designate a GPO/Alliance, seeks to purchase under agreements with multiple alliances, or does not meet contract eligibility requirements. Facility will be added to the designated GPO's contract(s) within thirty (30) days, if GSK determines that all contract eligibility requirements are met. Declaration forms must be submitted for each location.

PLEASE COMPLETE ALL REQUESTED INFORMATION (PLEASE PRINT) INCOMPLETE FORMS WILL NOT BE PROCESSED

FACILITY NAME _____

DEA or HIN # (must be current) _____ STATE LICENSE # _____ STATE LICENSE # EXPIRATIONDATE _____

FACILITY STATE LICENSE NAME OR AUTHORIZED Health Care Provider STATE LICENSE NAME _____

PHYSICAL ADDRESS _____ SUITE # _____

CITY _____ STATE _____ ZIP _____

TELEPHONE _____ FAX # _____

MUST DESIGNATE SOLE GROUP PURCHASING ORGANIZATION: _____

PRIMARY WHOLESALER (NAME, CITY, STATE) _____

TYPE OF BUSINESS:

- On-site hospital clinic
- Off-site satellite clinic (affiliated with _____ Hospital)
- City County or State (CCS) funded health clinic
- Surgery Center
- HMO/Managed health care
- Intermediate Care Facilities for Mentally Retarded
- Outpatient Clinic in a Hospital
- Hospice Inpatient
- Inpatient Psychiatric Facility
- Outpatient Mental Health Clinic
- Public Health Department
- Hospital owned and funded by government
- Correctional Facility
- Other (please describe: _____)

Is this facility owned, leased, or managed by a hospital or hospital system? YES NO

If so, name and location of hospital or hospital system _____

Is a pharmacy or physician-dispensing unit physically located within this facility? YES NO

Is this pharmacy or physician dispensing unit a closed-door pharmacy? (i.e. only serves patients and employees of the facility?) YES NO

Is this facility for profit? YES NO

CERTIFICATION: By signing below, Facility certifies, under penalty of perjury, that all of the above information is true and correct. Further, Facility certifies and agrees that (1) any GSK product purchased under any agreement shall be for its "Own Use," as defined by the United States Supreme Court in its opinions report at Abbott Laboratories et al. v. Portland Retail Druggist Association, Inc., 425 U.S. 1 (1976), and Jefferson County Pharmaceutical Association, Inc., v. Abbott Laboratories, et al., 103 S. Ct. 1011 (1983), and (2) GSK may, in its sole discretion, contact Facility's staff, and/or visit Facility's locations to verify that the above information is correct, and Facility agrees to provide such information to GSK as is reasonably necessary for GSK to make such a determination.

Printed Name (Required) _____ Title (Required) _____ Signature (Required) _____ Date (Required) _____

PLEASE FAX FORM BACK TO 215-933-3947 OR EMAIL TO: iqg86213@gsk.com

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 (MMS2000177)
AI	Admin Fee
AJ	Credit Indicator (C for credit)

AK	MMCAP Assigned Wholesaler Code (<i>Codes will be assigned to PPV's during implementation period of the contract</i>)
AL	Manufacturer Name (MFG Name)
AM	Class of Trade
AN	340b Purchase
AO	Category
AP	Manufacturer Part Number
AQ	List Price
AR	UNSPSC Code (XXXXXXXX)
AS	UNSPSC Description
AT	GLN
AU	GTIN

ATTACHMENT E
Minnesota Statutory Procurement Language

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 social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the MMCAP Infuse, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state 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.
10. **Payment to Subcontractors.** To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the Vendor must pay all subcontractors, less any retainage, within ten (10) calendar days of the Vendor's receipt of payment from a Member for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).