

VACCINES PARTICIPATION AGREEMENT

The Vaccines Participation Agreement (this “Agreement”), effective this _____ day of _____, 20____ (the “Effective Date”), is made by and between Children’s National Health Network, Inc. (“CNHN”), a District of Columbia corporation, doing business as PHN Services and _____ (“Member”).

- 1. Definitions.** For purposes of this Agreement: (a) “Covered Items” means goods or services; (b) “Supplier” means a vendor or distributor of Covered Items; and (c) “Supplier Agreement” means an agreement that is entered into by CNHN with a Supplier, makes Covered Items available for sale to Member, and sets forth the terms and conditions pursuant to which Member may purchase Covered Items from the Supplier. Schedule A lists the current Supplier Agreements and will be updated from time to time.
- 2. Purchasing Agent.** Member authorizes CNHN to act as Member’s purchasing agent in negotiating and entering into Supplier Agreements.
- 3. Supplier Agreements.** Nothing in this Agreement or in any Supplier Agreement shall in any way obligate Member to purchase Covered Items from a Supplier. Upon execution of this Agreement by the parties, CNHN will make available to Member the terms and conditions of each current Supplier Agreement to the extent such Supplier Agreement allows and shall provide Member a Confidential Addendum to this Agreement (the “Confidential Addendum”). The Confidential Addendum contains an outline summary of some but not all of the terms and conditions of the current Supplier Agreements and will be updated from time to time. Member acknowledges and agrees that it comprehends and can abide by the terms and conditions of each Supplier Agreement, and that in accordance with Section 7 it will treat as Confidential Information any Supplier Agreement it obtains, the contents of any Supplier Agreement, and the Confidential Addendum. Where Member chooses to purchase Covered Items from a Supplier under a Supplier Agreement, Member shall comply with the terms and conditions of the Supplier Agreement. Member acknowledges and agrees that the availability of any discounts or pricing under a Supplier Agreement is subject to the specific terms and conditions of that Supplier Agreement, and that such terms and conditions may and do vary. Such terms and conditions may include, but are not limited to, approval by Supplier of Member’s participation in the Supplier Agreement and the achievement of certain metrics regarding the level of purchases by all Members electing to participate in CNHN’s efforts as a purchasing agent.
- 4. Liability.** Neither CNHN nor any of its affiliates shall be liable to Member for any act, or failure to act, in connection with any Supplier Agreement, including but not limited to any failure of a Supplier to furnish the Covered Items that it has agreed to furnish under any Supplier Agreement. Member shall be solely liable to make any payments for Covered Items it orders, purchases, or receives under any Supplier Agreement and any goods, services and taxes due under any agreements it has with Suppliers.
- 5. Supplier Fees.** Member understands and agrees that CNHN may receive fees from Suppliers (“Supplier Fees”) under certain Supplier Agreements in accordance with Schedule A to this Agreement. CNHN will disclose annually in writing to Member the amount of Supplier Fees received from each Supplier with respect to purchases from that Supplier made by Member.
- 6. Term and Termination.** This Agreement has a one-year term and will automatically renew from year to year unless either party gives written notice at least 30 days’ prior to the expiration of the then current term. This Agreement may be terminated by either party with or without cause upon 30 days’ prior written notice.

7. **Confidential Information.** For purposes of this Agreement, confidential information (“Confidential Information”) means each Supplier Agreement and all provisions, terms, and conditions of each Supplier Agreement, the Confidential Addendum, any documents, information, or materials relating to the prices, terms, or conditions of any Covered Items in any Supplier Agreements, and any CNHN programs, services and agreements of a proprietary or sensitive nature not readily available through sources in the public domain (including, but not limited to, this Agreement). Member shall keep Confidential Information strictly confidential in accordance with the Supplier Agreements and hold such Confidential Information in trust. Member shall not use Confidential Information for any purpose other than to effectuate the purposes of this Agreement. Member shall not disclose Confidential Information to any third party without CNHN’s prior written consent and shall only do so in strict accordance with the applicable Supplier Agreements, including, if applicable, with the prior written consent of Supplier.
8. **Compliance.** Member represents and warrants that at all times during the term of this Agreement, Member shall comply with all applicable federal, state and local laws. For example, to the extent Member receives discounts, rebates, or any other price reductions or remuneration (collectively, “remuneration”) under a Supplier Agreement or CNHN’s group purchasing program, Member may have an obligation under federal or state law to disclose such remuneration to federal or state health care programs or other payors.
9. **Indemnification.** Member hereby covenants to defend and indemnify CNHN and hold it harmless against and from all losses, damages and costs, including, but not limited to, attorney’s fees and expenses, asserted against or sustained or incurred by CNHN in connection with any action brought by any party in connection with any act, omission or breach of any warranty or obligation by Member, except for losses incurred by reason of CNHN’s breach of this Agreement or failure to perform its obligations hereunder.
10. **Binding Effect; Assignment.** This Agreement shall inure to the benefit of, and be binding upon and enforceable by and against, CNHN and Member, and their respective successors and assigns. Member may not assign this Agreement to any other person without the prior written consent of CNHN.
11. **Notice.** Any notices required by this Agreement shall be deemed to be properly given if sent by certified or registered mail, return receipt requested, at the addresses set forth below or at any other address of which notice has been properly given pursuant to the provisions of this Section 11 or if provided by email to one of the persons listed below.

If to CNHN: Mark Weissman, MD 1 Inventa Place, Silver Spring, MD 20904 mweissma@childrensnational.org	If to Member: _____
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12. **Entire Agreement.** This Agreement represents the entire agreement between CNHN and Member regarding the subject matter hereof, and supersedes any prior oral or written agreement concerning such subject matter. This Agreement may be amended only upon the mutual written agreement of the Parties.
13. **Governing Law.** This Agreement shall be governed by and enforced under the laws of the District of Columbia without regarding to choice of law or conflict of law rules that may be otherwise applicable to this Agreement.
14. **Survival.** Sections 4, 7, 9, 11, and this Section 14 shall survive termination or expiration of this Agreement for any reason or on any basis and Member agrees to be bound by the terms and provisions of these Sections.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective representatives as of the Effective Date.

CHILDREN'S NATIONAL HEALTH NETWORK, INC.

By: _____
Mark Weissman, M.D.
CNHN Medical Director

[MEMBER]

By: _____
Name: _____
Title: _____

Please submit this completed form to phnservices@childrensnational.org
For assistance, please contact Donnita Pickett @ CNHN: 202-476-2727 or
phnservices@childrensnational.org

Schedule A

Supplier Agreement	Service Fees
Merck Sharp & Dohme Corp. ("Merck")	Less than 3% of purchase price
Sanofi Pasteur Inc.	5% of purchase price
Pfizer Inc.	Less than 3% of purchase price

CONFIDENTIAL ADDENDUM

This Confidential Addendum provides a summary of some but not all of the terms and conditions of each Supplier Agreement with Children's National Health Network, Inc. doing business as PHN Services. Member must consult and review each Supplier Agreement for all such terms and conditions. Member represents and warrants that it will not rely on this Confidential Addendum to review, understand, or comply with the terms and conditions of each Supplier Agreement. Member agrees that it shall not hold CNHN or any of its affiliates liable for any act or failure to act resulting from reliance on this Confidential Addendum or any statement contained herein. All capitalized terms in this Confidential Addendum that are not defined in this Confidential Addendum or in Member's Vaccines Participation Agreement shall have the meaning ascribed to them in the applicable Supplier Agreement.

Member Supplier Agreement with Merck Sharp & Dohme Corp. ("Merck Agreement")

1. (Section 2.1) Member shall be eligible to purchase Merck Vaccines under the Merck Agreement and receive any corresponding discounts or pricing if the Merck Agreement terms and conditions are met including pursuant to Section 2 of the Merck Agreement.
2. (Section 2.2) Member shall not purchase any Merck Vaccines under the Merck Agreement except Merck Vaccines for the Eligible Clinic's "own use" in accordance with Abbott Laboratories v. Portland Retail Druggists Association, 425 U.S. 1 (1976). If Merck Vaccines purchased under the Merck Agreement are not dispensed consistent with the Member's "own use" policy, Member will provide Merck with an accounting for all such dispensing and shall return all discounts attributable to such dispensing to Merck.
3. (Section 3.1) Utilization of Merck Vaccines is on an outpatient basis only.
4. (Section 3.2) In order for Member to qualify for the discounts applicable to the Merck Vaccines in the Vaccine Group, CNHN Members that are Eligible Clinics must as a group achieve Merck Market Share for vaccines in the Hepatitis A Pediatric/Adolescent Vaccine Therapeutic Category and the Rotavirus Vaccine Therapeutic Category. In general, to achieve Merck Market Share, at least eighty percent (80%) of the total purchases of Hepatitis A Pediatric/Adolescent Vaccine Therapeutic Category by CNHN Members as a group must be pediatric/adolescent formulation of Merck's VAQTA® and at least eight percent (80%) of the total purchases of Rotavirus Vaccine Therapeutic Category must be Merck's RotaTeq®.
5. (Section 3.3) Pricing for VAQTA® (adult formulation), RECOMBIVAX HB® (adult formulation), and PNEUMOVAX®23 (listed in the "Discounts on Other Vaccines" section of Schedule D) are not subject to the Merck Market Share or other market share requirements in order to obtain the discounts listed in Schedule D.
6. (Section 3.4) Merck reserves the right to adjust the discounts on Merck Vaccines available under the Merck Agreement in the event that the net effective prices available to CNHN Members are forecasted by Merck to set a new Medicaid best price, or a new federal Supply Schedule price, or set a price lower than the price of the relevant Merck Vaccine(s) under Merck's contract with the U.S. Centers for Disease Control and Prevention ("CDC").
7. (Section 3.5) In addition to other discounts, Member is be eligible for a prompt payment discount on purchases of Merck Vaccines directly from Merck as set forth in the Merck Terms and Conditions of Sale in effect at the time of purchase.
8. (Section 3.6) When a price increase is effected for any of the Merck Vaccines, Merck will provide Member a ninety (90) day window to obtain the Merck Vaccine at the pre-increase price, in accordance with Section 3.6.

CONFIDENTIAL ADDENDUM (cont.)

Member Supplier Agreement with Merck Sharp & Dohme Corp. ("Merck Agreement") - continued

9. (Section 3.7) Merck shall remove all Members from participation in any other Merck vaccine contract and Members will be eligible for the discounts pursuant to the Merck Agreement only, unless approved by Merck to participate in other Merck vaccines contracts or programs. CNHN (including any third-party administrators) and its Members shall seek discounts only for purchases of Merck Vaccines for which other price reductions, discounts, contracts or offers are not available directly or indirectly to CNHN or its Members, unless otherwise approved by Merck.
10. (Section 3.8) Member warrants that all Merck Vaccines for which any discount is sought are for use by Member's patients and have not been resold to any other individual or entity.
11. (Section 4.2) In the event that Merck determines that a Member is not in compliance with any portion of the Merck Agreement that pertains to Member's obligations (including, but not limited to, Section 9.5, Duty to Warn, Section 9.3, Confidentiality), Merck shall have the right to remove that Member from the list of Eligible Clinics such that it shall no longer be eligible to purchase Merck Vaccines pursuant to the Merck Agreement.
12. (Section 5) The calculation and implementation of Merck Market Share will be done in accordance with Section 5 of the Merck Agreement for purposes of whether CNHN Members as a group qualify for the discounts applicable to the Merck Vaccines in the Vaccine Group.
13. (Section 6) Merck will pay CHNH certain administrative fees for purchase by CNHN Members of Merck Vaccines in accordance with Section 6.
14. (Section 9.3) Member agrees to maintain as confidential the terms and conditions of the Merck Agreement, including, but not limited to, the pricing and discounts for the Merck Vaccines, except when such disclosure is required by applicable law, regulations, court order or subpoena. Member shall provide reasonable advance notice to Merck prior to making such a disclosure.
15. (Section 9.7) Through this Confidential Addendum Member is informed of the value of the discounts provided under the Merck Agreement, the net effective prices of the Merck Vaccines, and other related information that it may be obligated to disclose under federal or state law. Member acknowledges and agrees that it may have obligations to accurately report the net effective discount price, and any other information that must be disclosed under applicable law, for each Merck Vaccine for which a discount has been paid under the Merck Agreement to the U.S. Department of Health and Human Services, Medicare Part D PDP and MA-PD Plans, and/or enrollees and other individuals to the extent required under applicable federal or state law or contracts with Medicare Part D plans or other third-parties. Member shall request confidential treatment for any such disclosures to the extent permitted by law.
16. (Section 9.15) Member will not at any time disclose to Merck, or any of its employees, agents, or affiliates, any "individually identifiable health information" or "protected health information" as those terms are defined in the Standards for Privacy of Individually Identifiable Health Information, published on August 14, 2002 at 67 F.R. 53182 et seq. and designated as 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164, and any amendments, modifications, or supplemental or successor provisions thereto (hereinafter collectively "Federal Patient Privacy Regulations") or similar patient information as protected under applicable State Patient Privacy Regulations.
17. (Schedule D) The net effective discount prices that may be available to Member for Merck Vaccines, including those in the Merck Vaccine Group, are provided on Schedule D.

18. (Schedule F.1) Member warrants that it will (1) take all appropriate steps to assure that all vaccines discounted and/or purchased under the Merck Agreement shall be administered to each patient on the basis of an individualized medical judgment by a physician, or (2) take all appropriate steps to provide to such patient (or to the patient's parent or guardian) meaningful and complete warnings relating to the risks and benefits of vaccination, in form and language understandable to such patient, parent, or guardian.
19. (Schedule F.2) If any suit asserted against Merck by a third party is based in whole or in part on a claim for failure by Member to properly discharge the responsibilities assumed by it under paragraph F.1 of Schedule F of the Merck Agreement, Member shall upon prompt written notice of such claim or action, indemnify Merck and hold Merck harmless for any cost attorney's fees and damages associated with the defense of such claim or action and to provide its full cooperation and assistance to Merck in defense of such claim.
20. (Schedule F.3) In the event of Member's breach of, or failure to carry out, its responsibilities under paragraph F.1 of Schedule F of the Merck Agreement, any measure of resulting damages to Merck shall include, but need not be limited to, damages (including money judgments, reasonable attorneys' fees, and other cost) sustained in connection with claims against Merck for personal injuries caused by such breach or failure. This provision shall not limit any other right of Merck to obtain damages of other relief for any breach of this contract or for the settlement of any dispute arising under this contract.

CONFIDENTIAL ADDENDUM (cont.)

Member Supplier Agreement with Sanofi Pasteur Inc. (“Sanofi Agreement”)

1. (Section 3) Member may be eligible to purchase certain Qualifying Products in accordance with the pricing and terms found at Section 3 and Addenda A and AA provided that the terms and conditions set by the Sanofi Agreement for such pricing are met.
2. (Section 3.2) Sanofi Pasteur Inc. reserves the right to adjust the prices under the Sanofi Agreement at any time in the event the total purchases of Members, by Product, are tracking less than the annual estimated quantities.
3. (Section 3.3) Sanofi Pasteur Inc. reserves the right to limit orders (by National Drug Code (“NDC”)) for Member within any given month to no more than one hundred and fifty percent (150%) of Member’s average monthly purchases and also to no more than one hundred and fifty percent (150%) of all purchases under the Sanofi Agreement in its entirety, calculated over the previous six months.
4. (Section 4) Sanofi Pasteur Inc. will pay Administrative Fees to Children’s National Health Network, Inc. for purchase by Member of Qualifying Products in accordance with the terms and conditions found in Section 4 of the Sanofi Agreement.
5. (Section 5.1) Member shall dispense products sold under the Sanofi Agreement to patients, physicians, and/or employees of Member. Member is operating as the exclusive provider of said product to patients, physicians, or employees of said Member such that Member is not reselling the product or operating as a retail clinic. Member is (i) a nonprofit institution, eligible for purchases under the Sanofi Agreement under the Nonprofit Institutions Act, 15 U.S.C. § 13c for Member’s “own use”; or (ii) a for-profit organization, for which purchases under the Sanofi Agreement are made for Member’s “own use” as defined in *De Modena, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, 743 F. 2d 13888 (9 Cir. 1984), applying the holding of the U.S. Supreme Court in *Abbott Laboratories, et al. v. Portland Retail Druggist Association, Inc.*, 425 U.S. 1 (1976).
6. (Section 7.1.1) Member is responsible for inspection of all product purchased under the Sanofi Agreement upon its receipt, and shall promptly notify Sanofi Pasteur Inc. of any product that is damaged or unusable within ten (10) business days. Such product shall be returned to Sanofi Pasteur Inc. in accordance with Sanofi Pasteur Inc.’s General Terms and Conditions of Sale. Member shall store and handle all products purchased under the Sanofi Agreement as described in each product’s approved labeling.
7. (Section 7.1.2) Member shall permit Sanofi Pasteur Inc. or its authorized representatives to examine or replace inventory at no additional expense to Children’s National Health Network, Inc. or Member, and acknowledges and agrees that Sanofi Pasteur Inc. or its authorized representatives may provide Member information or service materials.
8. (Section 7.1.5.) Member shall hold the terms of the Sanofi Agreement as confidential information and such obligation of confidentiality shall survive the termination or expiration of the Sanofi Agreement.
9. (Section 7.1.6) Either Children’s National Health Network or Sanofi Pasteur Inc. shall have the right to cancel this Agreement upon thirty (30) days’ prior written notice.

CONFIDENTIAL ADDENDUM (cont.)

Member Agreement with Pfizer Inc. ("Pfizer Agreement")

1. Member will be able to purchase Covered Products in accordance with the applicable Contract Discounts in the following table if all applicable terms and conditions of the Pfizer Agreement are met:

NDC	Covered Product Description	Contract Discount
00005-0100-05	TRUMENBA 0.5ML 1X5 PFS Units	16%
00005-0100-10	TRUMENBA 0.5ML 1X10 PFS Units	16%

2. Member shall not subject any Covered Product to any competitive disadvantage, including but not limited to: (i) establishing a formulary or preferred drug list that excludes the Covered Product; (ii) disseminating any communications that disadvantages or discourages the dispensing of the Covered Product; and (iii) utilizing any other mechanism to disadvantage or discourage the dispensing or use of the Covered Product in favor of a competitive product or to actively replace prescriptions or purchases of the Covered Product with competitive products. Notwithstanding the foregoing, the following actions are not prohibited: (i) actions related to drug interactions with other prescription or over-the-counter drug products, (ii) actions related to contraindications for the Covered Product, (iii) restrictions or curtailment of the Covered Product for clinical reasons as generally accepted in the U.S. medical community, (iv) generic substitution or intervention, or (v) Member contracting for the purchasing, supply or marketing of a competitive product.

3. Competitive products to Pfizer Covered Products are the following:

NDC	Competitive Product Description
46028-0114-01	BEXSERO 50 mcg-50 mcg-25 mcg/0.5 mL 1x10 Units
46028-0114-02	BEXSERO 50 mcg-50 mcg-50 mcg-25 mcg/0.5 mL 1x1 Units
46028-0114-11	BEXSERO 50 mcg-50 mcg-50 mcg-25 mcg/0.5 mL 1x1 Units

4. Member shall purchase any Covered Product under the Pfizer Agreement for its Own Use and shall not commercially resell such Covered Product to any other entity or person. Member acknowledges and agrees that Pfizer reserves the right to audit Member's records to ensure compliance with this provision of the Pfizer Agreement.