

Member-Requested Participation Addendum (MPA)

This Addendum (“**MPA**”) is entered into by State of Oklahoma (“**Member**”) Henry Schein, Inc., whose designated business address is 135 Duryea Rd., Melville, NY 11747 (“**Vendor**”) and incorporates the MMCAP Infuse, an agency of the State of Minnesota, (“**MMCAP Infuse**”) vendor contract MMS1900159 (“**Vendor Contract**”).

WHEREAS, MMCAP Infuse and Vendor executed the Vendor Contract and is effective January 1, 2020.

WHEREAS, Member and Vendor wish to amend the terms and conditions of the Vendor Contract to address the matters of Member.

WHEREAS, MMCAP Infuse has sole approval authority to any changes to the Vendor Contract, thus is a signatory to this MPA.

WHEREAS, Member, MMCAP Infuse, and Vendor do not intend to alter, amend, interfere, modify, or adjust the contractual relationship of MMCAP Infuse and Vendor nor the relationship between any other member of MMCAP Infuse and the Vendor.

THEREFORE, the parties agree as follows:

I. **DEFINITIONS**

- A. **Membership**: Means the joint power cooperative comprised of the MMCAP Infuse authorized states, departments, facilities, and other municipalities.
- B. **Facilities**: Means the authorized departments, facilities, and other municipalities approved by Member and MMCAP Infuse to access and use this MPA, as identified on Exhibit B.

II. **EFFECTIVE DATE AND TERM**

- A. **Effective Date**: This MPA is effective on the date all signatures have been obtained.
- B. **Termination**: This MPA terminates upon:
 - 1. Thirty (30) calendar days’ written notice upon written notice to the other parties; or
 - 2. The termination of the Vendor Contract between MMCAP Infuse and the Vendor; or
 - 3. Written agreement executed by all parties.

III. **SCOPE**

- A. **Exhibit A**: Which is attached and incorporated herein, identifies the Vendor Contract and all other previous agreements and amendments to be incorporated into the contractual relationship between Member and Vendor.
- B. **Exhibit B**: Which is attached and incorporated herein, identifies the additional Facilities Member has approved to access the Vendor Contract and MPA.
- C. **Exhibit C**: Which is attached and incorporated herein identifies the language to be incorporated into the contractual relationships between Member and Vendor, as referenced on Exhibit A. In the event of any conflict between the terms of the Vendor Contract and Exhibit C of this MPA, the terms of Exhibit C will supersede as between Member and Vendor. *MMCAP Infuse, the State of Minnesota, nor any other party of the Membership (except for the Facilities) are bound by the terms of Exhibit C.*

IV. GENERAL PROVISIONS

- A. **Assignment:** Except as affirmed in this MPA, the Member nor Vendor will not assign, delegate, or transfer any rights or obligations under this MPA without the prior written consent of MMCAP Infuse.
- B. **Counterparts and Electronic Signature:** The MPA cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse, Member and Vendor expressly agree to conduct transactions under the MPA by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this MPA 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 MPA is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP Infuse in order for this MPA to be a transferable record, to ensure that MMCAP Infuse has control of the authoritative copy of such transferable record.
- C. **Amendments:** Any amendment or modification to this MPA must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP Infuse

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned parties have caused this MPA to be signed on their behalf intending to be bound thereby.

BY AND BETWEEN:

FOR THE MEMBER:

STATE OF Oklahoma

Signature: Dan Sivard Digitally signed by Dan Sivard
Date: 2020.09.30 08:43:02 -05'00'

By: _____

Title: _____

Date: _____

VENDOR: Henry Schein, Inc.

Signature: Mark Nicholls

By: Mark Nicholls

Title: VP & GM Group Sales

Date: 9/23/2020

IN AN APPROVAL CAPACITY ONLY:

State of Minnesota for MMCAP INFUSE

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

Signature: James P Losinski DocuSigned by:
0CAAB984AFAD40F... Printed: James P Losinski Date: 10/8/2020

Minnesota Commissioner of Administration

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

Signature: Sara Turnbow DocuSigned by:
694A6F1D2CF64DE... Printed: Sara Turnbow Date: 10/8/2020

[SIGNATURE PAGE]

EXHIBIT A

Vendor Contract and other Applicable Legal Documents

The following is a list of the legal documents to be referenced and to be incorporated with the terms and conditions of Exhibit C.

1. Vendor Contract MMS1900159

EXHIBIT B

Approved Facilities

Available to any agency of the State of Oklahoma approved by MMCAP Infuse; any governmental entity specified as a political subdivision of the State of Oklahoma pursuant to the Governmental Tort Claims Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the political subdivision; and entities authorized to utilize contracts awarded, adopted, or otherwise entered into by the State of Oklahoma via a multistate or multi-governmental contract.

EXHIBIT C**Language Modification of the Vendor Contract**

The following terms and conditions are entered into between Vendor and the Member and incorporate the documents identified on Exhibit A. Neither MMCAP Infuse, the State of Minnesota, nor the Membership, except for the Member (and applicable Facilities), are bound by the terms within this Exhibit.

Modification of Terms:**Additional Terms:****1. Exemption from Sales and Use Tax**

Per Oklahoma Statutes, 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, purchases under this MPA are exempt from the assessment of Oklahoma sales, use, and excise taxes. Facilities located in Oklahoma will provide Vendor with a tax exemption certificate. Any taxes of any nature whatsoever payable by the Vendor shall not be reimbursed by the Oklahoma Facility.

2. Payment

Payment will be Net thirty (30) days. Interest on late payments will be paid in accordance with 62 O.S. § 34.72.

3. Sovereign Immunity

Notwithstanding any other term or provision in this MPA, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on sovereign immunity that otherwise would be available to the State of Oklahoma under applicable law.

Any clause that conflicts with laws of the State of Oklahoma, including but not limited to the opinions of the Oklahoma Attorney General, or infringe upon the authority of the Oklahoma Attorney General shall be inapplicable to the State of Oklahoma.

4. Compliance with Applicable Oklahoma Laws

For all services provided to the State of Oklahoma under this MPA by Vendor to Facilities in the State of Oklahoma, Vendor shall comply with all applicable federal, State of Oklahoma, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- 4.1 Be registered as a business entity licensed to do business in the State of Oklahoma, have obtained a sales tax permit, and be current on franchise tax payments to the State of Oklahoma, as applicable.
- 4.2 As applicable, Vendor agrees to comply with Governor's Executive Order 2012-01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State of Oklahoma, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State of Oklahoma.

5. Oklahoma Fees and Contract Usage Report

If Vendor has sold products to Oklahoma Facilities, Contractor agrees to submit a Contract Usage Report to the State of Oklahoma on a quarterly basis. "Contract Usage Report" shall include the following: (A) the applicable state contract number; (B) report amount(s); (C) reporting period covered; and (D) the applicable state agency name(s). Continuous failure to submit Contract Usage Reports as required herein may result in termination of the MPA.

All Contract Usage Reports shall meet the following criteria:

- A. Must be submitted electronically in Microsoft Excel format.
- B. Quarterly reporting periods are as follows:
 - i. January 01 through March 31, due May 15th
 - ii. April 01 through June 30, due August 15th
 - iii. July 01 through September 30, due November 15th
 - iv. October 01 through December 31, due February 15th

All Contract Usage Reports shall be delivered to: E-mail: strategic.sourcing@omes.ok.gov

For Oklahoma Facilities, the State of Oklahoma assesses a state fee in the sum of one percent (1%) on all net sales transacted by any Oklahoma Facilities under this MPA (the "Oklahoma State Fee"). Vendor will add the following Oklahoma State Fee on top of the MMCAP Infuse contract price to all invoices, and it will be calculated on the total invoice cost. The Oklahoma State Fee shall not be reflected as a separate line item in Vendor's billing to Oklahoma Facilities. Vendor shall submit the Oklahoma State Fee on a quarterly basis. Failure to remit the Oklahoma State Fee quarterly may result in cancellation of this MPA.

Payment of the Oklahoma State Fee shall be made via company check payable to OMES within forty-five (45) calendar days from the completion of the applicable quarterly reporting period set forth above. Vendor agrees to notify OMES-Central Purchasing Procurement via the email address set forth below twenty-four (24) hours in advance of Vendor's submitting payment of the Oklahoma State Fee.

Oklahoma State Fee shall be mailed to:

Office of Management and Enterprise Services
Attention: Accounts Receivable
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, OK 73105