

**2018-2019 Seqirus Terms and Conditions for Purchases of Seasonal Influenza Vaccine Products; FLUAD® (Influenza Vaccine); AFLURIA® TRIVALENT (Influenza Vaccine), AFLURIA® QUADRIVALENT (Influenza Vaccine) and FLUCELVAX QUADRIVALENT® (Influenza Vaccine)**

- 1. Purchase, Sale and Use of Product.** These terms and conditions (hereinafter “**Terms**”) govern direct purchases only (either via the Internet or through Seqirus Customer Service) for the 2018-2019 Influenza Season of the seasonal influenza vaccines branded as FLUAD® (the “**Fluad Product**”); AFLURIA® TRIVALENT (the “**Afluria TIV Product**”); AFLURIA® QUADRIVALENT (the “**Afluria QIV Product**”) and FLUCELVAX QUADRIVALENT® (the “**Flucelvax Quadrivalent Product**”) (each a “**Product**” and collectively the “**Products**”) from Seqirus USA Inc. (“**Seqirus**”). Customers eligible to purchase Products are at the sole discretion of Seqirus. No customer may resell a Product or market, promote, administer or use a Product for the benefit of persons or entities located outside the United States or its territories, or where it ought reasonably to be aware that the ultimate destination for a Product is outside the United States (or its territories). The pricing and terms of this Agreement shall apply only to Purchasers located in the Continental U.S., Alaska and Hawaii; provided that, if a Purchaser is located in a state in which the state (or state agency) has in force or enacts, implements or modifies a law, rule or regulation (such as a state unitary pricing, anti-discount or pricing, rebate or other law intended to impact the pricing of prescription drugs or penalize Seqirus for such pricing) or interpretation thereof and which law (1) prohibits or restricts in any material way the provision of pricing, discounts or rebates described in this Agreement, (2) requires Seqirus to provide the same or similar pricing to other purchasers or users of Seqirus’ Products to which Seqirus would not normally provide such pricing or terms or (3) otherwise results in a potentially adverse impact on Seqirus, then such Purchaser shall not be eligible to purchase Seqirus Products hereunder until such law or regulation is repealed.
- 2. Product Ordering; Delivery.** Customers may order a Product by creating a direct purchase account online at [flu.seqirus.com](http://flu.seqirus.com) or by calling Seqirus’ Customer Service at (855) 358-8966. A purchase order is not required to purchase a Product hereunder. Unless specified otherwise, all Product purchased hereunder must be in multiples of ten (10) doses, and the minimum number of doses of a Product that must be purchased hereunder is ten (10) doses. Each order submitted by a customer is subject to Seqirus’ confirmation of the customer’s valid state license number and authorizations and the customer’s creditworthiness.

For Product orders confirmed by Seqirus that are placed by April 15, 2018, Seqirus will use commercially reasonable efforts to deliver, on or before September 30, 2018, or as otherwise agreed by a customer and Seqirus. Orders placed after April 15, 2018, Seqirus will use reasonable efforts to fulfill such orders as product availability allows. Seqirus will consider, but is under no obligation, to consider special shipping requests made by a customer, including, without limitation, any request to deliver Product by a specified date. Seqirus is responsible for obtaining all export and import licenses required to deliver any Product to the specified destination.

Seqirus’ obligation to deliver Product ordered by a customer is subject at all times to any superseding requirement imposed by any governmental authority, including without limitation any requirement imposed in connection with an influenza epidemic or pandemic, delays in Product lot releases, and to the condition that Seqirus is able to manufacture a sufficient supply of Product to meet the demands of all of its customers. In the event there is a shortage of any Seqirus product, Seqirus in its sole discretion shall have the right to allocate such product among its customers in such a manner as it deems appropriate. In addition, in the event that the government assumes control of Product allocation (as a result of a shortage or otherwise) or requires that specific requirements be met, then product amounts and delivery schedules may be changed to meet the government’s requirements and Seqirus will be relieved (without incurring any liability) of all obligations to supply or deliver Product ordered by any customer.

Upon ordering Product and upon confirmation of an order by Seqirus, a customer shall have committed to purchase the amount and type of Product specified therein. Seqirus will attempt to accommodate order cancellation or modification requests prior to April 15, 2018. Cancellations or modifications will not be accepted after April 15, 2018.

3. **Payment Terms and Instructions.** Customers shall be obligated to pay for Product purchased hereunder by the payment due date specified in the invoice delivered by Seqirus with respect to the purchased Product by any method described in such invoice. Customers will receive a prompt payment discount of two percent (2%) 60, net 61 off the applicable price of Product (exclusive of current federal excise taxes or other taxes levied on vaccine products) for payments received by Seqirus on or before the applicable due date. Interest will be charged on overdue amounts at a rate equal to the London Interbank Offered Rate (LIBOR) (three months), as reported in The Wall Street Journal (Eastern Edition) Money Rates column, print edition, on the business day immediately following the applicable payment due date, plus five percent (5%) per annum, or, if less, the maximum amount permitted by applicable law, until the date payment is received by Seqirus. All claims involving discounts, pricing, credits, or returns must be reported to Seqirus within one (1) year of the date of invoice for the purchase in question.
4. **Product Price.** The price per dose for each presentation of Product is set at the time of purchase in the account established by a customer and excludes surcharges for shipping (if any), where applicable, and excise or other taxes or assessments.
5. **Inspection of Product by Customers;** Customers must, within three (3) business days after delivery of Product, conduct a physical inspection of the packaged Product and notify Seqirus in writing of any issue or physical damage that is apparent from such inspection. If a customer fails to give such notice, then the customer will be conclusively presumed to have accepted the shipment and Seqirus will have no liability to the customer for any defects that could have been identified by such inspection or for any discrepancies between the shipment received and the amount of Product ordered by the customer. Any defect or damage to the Product that is not identifiable from a physical inspection will remain grounds for rejection of Product if the customer notifies Seqirus in writing within three (3) business days following discovery of the defect or damage. Upon receipt of such notice from a customer, Seqirus will conduct an investigation and if Seqirus agrees with the customer's determination, (i) Seqirus will use reasonable commercial efforts to supply replacement Product to the customer, or if no replacement Product can be supplied, Seqirus will, in its sole discretion, issue a credit note or refund to the customer for the rejected Product; and (ii) the customer must ship the defective or damaged Product in accordance with instructions provided by Seqirus. If Seqirus, in its sole discretion, determines in good faith that no defect or damage to Product exists, then the customer must accept delivery of such Product and pay the invoiced price for such Product. In the event that Seqirus determines that no defect or damage exists, then in such event Seqirus will not be deemed to be in breach of these Terms or have any further liability to the customer with respect to the alleged defect or damage.
6. **Right to Return Product;** A customer shall have the right to return to Seqirus up to twenty percent (20%) of the total number of doses of each Product ordered. All Returnable Doses shall be returned by June 30, 2019 in accordance with the instructions found at [flu.seqirus.com/returns](http://flu.seqirus.com/returns).
7. **Passage of Title; Risk of Loss.** All orders for Product are shipped F.C.A. (Incoterms, 2010) Destination. Title to Product and risk of loss of each shipment of Product will pass to the customer upon delivery to the destination designated by the customer in the customer's direct purchase account.
8. **Covenants of Customers.** By ordering any Product from Seqirus, each customer agrees that it will:
  - o comply with applicable laws and any other applicable requirements imposed by a governmental authority relating to any Product;

- as requests for information or correspondence in relation to a Product are made of a customer by a governmental authority, unless otherwise required by law, the customer shall consult with Seqirus and keep Seqirus fully apprised of all such communications
  - observe and comply with such storage, handling, stock control and operational practices and procedures of Seqirus in effect from time to time or as required by any governmental authority or applicable law;
  - observe and comply with Seqirus' adverse event and Product technical complaint reporting procedures and procedures regarding provision of medical information in effect from time to time and found at <http://www.seqirus.com/ReportingSideEffects.htm>; and
  - execute any recall or withdrawal of a Product from the market in accordance with procedures of Seqirus in effect from time to time.
  - will not initiate any orders for Product if customer, nor any individual employed by customer, is currently included in the Department of Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities or in the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs. Each customer must notify Seqirus immediately and in writing if the customer or any individual employed by it is excluded or becomes reasonably subject to exclusion from a Federal Healthcare Program as defined by 42 U.S.C. § 1320a-7b(f). If a customer or any individual employed by a customer is excluded or becomes reasonably subject to such exclusion from a Federal Healthcare Program, Seqirus will have the right to immediately terminate any outstanding order submitted by such customer and to refuse acceptance of any further orders from such customer
9. **Disclaimer of Warranties;** Except for the terms and conditions expressly set forth in these Terms and Conditions, all conditions, warranties and other terms that might have any effect between the parties or be implied or incorporated whether by statute, common law or otherwise, and whether express, implied or otherwise, are hereby excluded. Without limiting the foregoing sentence, Seqirus specifically excludes and disclaims, and Customer for itself and its Affiliates hereby expressly waives and releases, Seqirus from:
- a. any express or implied warranty as to satisfactory quality or fitness for a particular purpose with respect to Product whether used alone or in connection with other substances or materials; and
  - b. any liability with respect to any Product which:
    1. has been tampered with or in any way altered or modified after Delivery; or
    2. has been subject to misuse, negligence or accident after Delivery; or
    3. after Delivery has been stored, handled, maintained or used in a manner contrary to legal or regulatory requirements, the labeling therefor or Seqirus' instructions; or
    4. has exceeded its stated expiry date;

and the warranty set forth in Section 15 shall not apply to any such Product.

10. **Withdrawal of Product Approval;** Seqirus will promptly notify customers in writing of any withdrawal of a Product's United States Food and Drug Administration approval or of a Product's material noncompliance with United States Food and Drug Administration standards. At the request of Seqirus, customer agrees to return to Seqirus, at Seqirus' sole cost and expense, any allegedly defective Product owing to the withdrawal of a Product's approval or a determination of material non-compliance by Seqirus or a governmental authority

11. **Modification of Product.** Subject to compliance with applicable laws and regulations, Seqirus may, in its sole discretion, at any time and from time to time, modify a Product as it deems appropriate or necessary or as may be required by any governmental authority, including changes in design, production or packaging of a Product or withdrawal of a Product in response to a governmental authority action, without liability to customers of any kind.
12. **Limitations on Use of Intellectual Property.** Customers may not: (a) make any modification to a Product or its packaging; (b) alter, obscure, remove or tamper with any trademarks, markings, numbers, labels, indication of the source of origin, or other means of identification used on, or in relation to, a Product; (c) use a Product trademark in any way which might materially prejudice its distinctiveness or validity or the goodwill of Seqirus therein; (d) use any trademarks other than those set forth herein in relation to Product; (e) use or make any application for registration in the United States of any trademarks or trade names so resembling any trademark or trade name of Seqirus as to be likely to cause confusion or deception; (f) shall not use Product trademarks for any purpose other than as expressly necessary to exercise their rights and perform their obligations under these Terms; and (g) ensure that each reference to and use of a Product trademark is accompanied by an acknowledgement that the same is a registered trademark of Seqirus.

Customers will not acquire any rights in respect of any intellectual property of Seqirus (including any Product trademarks) or of the goodwill associated therein and all such rights and goodwill are, and will at all times remain, vested in Seqirus. Other than as is set forth in these Terms, no license, express or implied, is granted to customers by Seqirus under any intellectual property rights, including those of Seqirus' affiliates.

13. **Confidential Information.** By ordering a Product, each customer agrees that any and all information it obtains regarding Seqirus in connection with a purchase of such Product, including pricing information and all other contract information, is confidential information of Seqirus. Each customer's obligations under this Section will remain in effect for a period of three (3) years from the date that the last order was submitted by such customer under these Terms. By ordering a Product, each customer (a) agrees that it will not disclose Seqirus' confidential information to any third party without the prior written consent of Seqirus (except as required to comply with law or court order); (b) may disclose Seqirus' confidential information to its employees and/or independent contractors only to the extent that such employees and/or independent contractors are reasonably required by their duties to have knowledge of such confidential information, and provided that such employees and/or independent contractors are contractually obligated to hold such confidential information in confidence and to otherwise comply with these Terms; (c) agrees that it will not hold Seqirus or its employees liable for any errors or omissions in Seqirus' confidential information; and (d) agrees to use reasonable care to safeguard Seqirus' or its affiliates' confidential information and make no misuse of such confidential information. By ordering a Product, each customer acknowledges that any and all confidential information disclosed by Seqirus to such customer is and will remain the property of Seqirus. Seqirus makes no representation or warranty, express or implied, as to the accuracy and completeness of its confidential information. By ordering a Product, each customer agrees to return any Seqirus' confidential information promptly upon written request and to retain no copies or excerpts of such confidential information.
14. **Force Majeure.** Seqirus shall not be liable for delays in shipment, reductions of shipment amounts or default in delivery for any cause beyond its reasonable control including, but not limited to (a) an actual or potential national shortage of any product(s); (b) actions by federal, state or local governmental agencies, units, bodies, or officials relating to an actual or potential national shortage of any product(s), including but not limited to orders, guidelines, recommendations, or requests to limit, alter or change product sales or distribution or to limit the persons who should be vaccinated; (c) government action (to the extent such action is not covered by the preceding subparagraph), public health emergencies, influenza pandemic, war, riots, civil commotion, embargoes, acts of terrorism or martial laws; (d) Seqirus' inability to obtain

necessary materials from its usual sources of supply; (e) shortage of labor, raw material, production or transportation facilities, or other delays in transit; (f) labor difficulty involving employees of Seqirus or others; (g) fire, flood or other casualty; or (h) other contingencies of manufacture or shipment. In the event of any delay in Seqirus' performance due in whole or in part to any cause beyond its reasonable control, Seqirus shall have such additional time for performance as may be reasonably necessary under the circumstances. If by reason of any such force majeure event, the quantities of any product(s), or any other materials used in the production thereof, reasonably available to Seqirus shall be less than its total needs to fulfill orders or reservations for product(s), Seqirus may allocate its available supply of any such product(s) among its existing or prospective buyers and/or its affiliates in such manner as Seqirus deems proper, without thereby incurring liability for failure to perform under any applicable agreement..

15. **Warranties of Seqirus.** Seqirus warrants that:

- a. Product Delivered shall, at the time of Delivery, materially conform to the applicable specification;
- b. at the time of Delivery, the Product will not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, all applicable regulations thereunder, or within the meaning of any Applicable Law within which the definitions of "adulteration" or "misbranding" are substantially the same as those contained in the Federal Food, Drug and Cosmetic Act, as such Act and such Applicable Laws are constituted and effective at the time of Delivery, nor will the Product be an article which may not, under the provisions of such Act, or of the Public Health Service Act, as amended, be introduced into interstate commerce;
- c. Seqirus' quality control procedures applicable to Product shall have been materially carried out prior to Delivery of Product;
- d. Product shall be at Seqirus' risk during shipment and shall therefore be Delivered in sellable condition; and upon Delivery to the Destination, title to Product will pass to Distributor free and clear of all third party liens, claims, security interests, or other encumbrances.

**THIS SECTION SETS FORTH SEQIRUS' SOLE AND LIMITED WARRANTIES WITH RESPECT TO PRODUCT SUPPLIED TO CUSTOMERS. TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT AS UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN THIS SECTION, SEQIRUS SPECIFICALLY DISCLAIMS, AND, BY ORDERING A PRODUCT, EACH CUSTOMER IS EXPRESSLY WAIVING AND RELEASING SEQIRUS FROM ALL OTHER WARRANTIES, CONDITIONS AND TERMS REGARDING OR RELATING TO A PRODUCT (WHETHER USED ALONE OR WITH OTHER SUBSTANCES OR MATERIALS) THAT MAY HAVE BEEN PROVIDED TO A CUSTOMER OR OTHERWISE THAT MIGHT HAVE EFFECT BETWEEN A CUSTOMER AND SEQIRUS OR BE IMPLIED INTO THESE TERMS, A PRODUCT ORDER, OR ANY OTHER COLLATERAL CONTRACT, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE AND WHETHER EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES, CONDITIONS OR TERMS OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SEQIRUS WILL NOT BE LIABLE TO ANY CUSTOMER, AND, BY ORDERING PRODUCT, EACH CUSTOMER IS EXPRESSLY WAIVING AND RELEASING SEQIRUS FROM ANY LIABILITY, WITH RESPECT TO A PRODUCT (AN "UNCOVERED PRODUCT") THAT (A) HAS BEEN TAMPERED WITH OR IN ANY WAY ALTERED OR MODIFIED AFTER DELIVERY TO THE CUSTOMER'S DESIGNATED DESTINATION; (B) HAS BEEN SUBJECT TO MISUSE, NEGLIGENCE OR ACCIDENT AFTER DELIVERY TO THE CUSTOMER'S DESIGNATED DESTINATION; (C) HAS BEEN STORED, HANDLED, MAINTAINED, ADMINISTERED OR USED IN A MANNER CONTRARY TO REGULATORY REQUIREMENTS, THE LABELING OF A PRODUCT OR SEQIRUS' INSTRUCTIONS, OR OTHERWISE NOT AS ORIGINALLY INTENDED, AFTER DELIVERY TO THE CUSTOMER'S**

**DESIGNATED DESTINATION; OR (D) HAS PASSED ITS EXPIRATION DATE. THE WARRANTIES CONTAINED IN SECTION 15 HEREIN WILL NOT APPLY TO ANY SUCH UNCOVERED PRODUCT.**

- 16. LIMITATION ON DAMAGES.** Claims for loss, shortage, breakage, leakage, or other damage occurring in transit must be submitted to Seqirus within three (3) business days from date of invoice, for replacement or credit of affected Product. The sole and exclusive remedy of Customer is Seqirus credit or replacement, as applicable, of affected product(s). Loss, shortage, breakage, leakage, or other damage claims must also be accompanied by freight bill with notation by the common carrier of the loss, shortage, breakage, or damage, or accompanied by the carrier's concealed loss or damage report where the loss is of a concealed nature. Where loss, shortage, breakage, leakage, or other damage has occurred in transit, Customer agrees to cooperate fully with Seqirus in Seqirus' effort to establish a claim against the transportation company. Claims submitted without appropriate documentation will be denied.

**TO THE MAXIMUM EXTENT ALLOWED BY LAW, IN NO EVENT WILL SEQIRUS BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR OTHER DAMAGES RELATING TO LOSS OF USE, INCOME OR PROFIT, OR LOSS OR DAMAGE TO PERSON OR PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE MARKETING, SALE OR USE OF A PRODUCT, INCLUDING DAMAGES RESULTING FROM ANY NEGLIGENCE OR BREACH OF ANY OBLIGATION IMPOSED ON ANY CUSTOMER.**

- 17. Indemnification by Customers.** By ordering a Product, each customer agrees to indemnify, defend and hold harmless Seqirus and Seqirus' directors, officers, employees and agents from and against any and all Damages directly arising out of (a) any infringement by such customer of any intellectual property rights of Seqirus or third parties; (b) any material breach of any representation or warranty of such customer made in these Terms or any material default by such customer hereunder or under any order submitted by such customer; and (c) any action by such customer, its directors, officers, employees or agents with respect to any Product resulting in such Product becoming an Uncovered Product.
- 18. Survival of Indemnification Obligations.** The indemnification obligations pursuant to Section 17, with respect to a customer ordering a Product hereunder, will survive for a period of three (3) years following the date on which the last order for a Product is submitted by such customer under these Terms.
- 19. Insurance.** Each customer ordering a Product from Seqirus must maintain, for not less than three (3) years from the date of the last order submitted by such customer hereunder, such type(s) and amount(s) of insurance coverage that is normal and customary for persons or entities similarly situated insuring the customer against any liabilities arising under the foregoing indemnities as are reasonably insurable. Each customer ordering a Product from Seqirus must at all times be in compliance with all insurance requirements of any governmental authority and applicable law.
- 20. Notice.** All notices, requests, demands and other communications which are required or may be given hereunder must be in written or electronic form, and will be deemed delivered (a) on the date of delivery when (i) delivered by hand or (ii) sent by reputable overnight courier maintaining records of receipt and (b) on the date of transmission when sent by facsimile or other electronic transmission during normal business hours with confirmation of transmission by the transmitting equipment (if confirmed by delivery in a method described in clause (a) within two (2) business days after its delivery by facsimile or other electronic transmission). All such communications by Seqirus to a customer will be to the contact person listed at the "Ship To" address in the direct purchase account established by such customer. All such communications by a customer to Seqirus must be sent to the attention of the Customer Service Dept., Seqirus USA Inc., 25 DeForest Avenue, Suite 200, Summit, NJ 07901 or [customerservice.us@seqirus.com](mailto:customerservice.us@seqirus.com).
- 21. Governing Law.** These Terms are governed by and construed in accordance with the substantive laws of the State of Delaware without regard to its conflict of laws provisions or any

choice of law rule or principle that might otherwise require or permit the application of the laws of another jurisdiction. Each party irrevocably submits to the exclusive jurisdiction of the Delaware Superior Court or the Delaware Court of Chancery, each located in New Castle County, Delaware and, if removed, to any federal courts sitting in the City of Wilmington, Delaware, and waives any rights it may have to jury trial with respect to any action or proceeding arising out of or relating to these Terms or any purchase of Product.

22. **Entire Agreement.** Unless otherwise agreed between a customer and Seqirus, these Terms and each order for a Product submitted by a customer contain all the terms and conditions which Seqirus and such customer have agreed to in relation to the purchase of a Product. By submitting an order for a Product, each customer agrees that it is not relying on, and will have no remedy in respect of, any statement, representation, warranty, collateral contract or other assurance (whether negligently or innocently made) of any person or entity other than those expressly set out as a warranty in these Terms and the applicable order, and that, except as otherwise provided herein, the only remedy available to it for breach of the warranties set forth herein is for breach of contract under these Terms.
23. **Non-Assignment.** Customers may not assign or delegate these Terms or any of the rights or duties arising hereunder without the prior written consent of Seqirus and any attempt to so assign or delegate will be void and of no effect. Seqirus may, without the prior written consent of a customer, assign or delegate these Terms, together with any applicable order, and its rights and obligations hereunder and thereunder. Seqirus may perform any and all obligations under these Terms and all applicable orders through any Seqirus affiliate or a third party contractor.
24. **Modification to the Terms.** These Terms may not be supplemented, deleted, modified, amended or otherwise changed with respect to a customer's purchase of a Product made prior to the effective date of such change except by mutual written agreement of Seqirus and such customer. Seqirus may supplement, delete, modify, amend or otherwise change these Terms from time to time in its sole discretion with respect to purchases of a Product made after the effective date of such change.
25. **Severability.** In the event that any one or more of these Terms is held invalid, illegal, or unenforceable, such provision or provisions shall be severed and the remaining Terms shall remain binding and effective.