

## 'BIRTH DAY' PRIZE

### MSD RULES OF CONTEST

The "Birth Day" Prize is an initiative of the European Commission (EC or the Commission). Merck Sharp & Dohme Corp., a subsidiary of Merck & Co., Inc., Kenilworth, NJ USA (MSD or Company), has committed to grant a financial award (the Prize) to a recipient selected by the Commission as the third ranked winner of the Birth Day Prize (the Recipient).

The Prize will be awarded pursuant and subject to the Commission's Rules of Contest (the EC Rules of Contest), which are set forth in Attachment 1 and incorporated herein by reference, and the following terms and conditions (the MSD Rules of Contest). In the event of a conflict between a term or condition set forth in the EC Rules of Contest and the MSD Rules of Contest, the relevant term or condition of the MSD Rules of Contest shall govern.

#### **TERMS AND CONDITIONS**

##### **1. Statement of Purpose**

- (a) The purpose of the "Birth Day" Prize is to develop novel solutions to improve the quality and outcomes of facility-based deliveries, which might be of a clinical, technological or managerial nature, or a combination of these. As provided in the EC Rules of Contest, the Birth Day Prize is organized as a contest with qualified candidates (each a Candidate) invited to submit solutions (each a Candidate Solution) from which a winning solution may be selected by the Commission qualifying the relevant Candidate to be awarded the Prize (the Prize Solution).
- (b) The Prize is being funded through the Company's *Merck for Mothers* Program, consistent with its stated objective of addressing the problem of maternal mortality. The Prize shall be in the form of a financial award payable to Recipient.
- (c) The Prize is not intended to influence regulatory, formulary, pricing or reimbursement decisions or to induce or reward the referral recommendation, utilization, purchase, dispensing or prescribing of the Company's products. The Prize is not earmarked by Company for any individual public official or government employee and is not intended as a gift or other benefit from the Company to any public official, government employee or healthcare professional.
- (d) Recipient shall certify that it would not be prohibited, if selected as the Recipient, from accepting the Prize by Recipient's internal policies, professional standards or professional ethics.

##### **2. Funding and Payment**

- (a) The Prize is in the amount of 500,000 EUR and will be awarded by Company to the Recipient. The Prize represents the Company's exclusive and complete financial commitment and obligation of any kind in respect to the Prize, the Prize Solution, Candidate Solution, or the Birth Day Prize.

- (b) Payment of the Prize will be made by Company within thirty (30) business days following (i) the public announcement of the Recipient by or on behalf of the Commission, (ii) Recipient's acceptance in writing of these MSD Rules of Contest, (iii) Recipient's provision to Company of such other information, representation and warranties as is necessary to comply with the requirements of these MSD Rules of Contest, including the information described in Section 5, below, and (iii) sufficient bank account validation and other bank-related information needed to complete payment of the Prize to Recipient.
- (c) All fees, expenses, costs and any other financial or non-financial obligation incurred in respect to (i) a Candidate Solution and (ii) the Prize Solution, are and shall be the sole responsibility of each Candidate and the Recipient, respectively.
- (d) Recipient is solely responsible for the payment of any and all national, state, local or other governmental taxes, duties, levies, fees, excises, penalties, tariffs or other governmental or non-governmental obligations of any kind owed by Recipient arising as a result of or in connection with payment or receipt of the Prize.

**3. Disclosure of Financial Relationships** In any brochures, syllabi, and other Prize Solution materials, Recipient will ensure meaningful disclosure of (a) funding from the Company, and in particular from the Company's *Merck for Mothers* Program (e.g., "This project was supported by an award from Merck through its Merck for Mothers Program"), (b) any other significant relationship between Recipient and the Company. If a conflict of interest is identified, Recipient will resolve the conflict consistent with applicable standards, guidelines, codes, laws, regulations and orders. Company reserves the right to publicly disclose, at any time, the details of the Prize and the Prize Solution.

#### **4. Compliance with Governmental and Regulatory Policies**

- (a) Each Candidate agrees to abide by standards, guidelines, codes, laws, regulations and orders regarding industry-supported educational activities (including, as applicable, the U.S. Food & Drug Administration's policy on industry-supported scientific and educational activities) that may be applicable to a Candidate Solution.
- (b) Recipient agrees that the Prize will not be used for any meals, gifts, or other items (collectively, "gifts") inconsistent with applicable standards, guidelines, codes, laws, regulations and orders (e.g., as applicable, the American Medical Association Guidelines (Ethical Opinion 8.061) or equivalent medical ethical codes in the Project location) concerning provision of gifts to physicians, or applicable voluntary or self-regulatory codes (e.g., the IFPMA Code of Practice or local industry codes in the Project location).
- (c) In addition, Recipient agrees that any gatherings supported by the Prize will not be held in a lavish or extravagant location or venue (e.g., luxury resorts, spas or destination tourist attractions).

#### **5. Reporting**

Recipient agrees to provide Company with information that Company reasonably needs in order to fulfill its reporting obligations under any applicable law, including without limitation the information

described in regulations promulgated under the federal Physician Payment Sunshine Act, codified at 42 C.F.R. Part 403. Recipient will report this information in writing to Company within seven (7) business days of Company's written request. Company will provide to Recipient a Reporting Template setting forth the categories and form of information to be reported to Company.

## **6. Ethical Business Practices**

- (a) Each Candidate acknowledges that Company's corporate policy requires that its business be conducted within the letter and spirit of the law. Each Candidate agrees to undertake the design, development, and implementation of a Candidate Solution and, if selected as the Recipient, to utilize the Prize in a manner, which is consistent with any laws to which Recipient may be subject and good business ethics. Recipient confirms that no payment, either directly or indirectly, of money or other assets, including but not limited to Prize funds will be used to make payments or gifts, aimed at improperly influencing decisions or actions with respect to the Prize Solution or Company's or its Affiliates' specific business interests, to government officials or political party officials, candidates for public office or representatives of other businesses or persons acting on behalf of the foregoing. As used herein, Affiliate shall mean any entity directly or indirectly controlled by, controlling, or under common control with, a Party. For purposes of this definition, "control" means beneficial ownership of at least fifty percent (50%) of the voting securities or other ownership or general partnership interest or other comparable equity interests in an entity.
- (b) Each Candidate acknowledges that no employee of Company or its Affiliates shall have authority to give any direction, either written or oral, relating to the making of any commitment by a Candidate to any third party in violation of the terms of this or any other section of these MSD Rules of Contest.
- (c) In any and all agreements, which a Candidate enters into with contractors in connection with a Candidate Solution, Candidate shall inform the other contracting party of its obligations under applicable U.S. Federal and foreign anti-bribery/anti-corruption laws, including the U.S. Foreign Corrupt Practices Act. Each Candidate agrees that it will exercise appropriate diligence prior to entering any agreement with any contractor to ensure that payments made under such agreement will not violate the U.S. Foreign Corrupt Practices Act. Without in any way limiting the foregoing, (i) no officer or employee of Recipient shall make any illegal payment of any type utilizing the Prize; and (ii) each Candidate shall comply with all applicable laws to which a Candidate may be subject with respect to a Candidate Solution and performance of its obligations under these MSD Rules of Contest.

## **7. Organizational Status and Conflict of Interest**

- (a) Recipient shall represent and warrant that it is duly organized and validly operating under all laws to which it is subject.
- (b) Recipient shall further represent and warrant that Company funds provided hereunder will be used only for the purposes set forth herein and, further, that, as applicable, no individual employed by or associated with Recipient, including without limitation any member of Recipient's executive leadership, officers, board of directors or their spouses or children

(collectively, "Recipient Leadership") is intended to benefit personally, whether directly or indirectly, from the Prize.

- (c) Recipient shall further represents and warrants that neither Recipient nor, as applicable, any member of Recipient Leadership is employed or engaged, whether paid or unpaid, in any of the following capacities: as officials, officers, agents, or representatives of any foreign (non-U.S.) government body, agency or instrumentality (including, as applicable, political party, reimbursement committee, pricing committee, drug approval committee, formulary or similar committee); or in any other position with a foreign government or public international organization, as that term is used in the U.S. Foreign Corrupt Practices Act (e.g., the World Health Organization, UNICEF or UNFPA).

**8. Excluded Entities** Recipient shall represent and warrant that prior to the date of receiving the Prize, it has screened itself, and, as applicable, its officers and directors against the Exclusion Lists and that it has informed Company whether it, or, as applicable, any of its officers or directors, has been in violation. Company shall also have the right, in its sole discretion, to terminate this Agreement immediately in the event of any such violation. The term violation shall mean that either Recipient, or any of its officers or directors has been: (i) convicted of any of the felonies identified among the exclusion authorities listed on the U.S. Department of Health and Human Services, Office of Inspector General (OIG) website, including 42 U.S.C. 1320a-7(a) (<https://oig.hhs.gov/exclusions/authorities.asp>); (ii) identified in the OIG List of Excluded Individuals/Entities (LEIE) database (<https://oig.hhs.gov/exclusions/index.asp>) or the U.S. General Services Administration's list of Parties Excluded from Federal Programs (<http://www.sam.gov>); or (iii) listed by any U.S. Federal agency as being suspended, debarred, excluded, or otherwise ineligible to participate in Federal procurement or non-procurement programs, including under 21 U.S.C. 335a ([http://www.fda.gov/ora/compliance\\_ref/debar/](http://www.fda.gov/ora/compliance_ref/debar/)) (each of (i), (ii) and (iii) collectively the "Exclusions Lists").

**9. Denied Parties** Recipient shall represent and warrant that neither Recipient nor, as applicable, any of its officers or directors are listed on any of the U.S. or EU denied parties lists, including without limitation the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons (the "SDN List") (<http://www.treasury.gov/ofac/downloads/t11sdn.pdf>), the U.S. Commerce Department's Denied Persons List (<http://www.bis.doc.gov/dpl/thedeniallist.asp>) and Entity List (<http://www.bis.doc.gov/entities/default.htm>), and the Consolidated List of Persons, Groups and Entities Subject to EU Financial Sanctions ([http://ec.europa.eu/external\\_relations/cfsp/sanctions/list/version4/global/e\\_ctlview.html](http://ec.europa.eu/external_relations/cfsp/sanctions/list/version4/global/e_ctlview.html)), or are owned by fifty percent (50%) or more by a person listed on the SDN List.

**10. Control of or Involvement in Prize Solution Content; Use and Limitations of Data; Ancillary Promotional Activities** Each Candidate is solely responsible for the design, development, implementation and control of the Candidate Solution and any related content and Company agrees that it will not be involved in such activities or content, including Candidate's selection of organizations/individuals with whom Candidate will work on the Prize Solution; there will be no "scripting", emphasis, or direction of Candidate Solution content by the Company or its agents. Each Candidate will make every effort to ensure (a) to the extent possible, meaningful disclosure of limitations on data, e.g., ongoing research, interim analyses, preliminary data, or unsupported opinion, (b) that presenters disclose when a product is not approved for the use under discussion, (c) as appropriate, each Candidate will ensure meaningful opportunities for questioning or scientific debate,

and (d) that any data regarding Company's products (or competing products) are accurate, objectively selected and presented, with favorable and unfavorable information and balanced discussion of prevailing information on the product(s) and/or alternative treatments. Each Candidate will restrict promotional activities, including product advertisements, in connection with Candidate Solution materials or presentations to ensure independence of the Candidate Solution from Company support.

**11. Independence of Recipient from Promotional Activities** Recipient shall warrant that the Recipient, and, as applicable, its subsidiaries, divisions, agents or subcontractors has not performed work for Company in the last twelve months on product promotion or market research activities in the same disease category as the subject of the Prize Solution.

## **12. Independence from Formulary Decision Making, and Prescribing**

- (a) Recipient shall represent and warrant that it is not involved in and does not influence decisions regarding the formulary status of or the purchase, prescribing or recommendation of pharmaceutical products by any U.S. healthcare provider.
- (b) Recipient shall further represent and warrant that neither Recipient nor, as applicable, any member of Recipient's Board of Directors, or its officers or management, is (i) a practicing physician involved in the purchase, prescribing or recommendation of pharmaceutical products by or on behalf of any U.S. healthcare provider, or (ii) a member of a pharmacy and therapeutic committee or otherwise has direct responsibility for or influence in respect to any U.S. healthcare provider. Recipient shall further represent and warrant that the funds provided pursuant to this Agreement shall not be used to influence any decisions Recipient or any affiliate makes regarding the procurement of pharmaceutical products.

**13. Right of Non-Award** Company reserves the right not to award the Prize if (i) it determines, in the exercise of its sole and absolute discretion, that the Recipient is not, or is unable to be, in compliance with any conditions, representations, warranties or terms of these MSD Rules of Contest, or (ii) a Recipient is not announced by or on behalf of the Commission on or before December 31, 2017.

## **14. Responsibility**

- (a) Each Candidate agrees that except for the provision of the Prize funds to Recipient in accordance with these MSD Rules of Contest, Company shall incur no responsibility or liability in respect of the Prize Solution or a Candidate Solution (including for example, for failure to obtain all consents, authorizations, approvals, and releases, which may be necessary for undertaking the Prize Solution or a Candidate Solution and of any written materials prepared in connection therewith).
- (b) Each Candidate represents and warrants that all activities undertaken by such Candidate in connection with a Candidate Solution shall be performed in compliance with all applicable laws, regulations, rules and licensing requirements, including, but not limited to, those pertaining to patient consent, authorization, and testing; telephone, facsimile, and electronic mail privacy; Internet privacy; security and data protection; and the privacy and prohibited use of medical records, prescription information, and individually identifiable health information.

- (c) Each Candidate is solely responsible for any claims, actions, or demands that may arise in any manner out of a Candidate Solution, including a Candidate's failure to secure necessary consents, authorizations, approvals or releases or to otherwise comply with the foregoing, and agrees to indemnify Company, its officers, directors, agents, employees, its parent corporation, subsidiaries and affiliates with respect to any such claims, actions, or demands, including for reasonable attorneys' fees arising from them.

**15. Notices** All notices or other communications pursuant to these MSD Rules of Contest shall be in writing and shall be delivered personally, by overnight messenger, by confirmed facsimile transmission, or via email, as follows:

if to Recipient,  
at the address provided by the Commission,

if to Company, to  
Scott C. Higgins  
Director of Operations, *Merck for Mothers*  
Merck & Co., Inc.  
2000 Galloping Hill Road, K1-3181  
Kenilworth, NJ USA 07033  
scott.higgins@merck.com

With copies to  
Office of General Counsel  
Merck & Co., Inc.  
2000 Galloping Hill Road, K1-3181  
Kenilworth, NJ USA 07033

**Attachment 1**

**EC Rules of Contest**