



ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: DIAMOND DRUGS, INC. 645 KOLTER DRIVE INDIANA, PENNSYLVANIA 15701	DATE ISSUED: 3/2/2023
	CONTRACT NO: 23-SRF-R-531
	CONTRACT TITLE: INMATE PHARMACY SERVICES

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 23-SRF-R-531, including any attachments or amendments thereto.

EFFECTIVE DATE:

EXPIRES: AUGUST 31, 2024

RENEWALS: THREE (3) ADDITIONAL YEARS IN INCREMENTS DETERMINED BY MMCAP INFUSE

COMMODITY CODE(S): 94872

LIVING WAGE: N

ATTACHMENTS:

AGREEMENT No. 23-SRF-R-531

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: COURTNEY ADAMS

VENDOR TEL. NO.: (724) 349-1111 X1036

EMAIL ADDRESS: CADAMS@DIAMONDPHARMACY.COM

COUNTY CONTACT: ANGELA SOUDER, SRF

COUNTY TEL. NO.: (703) 228-7263

COUNTY CONTACT EMAIL: ASOUDER@ARLINGTONVA.US

PURCHASING DIVISION AUTHORIZATION

Kaylin Schreiber Title: Procurement Officer Date: 2/1/2023



**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

RIDER AGREEMENT NO. 23-SRF-R-531

THIS AGREEMENT (hereinafter "Agreement") is made on 3/2/2023, between Diamond Drugs, Inc. ("Contractor"), a Pennsylvania corporation with a place of business at 645 Kolter Drive, Indiana, Pennsylvania 15701, authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement and Exhibit A – State of Minnesota MMCAP Infuse, Office of State Procurement (MMCAP Infuse) Agreement # MMS220730, together with any exhibits and amendments issued or applicable thereto (collectively, "Contract Documents" or "Contract"). This Agreement rides a contract awarded to the Contractor by MMCAP Infuse and extended by the Contractor to the County on the same terms and conditions as the Contractor's agreement with MMCAP Infuse. Where the terms of this Agreement vary from the terms and conditions of the other Contract Documents, the terms and conditions of this Agreement shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

2. CONTRACT TERM

The Contractor's provision of goods and services for the County ("Work") shall commence upon the execution of the Agreement by the County", and shall be completed no later than August 31, 2024 ("Contract Term"), subject to any modifications as provided for in the Contract Documents regarding the Contract Term. No aspect of the Work shall be deemed complete until it is accepted by the County's Project Officer.

Upon satisfactory performance by the Contractor, if MMCAP Infuse renews their agreement identified in Exhibit A, the County may elect to renew this Agreement under the same contract terms for three (3) additional years in increments determined by MMCAP Infuse ("Subsequent Contract Term"). However, if MMCAP Infuse does NOT renew their agreement identified in Exhibit A, this Agreement shall automatically expire on the contract expiration date.

3. PAYMENT

Payment will be made by the County to the Contractor within thirty (30) days after receipt by the County Project Officer of an invoice detailing the Work provided by the Contractor and accepted by the County. All payments will be made from the County to the Contractor via ACH. Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee. The Project Officer will either approve the invoice or require corrections. The number of the County Purchase Order pursuant to which authority goods or services have been performed or delivered shall appear on all invoices.

4. SCOPE OF WORK

The Contractor agrees to perform the goods and/or services described in the Contract Documents (hereinafter “the Work”). The primary purpose of the Work is to furnish inmate pharmacy services.

The Contract Documents set forth the minimum Work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor’s responsibility, at the Contractor’s sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor’s responsibility to manage the details and execution of the Work.

5. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer (“Project Officer”) who shall be appointed by the Director of the Arlington County department or agency which seeks to obtain the Work pursuant to this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work pursuant to the Contract Documents.

6. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction. A Purchase Order must indicate that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

7. NON-APPROPRIATION

All funds for payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia. In the event of non-appropriation of funds by the County Board of Arlington County, Virginia for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Contract beyond the date of termination specified in the County’s written notice.

8. COVID-19 VACCINATION POLICY FOR CONTRACTORS

Due to the ongoing COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety, and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. To protect the County's workforce and the public at large, all employees and subcontractors of the Contractor who are assigned to this Contract, should be fully vaccinated against COVID-19. Any contractor employee or subcontractor who is not fully vaccinated should be following a weekly testing protocol as established by the Contractor, unless exempt pursuant to a valid reasonable accommodation under state or federal law.

9. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its Work pursuant to this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

10. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

TO THE CONTRACTOR:

Courtney Adams
Diamond Drugs, Inc.
645 Kolter Drive
Indiana, Pennsylvania 15701
Phone: (724) 349-1111 x1036
Email: cadams@diamondpharmacy.com

TO THE COUNTY:

Angela Souder, Project Officer
Arlington County, Virginia
1425 Courthouse Road, Suite 9100
Arlington, Virginia 22201
Phone: (703) 228-7263
Email: asouder@arlingtonva.us

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB
Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294

Email: slewis1@arlingtonva.us

TO COUNTY MANAGER’S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

11. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 (“Licenses”) of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail business@arlingtonva.us.

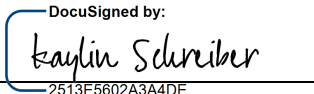
12. COUNTERPARTS

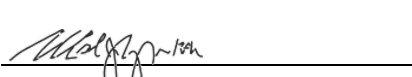
This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

DIAMOND DRUGS, INC.

AUTHORIZED SIGNATURE: 

AUTHORIZED SIGNATURE: 

NAME: Kaylin Schreiber

NAME: Mark J. Zilner

TITLE: Procurement Officer

TITLE: President & CEO, Owner

DATE: 3/2/2023

DATE: 2/10/2023



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

Diamond Drugs, Inc.

MMCAP Infuse Agreement #: MMS2200730

Prepared on December 2, 2022

Notice to Members: Members may only select one Pharmacy Service Provider.

PREFIX A
Definitions and Acronyms

Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** Means three percent (3%) of the Dispensing Fees, medical supplies, and durable medical equipment; billed Services are one percent (1%); each Product and installation relating to EnviroClean (**Attachment A-4**) and monthly subscription Services for Sapphire Health, LLC's EHR are three percent (3%). Application is described on *Paragraph 9.1*.
2. **Actual Acquisition Cost (AAC):** AAC is defined as Vendor's direct upfront wholesaler medication cost at the time of dispensing.
3. **Average Daily Population (ADP):** ADP is calculated by calculating the sum of each day's actual census for the Member's collective Facility population over a calendar month, and then dividing the sum by the number of calendar days in the respective calendar month.
4. **Change Order:** The document that memorializes the specific additional Services a Member has arranged with the Vendor.
5. **Class of Trade:** Vendor's class of trade includes adult and juvenile correctional institutions, long-term care facilities, and assisted living facilities. Vendor reserves the sole right to limit Members' classes of trade for full pharmacy services. Vendor is also offering Members additional services to include air purification systems and a correctional specific electronic health record software package, See **Attachment A-1**. These additional services are open to all Members.
6. **Contract(ed) Items:**
 - A. **Products:** Means all medication and other healthcare products offered by the Vendor in this Agreement through its sourcing.
 - B. **Services:** Means the services that the Vendor is offering a Member as part of a Dispensing Fee or an additional elected cost in accordance to this Agreement.
7. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
8. **Dispensing Fee:** The fee the Vendor collects for the issuance and deliverance of a prescription to a Member based on the terms of this Agreement and pricing on **Attachment A-1**.
9. **Facility:** The applicable site/location/building of the Member that houses a group of patients the Vendor is serving; a Member may have multiple Facilities per arrangement.
10. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
11. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
12. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
13. **Onboarding Date:** Means the Vendor must allow new Members to access to the Agreement within seven (7) days of notice by MMCAP Infuse.
14. **Onboarding Forms:** Reserved for future use.
15. **Order Form:** Means the document or electronic platform Member utilizes to obtain Products.
16. **Pricing:** Means the price that the Vendor has agreed to provide the Contracted Items to MMCAP Infuse and its Membership as set forth on **Attachment A** and any subsequent amendment to this Agreement as mutually agreed upon by Vendor and MMCAP Infuse.
17. **Primary Account Representative:** Jason Baker, Business Development Executive, jason.baker@diamondpharmacy.com, 850-865-7799.
18. **State:** Means one of the recognized fifty (50) states of the United States of America.
19. **Working Hours:** Means 8:00AM to 6:00PM Eastern, Monday through Friday; 8:00AM to 4:00PM Eastern on Saturday.
 - A. **After Hours** Means from 6:01 PM Eastern to 7:59 AM Eastern the following business day and from 4:01 PM Saturday through 7:59 AM the following Monday.
 - B. **Holidays:** New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas.

AGREEMENT FOR MMCAP INFUSE NO. MMS2200730

THIS Agreement (“**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 Diamond Drugs, Inc., a corporation with a headquarter address of 645 Kolter Drive, Indiana, PA 15701 (“**Vendor**”).

Agreement Term:

1. **Effective Date:** December 15, 2022, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** August 31, 2024.
3. The Agreement 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:** Pricing
 - A. **Attachment A-1:** Dispensing Pricing
 - B. **Attachment A-2:** Labor Pricing
 - C. **Attachment A-3:** Support Pricing
 - D. **Attachment A-4:** Equipment Pricing
3. **Attachment B:** Required Member Onboarding Forms – Reserved
4. **Attachment C:** Required Reporting
5. **Attachment D:** 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.
- 1.2 **Price Changes.** Vendor must hold Pricing under this Agreement firm for one (1) year from the Effective Date. Parties understand the medication AAC will fluctuate during the term of the Agreement. The terms of the Dispensing Fee for Vendor’s incumbent customers are stated below (*Paragraph 1.3*).
- 1.3 **Dispensing Fee.** Vendor’s Dispensing Fee and return processing fee will automatically increase by three percent (3%) every year on the anniversary date of the Effective Date
 - A. **Patient vs. Stock.**
 - i. **Patient Prescription.** The Dispensing Fee for a patient-specific prescription is calculated per prescription up to a 30-day supply per dispensing without regard to number of doses in the order. For clarity, a thirty (30) day prescription of 90 tablets will be dispensed in 3x30-count blister cards and charged one (1) Dispensing Fee for the prescription.
 - ii. **Stock Order.** The Dispensing Fee for stock orders will be on a per piece basis. For clarity, the issuance of 3x30-count blister cards would be assessed a Dispensing Fee for each blister card distributed.
 - B. **Automated Dispensing Cabinet.** Interfacing as well as any other costs with automated dispensing machines will be negotiated separately.
 - C. **Exceptions.** The Dispensing Fee(s) in **Attachment A-1** will not apply to the following Products:
 - i. Specialty and limited distribution products.
 - ii. Compounded IV medications.
 - iii. Total parenteral nutrition (TPN).
 - iv. Non-sterile compounded medications.
 - v. 340B program medications that are mutually agreed upon by Member and Vendor.
 - vi. Or, for Members requesting same day delivery, where possible and upon mutual agreement of Member and Vendor
- 1.4 **Taxes.** Members are responsible for all applicable sales, use, lease, ad valorem, and any other tax that may be levied or assessed by reason of this transaction, unless the Member provides a tax exemption certificate (blanket or transaction specific) to Vendor before the transaction occurs.
- 1.5 **Labor Rates and Travel.** Labor rates and travel expenses are outlined on **Attachment A-2**. There may be additional costs and Dispensing Fees as stated within this Agreement.
- 1.6 **Software/Hardware Data System Pricing.**
 - A. **Data Storage:** Found at **Attachment A-3**.
 - B. **Automatized Dispensing System Support:** Found at **Attachment A-3**.
 - C. **Hardware Support:** Found at **Attachment A-3**.
 - D. **Software Support:** Found at **Attachment A-3**.

- 1.7 **Alternative Pricing and Contracted Items.** If the Vendor does want to provide more advantageous or alternative terms to a Member, before implementing, the Vendor must submit the terms to MMCAP Infuse for review to determine if those terms should be incorporated into this Agreement for the entire Membership. MMCAP Infuse will review and make a determination if (A) it should become part of this Agreement through an amendment; or (B) the Vendor and Member can individually reflect the changes through a Change Order.
- 1.8 **Targeted Groups.** Some Members require the use of M/W/DBE (minority/women/disadvantaged business entity) subcontractors; the pricing and costs will be negotiated between the Member and Vendor and reflected in a Change Order.
- 1.9 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Pricing, those fees, assessments, and/or additional costs must be added on top of the Pricing and/or an adjustment to the discounts must be made so Vendor does not absorb the fee. Vendor must not pay a Member-levied fee without first collecting the fee through increased Pricing for the applicable Member. The fees will be set aside and paid to the Member as detailed in a form provided and approved by MMCAP Infuse.

ARTICLE II SERVICE OFFERINGS

- 2.1 **Service Area.** Contiguous United States, District of Columbia, Alaska, and Hawaii.
- 2.2 **Hours of Operation.** Services will be available to Members during Work Hours.
- 2.3 **Individual Member Selection and Order of Services.** Due to the individuality and customization each Member requires for its Facilities, the Vendor and Member will document the selection of Contracted Items and the Pricing through a Change Order (Vendor's and Member's mutual selection and agreement). Pricing and Contracted Items that are outside the scope of this Agreement must go through MMCAP Infuse's review and receive written approval (*Paragraph 1.3*). The final agreed upon costs and Service will be reported to MMCAP Infuse as outlined in **Attachment A**. If the Vendor (or its Subcontractors) need to perform work outside the agreed upon parameters in the Order Form, the Vendor must obtain prior written approval from the Member. The Vendor will be responsible for fixing and covering the costs for any damage and contingencies not addressed and described in the Change Order.
- 2.4 **Vendor's Staff or Agents.** Regardless of any vacancy in its staffing the Vendor is required to provide adequate coverage for all Services a Member selects that have been mutually agreed upon by Member and Vendor. For all staff the Vendor (or subcontractors – and will apply throughout the Paragraph) provides for Services, the Member will have the opportunity to review the credentials. The Members reserves the right to negate a hire or remove a staff member if it is found to have less than the necessary credentials and/or experience to perform the functions of the Services the Member elects. Each of Vendor's pharmacy professionals shall provide proof of licensure or certifications to the Member before any Services are performed. The staff of the Vendor will:
- A. maintain licensure or certification; and
 - B. maintain professional malpractice liability insurance.
- The Vendor will maintain and make available for review by the Member, if requested, all credentialing information that includes, at a minimum for pharmacists:
- A. Signed application and required background check;
 - B. Verification of education, training, and work history;
 - C. Professional references;
 - D. Malpractice claims history; and
 - E. Current license to practice.
- 2.5 **Inspection Support and Operational Reviews.** As part of the base Dispensing Fee, Vendor will assist the Member in developing pharmacy policies, procedures and protocols, and will cooperate with Member's personnel to promote rational, cost-effective pharmacy services. Upon request by the Member, Vendor will provide a pharmacist every three (3) months for onsite inspections, where required by law or to comply with Member's National Commission on Correctional Health Care (**NCCHC**) accreditation, for each Facility in the contiguous United States that has an ADP over 250 as part of the Dispensing Fee. Inspections that are required more often, or where not required by law or NCCHC accreditation, or for Member facilities that have an ADP of less than 250, or for Members in Alaska, Hawaii, or US Territories, inspection costs are outlined on **Attachment A-2**. Inspection shall include but are not limited to reviews of expiration dates, security, storage and a periodic review of medication records. Inspections for correctional Members will be based on a Member's NCCHC status, American Correctional Association (ACA), and Joint Commission standards.
- 2.6 **Formulary Development and Maintenance.** At no charge, the Vendor will develop a formulary for the Member to ensure the most appropriate medications are being prescribed in accordance with the manufacturer's recommendations. Ongoing and if requested, the Vendor will review and provide recommendations for the formulary quarterly. Annually, and if requested, the Vendor will review the Member's 'Policies and Procedures Manual' and make recommendations.
- A. Alternative Treatment Recommendations (ATR): For a cost (**Attachment A-2**), the Vendor will develop ongoing ATRs for non-formulary compliance at the Facility.

- 2.7 **Patient Management.** As part of the Dispensing Fee the Vendor will perform a drug utilization review when dispensing each patient specific prescription, as well as periodically upon request by Member using computer-generated information evaluating the following: Use of non-formulary medication; Antibiotic use; Psychotropic use; Drug Utilization by class; Specialized reporting as requested. Patient profiles will be available upon request on a patient-specific or housing unit basis provided that housing information is communicated to Vendor by the Member facility.
- 2.8 **Individual Patient Plans:** The Vendor will create individualized care plans if requested by a Member; pricing is located on **Attachment A-2.**
- 2.9 **Committee Meetings.** The Dispensing Fee covers the Vendor's pharmacist participation in all committee meetings required by Member through teleconference or webinar; Vendor and Member will work in good faith to arrange time and date that works for all parties. If the Member requires in-person participation, the Member will be billed in accordance with **Attachment A-2.**
- 2.10 **Training and Materials.** Reference books and publications, such as Physicians' Desk Reference (PDR), Nursing Drug Handbooks, etc., can be purchased through the Vendor at Vendor's actual acquisition cost plus Dispensing Fee plus shipping.
- 2.11 **Barcoding and Tracking Services; electronic pedigree.** As part of the Dispensing Fee, the Vendor will provide the following:
- A. **Fax Machines:** Vendor will provide one (1) fax machine for each facility; replacement toner can be purchased through the Vendor at cost, plus the Dispensing Fee or elsewhere by Member at Member's expense.
 - B. **Medication Carts:** Medication cart(s) are provided on loan for the duration of the Agreement (when all medications are purchased from Vendor) if current carts cannot be purchased, are unsafe, or have fallen into a state of disrepair as determined by Vendor's pharmacist account manager. If providing carts, the model, type, and number of carts will be based on the Facility census and at the discretion of Vendor. Carts will include a locked box for controlled substances. The Vendor is responsible for maintenance.
 - C. **Barcode Scanner:** Vendor will provide one (1) hand-held tethered barcode scanner for each Facility, if requested for medication reconciliation purposes. The Vendor is responsible for updates and maintenance.
- 2.12 **Stock Medication System.** As part of the Dispensing Fee, and where permissible under State Law, Vendor will work with Member to establish and maintain a stock / starter medication system for each Facility and will promote the use of stock medication flow sheets with Facility's staff. Provided the Member approves, and in accordance with board of pharmacy and state laws, rules, and regulations, the Vendor will maintain an emergency drug box located at the Facility. Items in each drug box will be determined in consultation with Member.
- 2.13 **Emergency Service Offerings**
- A. **Emergency Kits.** Where permissible under state law and in accordance with local, State and Federal Laws and regulations, Vendor will provide lockable emergency medication kits that contain injectable medications used for immediate administration to alleviate pain, treat infections, modify dangerous behavior, and preserve life if permitted by licensing and state regulations. Medications and stock quantities will be determined and mutually agreed upon in conjunction with the Member and Vendor. All contents will be listed on the sealed, lockable kit. Accountability sheets in each kit or cabinet will be used to document inventory, administered doses, and destruction. Medications utilized will be replenished by the Vendor and billed to the Member in accordance with this Agreement.
 - B. **STAT/Emergency Administration.** Vendor and Member will establish a sufficient stock inventory based on the applicable Facility's current products and the amounts used if permitted by licensing and state regulations. Appropriate stock quantities will be maintained using the following process:
 - i. Vendor will develop a customized order form that lists all stock items used by the Facility. Each form will contain a list of the items with complete descriptions and package sizes.
 - ii. To order, the Member will indicate the quantity needed next to each item on the form and submit the order to Vendor. Access to medications must be limited to authorized personnel, and medications must be kept secure at all times. Vendor will provide stock cards for medications that are needed for immediate administration, however stock-card doses need to be packaged in tamper-proof blister packs. When possible, different types of medications (i.e., Over-the-Counter vs. controlled substances) will have differential color codes.
 - iii. Inventory flow sheets will be provided to record and document each dose administered from the stock card to reconcile all doses. When stock is depleted, completed accountability sheets must be sent to the Vendor to reconcile doses. Vendor's system of accountability complies with all NCCHC and ACA guidelines.
 - iv. To help minimize diversion, Vendor will require an authorized agent to sign order forms for controlled substance stock items before they are dispensed. Instances where buprenorphine-based agents are being requested for a clinic or hospital, a site license will require signature by an "X waiver" holder to complete the transaction. Vendor will have final authority regarding the distribution of stock, controlled substance medications
 - v. Vendor will require Member facility to have designated personnel complete and sign a stock liability form prior to any legend or controlled substance medications being distributed as stock

- vi. Vendor may require Power of Attorney or authorized agent designations to be on file with Vendor prior to any legend stock being distributed
 - vii. At all times, local, state, and federal laws, rules, and regulations will take precedence over Member facility policy and procedures.
- 2.14 **On-Site Staffing and Telemedicine.** If on-site staffing or Telemedicine consults are requested by the Member, and mutually agreed upon by the Member and Vendor, the Member and Vendor will make arrangements for additional compensation, and document those costs on a Change Order. The hourly rates will not exceed what is outlined on **Attachment A-2.**
- 2.15 **Third Party Billing.** At no costs to the Member, and as directed by the Member, Vendor will create separate invoices for individual for patients that are being billed separate because they are being charged directly or being cared for by a jurisdiction other than the Member such as patients under the control of the U.S. Bureau of Prisons (BOP), U.S. Immigration and Customs Enforcement (ICE), U.S. Marshals Service (USMS), and for counties. Vendor will bill compensation orders, medical assistance, health insurance, AIDS drug assistance programs (ADAP), or other payment sources if the patient is eligible, if permitted to bill, and if Vendor receives billing information at the time of dispensing. Medications invoiced to other payers will be billed at the state Medicaid rate. If these invoices are not paid within sixty (60) days, the Member will be responsible for all charges at the agreed upon rate for that Member with no interest being charged
- 2.16 **Backup, Overflow, or Afterhours Pharmacies.** A Member can elect to have the Vendor set up a network of local pharmacies in close proximity to a Facility serviced as part of this Agreement for an alternative source for short term medication orders that are needed "stat" or after the normal hours of operation. Upon notification of a stat request, the Vendor shall make all arrangements for the order to be transmitted to the local pharmacy and make sure that there are no contraindications to the medication, as the local pharmacy will not have the patient's complete medication profile on hand to properly screen for drug interactions or other potential problems.
- A. The contractor shall not allow non-formulary medications to be ordered from the local pharmacy without a prior approval from the Member.
 - B. Backup pharmacy services will be billed as a pass-through charge to the Member at the contracted backup pharmacy's rate, as billed through a pharmacy benefit management (PBM) company, plus the backup pharmacy's delivery charge or on-call charge, or the taxi or courier charge, if applicable.
- 2.17 **Grant Consulting.** A Member can elect to have the Vendor manage their grants, where the Vendor will either manage or assist the Member in applying for and maintaining compliance for received grants. Under this Service, the Vendor will be required to coordinate requirements for clinical and research materials, while also ensuring compliance to all policies and procedures. The Pricing can be found on **Attachment A-2.**
- 2.18 **Discharge Service Offerings.** Discharge medications will be dispensed to the Member in the quantity requested up to a thirty (30) day supply. Only a single Dispensing Fee will be invoiced if the discharge medication is dispensed by the Vendor. All discharge medications will be dispensed in childproof containers, unless otherwise requested. These medications will be labeled appropriately with all directions and auxiliary warning labels, in compliance with applicable regulations.
- 2.19 **Reverse Distribution and Waste Disposal.** Members may opt to utilize MMCAP Infuse approved vendors at their own expense. The Member can purchase RxDestroyer from the Vendor; pricing can be found on **Attachment A-4.**
- 2.20 **Equipment Leasing and Maintenance.** Vendor can offer to lease equipment and associated software to a Member during the term of this Agreement. Offerings are not to exceed rates outlined on **Attachment A-3** and **A-4.** The final agreed upon Pricing and selected Contracted Items will be formalized in a Change Order. All maintenance of leased equipment will be the responsibility of the Vendor. If the equipment stops working or repairs are needed due to no fault of the Member, the Vendor will replace the malfunctioning equipment with a functional equivalent at no cost to the Member. Member will be responsible for damaged or lost Vendor equipment that was provided on loan.
- A. Member Owned Equipment and Software. For equipment owned by the Member, Vendor may be able to provide maintenance and support. Those rates are outlined on **Attachment A-3.**
- 2.21 **Reports.** The Vendor will provide the following reports at no costs:
- A. Patient Census
 - B. Monthly Costs
 - C. Costs Per Patient
 - D. Non-Formulary Prescription Orders
 - E. Non-Formulary Costs
 - F. Patient Profiles
 - G. Medication Utilization
 - H. New and refill prescription dispensed
 - I. Monthly refill reminders
 - J. Ad Hoc: The Vendor will provide ad hoc reports to Members at no additional costs; they will be provided to the Member within three (3) business days depending on the nature of the request.
- 2.22 **Failure to Provide Service.** If Vendor fails to provide the Services as set forth in this Agreement, unless due to Force Majeure, as defined in Paragraph 5.4, Member may obtain the same or equivalent Service through an alternative MMCAP Infuse vendor. If MMCAP Infuse vendor cannot provide Member the Services required, the Member may obtain the Service on the open market, including retail, for the period in which the Vendor is unable

to provide the Service. The Vendor will reimburse for any additional costs (including shipping and third-party fees) over the Pricing of this Agreement sustained by Member via a credit within thirty (30) days of receipt of the claim.

ARTICLE III PRODUCT DISPENSING AND ORDERING;

- 3.1 **Ordering Products.** Vendor or Member may use mutually agreed upon 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.
- A. **Obtaining a Contracted Item** from an Order Form shall constitute 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. Unless due to Force Majeure, as defined in Paragraph 5.4, 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. **Cut-off Times.** New orders are to be submitted by 2:00PM Facility local time Monday through Friday for next business day delivery. All new orders submitted Saturday by 11:00AM Facility local Time will be delivered on Monday. Refill and stock medication orders will be received by Vendor up to 5:00 PM local time Monday through Saturday and will be shipped from Vendor the next business day
 - C. **Order Minimums.** Reserved for future use.
 - D. **Shipping Costs.** For Members with ADPs equal to or over 250 in the contiguous United States, shipping costs are to be included in the Vendor's Dispensing Fee (i.e., not additional costs); for Members with an ADP of less than 250, shipping will be billed as a pass-through cost without any markups or fees by the Vendor. All shipping costs to Members in Alaska and Hawaii, are billed as a pass-through cost regardless of ADP. Same day delivery to certain Members, where feasible, are negotiated in good faith between Member and Vendor. They will be agreed upon before any delivery is made.
 - E. **Generics.** Vendor will dispense all medications as generics unless there is no approved generic substitute, or the Member has requested "no substitute" in accordance with applicable state laws.
 - F. **Dates.** All Products supplied to Members must have an expiration date of at least twelve (12) months from the date of manufacture and have a least a six (6) month shelf life from the date of acceptance of the Product by the Member unless prohibited or restricted by federal, FDA, DEA, State, or local laws, rules or regulations. Statutory and regulatory requirements will always take precedence over contractual terms and conditions.
- 3.2 **Product Labeling Requirements.** All true unit-dose blister cards eligible for reclamation will have each individual bubble of the blister card labeled with the medication's name and strength, lot number, NDC, manufacturer's name, and expiration date. Prescription labels will be barcoded to allow for inventory management as well as quality assurance during med pass. Part of the medication label will be a thermal barcode label with a peel-off refill tab, printed in clear, large type. The tabbed refill labels will be supplied on every labeled medication order. Each refill tab will contain the patient's name and number, medication name, quantity, number of refills, prescription number, unique card identification, and date the next refill is due.
- A. **Manifests.** Every Product shipment will contain a detailed computerized delivery manifest containing Vendor's name, patient name and identification number, prescription number, medication name and strength, quantity dispensed, date dispensed, and price. If a Member needs additional information on the delivery manifest, Vendor will make every effort to accommodate the request.
- 3.3 **Packaging Requirements.** If packaging other than blister cards are required, the alternative packaging surcharge is identified on **Attachment A-1**.
- A. **Over-the-Counter (OTC).** Vendor will distribute OTC commissary items in original manufacturer packaging. Each package is labeled with medication directions, side effects, ingredients, and all required information that are to be contained on OTC packaging.
 - B. **Prescriptions.** Prescriptions are packaged in thirty (30) count dose tamper resistant blister cards or the manufacturer's original container per request.
 - C. **Infusion Therapy.** IV mixtures will be dispensed compounded, labeled, and ready to administer or will be dispensed in MiniBag Plus packaging for easy self-mixing on site, upon request by the Member.
 - D. **Temperature Control.** Vendor's packaging will maintain Products at the manufacturers' recommended specifications. All Products that require refrigeration will be shipped in to ensure proper temperatures controls; outer boxes containing refrigerated items are labeled with a fluorescent orange sticker that states, "May Contain Refrigerated Items" Refrigerated items will not be shipped for weekend delivery unless requested.
 - E. **Controlled Substances.** Controlled substance medications will be packaged in red blister cards for easy identification, will be marked with a large red letter "C" if in Schedules III-V (C3-5) and with two red letter "C"'s if Schedule II (C-2), allowing Member staff to differentiate the schedules. Controlled substance medications will be packaged in a separate bag containing its own delivery manifest.

- F. **Absent Products.** If an ordered item is not part of the current shipment, the item and the reason for its absence (i.e., ordered too soon to fill, ordered past cut date, non-formulary medication, etc.) will be clearly indicated on the exception report section of the manifest.
- 3.4 **Shipping.** Vendor must distribute and deliver the Contracted Items covered under this Agreement to all Members, including the states of Alaska and Hawaii. If the Member account is in good standing, the Vendor will at no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination unless otherwise agreed to by Vendor and Member. Vendor will not add any fuel surcharges to the purchase under this Agreement unless such charges are imposed by Vendor's carriers. The Vendor and Member will split any fuel surcharges assessed by FedEx or UPS shipments fifty-fifty (50/50). Upon request by the Member, the Vendor will provide evidence of the total surcharge to the Member. Notwithstanding the foregoing, emergency orders, rush orders, and products dropped shipped from Vendor's contracted supplier, are subject to an added shipping and handling charge determined by Vendor and disclosed to in writing Member before a purchase is made.
- A. **Damaged Products.** All damaged Products will be reported to Vendor's customer service department within 24 hours of receipt and applicable credits will be issued on the next billing cycle.
- 3.5 **Order Tracking Requirements.** All orders will be tracked to ensure the timeliness and accuracy of deliveries. Vendor's shipping software will track packages at every destination point. The software will provide estimates and confirmations of scheduled and actual delivery times as well as the names and signatures of delivery recipients. Upon request, Vendor will automatically email the Member the courier tracking information, including the tracking number and a link to the shipping company's website. If an order is not delivered by its guaranteed delivery time, Vendor's shipping department will begin the process of tracking the shipment. If Vendor determines the package is lost in shipment, Vendor will immediately contact the Member and provide a copy of the missing delivery manifest, so each item can be reviewed, and it can be determined if Vendor needs to supply the medication(s) using local backup sources or immediate overnight shipment. The Vendor will recover those costs from the courier rather than the Member.
- 3.6 **Emergency Orders (non-prearranged Service).** For Members that are not utilizing the Vendor's emergency services under Article II. Emergency orders can be submitted directly to Vendor. The Vendor will either deliver the Products directly to the Member by courier or arrange access to a local pharmacy. Costs for both will be passed through at Vendor's cost or as invoiced to Vendor by local pharmacy, without any margin or markup. Detailed line-item reports of all emergency prescriptions will be provided with Vendor's invoice each month. Charges may include expedited courier charges, the local pharmacy's fees and price differentials, on-call charges, etc.
- 3.7 **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 Contracted Items 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 Contract Items under the Order Form are prohibited, or the Member is prohibited from paying for the Contracted Items from the planned funding source; or
- C. Vendor commits any material breach of this Agreement or Order Form and does not provide a cure within thirty (30) days that is acceptable to Member.
- Upon receipt of sixty (60) days 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.
- 3.8 **Product Outages.** It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Members. If Vendor cannot fulfill orders made by Members directly to the Vendor, it will be considered a failure to perform by the Vendor. The Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.
- A. **Immediate Notification.** Vendor's ordering system will provide notice within twenty-four (24) hours to the MMCAP Infuse and its Members of any Products covered by this Agreement that the Vendor has placed on backorder. Vendor's backorder notification will include:
- the Products placed on backorder status;
 - the expected timeline of the backorder;
 - the reason for the stock outage was caused; and
 - how the Vendor intends to resolve the backorder situation.
- B. **Substitution:** If Members consents, Vendor may offer like-kind Products at the same or lower price as the out-of-stock product. If no acceptable substitution can be offered: (i) the Member may purchase the same or equivalent Product from an alternative source or open market; or (ii) the Vendor may source the Product through other mechanisms.
- It is expected that the Vendor will be sourcing Products at the best value for the Member.
- 3.9 **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.

- 3.10 **Returns.** Once a month, Vendor will provide ground shipping for returned medications and will provide the Member with a prepaid, preaddressed return label. Vendor will provide credit on unused oral solid medications, where permitted by law or regulation. Vendor will provide credit on both full and partial blister cards of Products. Credit is offered on full and partial cards at 100% of the actual medication acquisition cost at the time of dispensing less a \$1.25 processing fee per card. Returns received by Vendor by the 15th day of each calendar month will be credited on the next invoice for that calendar month.
- A. Oral solid medications returned in a sealed manufacturer's bottles will be eligible for credit.
 - B. Credit is issued on medications based upon the professional judgment of a Vendor pharmacist.
 - C. Credit will not exceed the current market value per dose of medication eligible for return.
 - D. The following will not be eligible for credit: controlled substances, opened partial stock medications, liquids, injectables, topicals, medications dispensed in vials or strip packaging, refrigerated products, medications not in their original sealed blister packs, medications that have not been stored under proper conditions, medications that are defaced or have been adulterated, medications that are within 4 months of expiration, medications not packed as one full unit per blister, medications that have been released to the inmate population or labeled/dispensed as keep on person. Medications that are specialty, subject to FDA REMS criteria, or limited distribution medications, medications that have been billed to a private insurance, third party, USM, ICE, 340B, or Medicaid, medications that were not originally purchased from Vendor, and inhalers.
 - E. Blister cards that are dispensed with half tablets or with more than one single unit per individual bubble of the blister card are not eligible for return.
 - F. Medications ineligible for credit will not be returned to the Member.
 - G. Vendor will credit non-controlled substance Products returned from a Member so long as the Member's jurisdiction permits such practice, the medication was originally dispensed by Vendor, and the manner in which the medication is returned complies with state and federal law and Vendor's return policy.
- 3.11 **Recalls.** Vendor will employ dedicated staff pharmacists to address manufacturer recalls, shortages, and medication backorders. When Vendor is notified of recalls, the team will immediately review Vendor's current inventory and remove items identified in the recall. Vendor will provide reports to each affected Member, identifying the patients who received recalled medications. Vendor will notify all relevant prescribers and other personnel according to pre-established protocols and procedures. Members will not incur costs for Product returns related to recalls. Vendor will follow manufacturer or wholesaler instructions for returns and credit for recalled Product.

ARTICLE IV INVOICING AND PAYMENT

- 4.1 **Member Responsibility:** Each Member will be responsible for payment for Contracted Items 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. All Dispensing Fees are based on Vendor being Member's preferred pharmacy provider (other than those medications sourced locally for urgent needs) for medication dispensing and pharmacy program management. If the Vendor believes the Member is not utilizing the Vendor as expected, the Vendor may require the Member to provide an explanation of lack of or decrease in utilization from the Vendor. Member will have thirty (30) days to provide a response. If the Vendor is not satisfied by the response, they can provide a line-item list of equipment to be returned by Member to the Vendor. If the Member does not return the equipment within thirty (30) days, they will be invoiced for the costs.
- 4.2 **Conditions of Payment.** All Contract Items provided by the Vendor under this Agreement must be performed to the satisfaction of MMCAP Infuse and the Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for work found by MMCAP Infuse to be unsatisfactory or performed in violation of federal, state, or local law.
- 4.3 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), credit card, or P-Card as a payment method and Member will initiate this process with its financial institution. Payment by credit card or purchase card will be assessed a three percent (3%) fee.
- 4.4 **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.
- 4.5 **Payment Terms.** Payment by Member to the Vendor is due thirty (30) days from the receipt of the invoice. The Vendor can assess late fees in accordance with the local statutes of the Member.
- A. Hepatitis C medications are invoiced twice a month.
- 4.6 **Invoicing.** Vendor will submit an invoice monthly.
- 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. prescription number, patient name and identification number (if available), medication name and strength, quantity dispensed, unit price, extended price, dispensing fee, NDC number, date the prescription was dispensed, and prescriber name; and
 - vi. If applicable, charges related to elected Services along with description of service provided.
- 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. Any items not in dispute are required to be paid and are not to be withheld.
- 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.
- 4.7 **Credits and Rebills.** Vendor will process credits and rebills as notifications are received from a Member. In the case of an invoice dispute, and upon investigation by Vendor that dispute is justified, 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 order date itemized listing of the Contract Items affected;
 - ii. any new invoices associated with the credit; and
 - iii. Net credit amount available to the Member.
- 4.8 **Price Audits and Corrections.** In the event of a pricing error that is attributable to the Vendor, Vendor agrees to process credit/rebills for the past six (6) calendar months. When a Member or MMCAP Infuse discovers an error in pricing, they will notify Vendor.

ARTICLE V

TERMINATION, CANCELLATION, AND REMEDIES

- 5.1 **Cancellation.** MMCAP Infuse or Vendor may cancel this Agreement any time, without cause, upon one hundred and eighty days (180) days' written notice to the other Party.
- 5.2 **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, the other party has thirty (30) days to cure the defects. Upon the thirty (30) days, the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.
- 5.3 **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 Contracted Items covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Contracted Items 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 Contracted Items 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.
- 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 Contracted Items.
- 5.4 **Force Majeure.** A party 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, riot, 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.

- 5.5 **Breach.** In the event of a breach of this Agreement, MMCAP Infuse, Members, and Vendor reserve the right to pursue any other remedy available by law. Vendors may be removed from Minnesota's vendor list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 5.6 **Failure to Perform.** Upon failure to perform the following items in the time and manner as set forth herein, the following fees shall be paid by Vendor:
- A. **Reports.** In the event that any report and/or data provided by the Vendor, pursuant to the terms of this Agreement, is not received according to schedule, contains incorrect data, incomplete data, or no data, or is more than a minor defect or causes harm to MMCAP Infuse's ability to conduct business or its governmental purpose, Vendor will pay the following to MMCAP Infuse: \$50/day, until resolved. Vendor will receive notice and a fourteen (14) day grace period to provide necessary report or correct data before fees are incurred.
 - B. **Late Administrative Fee Payments:** As provided for in statute for late payments to the State of Minnesota.
 - C. **Notices and Signatures.** If the Vendor fails to provide notice or signature as provided for in this Agreement, the Vendor will pay the following to MMCAP Infuse: \$200/day, until resolved.
 - D. **Class of Trade:** Reserved.
 - E. **Adding and Removing Members.** Reserved.
 - F. **Application of Fees.** The application of the amounts herein shall not excuse Vendor's performance obligations as set forth in this Agreement, nor will it waive any rights of MMCAP Infuse or Members to seek any and all available legal and equitable remedies. Vendor acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP Infuse and Members whole for any failure of performance by the Vendor, as based upon good faith estimates as agreed to by the parties.
- 5.7 **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 their responsibilities under the Agreement that are not affected by the dispute. Member must pay all undisputed amounts on time and in accordance with this Agreement; they may withhold disputed amounts until there is a resolution. 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. If the Member fails to pay any invoices, Vendor shall have the right to suspend Services until such invoices are paid.
 - D. **No Waiver.** This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE VI MEMBERSHIP

- 6.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Contracted Items, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition.
- A. **Orientation.** When Vendor begins servicing a new Member, it will implement a competency-based training schedule and orientation program for Vendor's Pharmacists as well as any other Vendor personnel that will be involved with Member's contract management and Facility management. Prior to implementation, Vendor will have internal staff meetings to fully review Member's requirements and how they best apply to the Facility's specific needs. Virtual Orientation will be provided for free to the Member, if an on-site orientation is required, those will be provided according to terms agreed upon in **Attachment A-2**.
 - B. **Transition of Service.** Vendor will work with the Member to design and implement a smooth transition from the Member's current pharmacy provider to the Vendor's services.
- 6.2 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members from the Membership during the Agreement Term.
- A. **New Members.** The Vendor must allow new Members to access the Agreement by the Onboarding Date. MMCAP Infuse will provide Vendor with online access to its Membership list, which is updated daily. MMCAP Infuse will send Vendor a monthly e-mail with instructions on how to obtain the Membership list.
 - B. **Removing Members.** Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member, provided Vendor is made aware at least thirty (30) days in advance. If MMCAP

Infuse does not receive notification that a Member has been removed from Pricing, Vendor will honor Pricing for the Member for thirty (30) days after MMCAP Infuse receives the written notice.

- 6.3 **Membership Eligibility.** Upon request, Vendor will send an electronic eligibility list identifying which Members are receiving the Vendor's services to: MMCAP_Infuse.Contracts@state.mn.us.
- 6.4 **Member Attachment:** Vendor will ensure Members are attached to the Agreement for all Contracted Item purchases made by Member. Upon request of MMCAP Infuse, Vendor must verify only the Membership has access to the Pricing and Contracted Items. Failure to do may result in immediate termination.
- 6.5 **Non-Solicitation of MMCAP Infuse Members.** During the term of this Agreement, unless the individual Member elects to use Vendor outside this Agreement. The separate contract or agreement the Member and Vendor enter into cannot be substantially similar to this Agreement or "Piggyback" this Agreement. Additionally, the Member cannot use MMCAP Infuse's solicitation or its overall Membership as a basis for the arrangement between Member and Vendor. The Vendor and/or Member will notify MMCAP Infuse of the arrangement in a commercially reasonable timeframe. 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. If the Vendor has a pre-existing standalone contractual relationship with a Member, this Paragraph will not apply to that scenario.
- 6.6 **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, which MMCAP Infuse will work with the Member to obtain.
- 6.7 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.
- 6.8 **MPA.** In order to use this Agreement, some States will require jurisdiction-specific paperwork or contract language to establish a statewide contract for Members. These are separate from Change Orders; these are addendum to this Agreement to provide for laws specific to a State jurisdiction. If these circumstances exist, the Vendor will work with MMCAP Infuse and applicable State to prepare an MPA to set forth the additional or altered terms and conditions. An MPA must clearly apply only to the requesting State and will not affect the rights of the other States and its Members, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein, except in regard to the applicable named State and Members located in its jurisdiction. When the specific terms are agreeable to the Vendor and the State, the MPA will be presented by MMCAP Infuse to each party for execution. No other mechanism of modifying or "attaching to" the Agreement is authorized. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that State/Member. No verbal or written instructions from State/Members, or any of their staff or officials, to change any provision of this Agreement will be accepted by Vendor without the prior written approval of MMCAP Infuse.

ARTICLE VII AGREEMENT MANAGEMENT

- 7.1 **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 Infuse's 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 7.2](#).
 - D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance 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.
- 7.2 **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 VIII WARRANTS, COVENANTS, AND DUTIES OF VENDOR

- 8.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.
- 8.2 **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. Vendor must possess all necessary legal and regulatory qualifications, certifications, permits, and licenses when providing

the services described in this Agreement. Vendor must comply at all times with all applicable laws and applicable agency, regulatory and certification requirements, including but not limited to HIPAA and state privacy laws which govern the Vendor's operations. Vendor must notify Member immediately if it is in receipt of notice of noncompliance with any such requirements, conditions, and standards, or if Vendor has notice or reason to believe that its status as to the foregoing will change or has changed in any respect. Member will make a good faith effort to provide assistance to the Vendor upon request, however all expenses will be borne by the Vendor, which may include reimbursement to the Member. Additionally, the Vendor:

- A. Will be licensed and in good standing with all applicable State Boards of Pharmacy;
- B. Must maintain its registration with the U.S. Drug Enforcement Administration to dispense controlled substances in Schedules II–V;
- C. Maintain its status as a licensed wholesaler as applicable and will provide repackaged stock medications in accordance with its status as an FDA Registered Repackager;
- D. Will remain accredited by The Joint Commission, for pharmacy for the term of this Agreement;
- E. Will remain accredited as a Verified-Accredited Wholesale Distributor (VAWD) by the National Association of Boards of Pharmacy (NABP); and
- F. Will comply with current Health Insurance Portability and Accountability Act (HIPAA) and all applicable regulations promulgated thereunder. In accordance with HIPAA, Vendor will keep secure and private all information that may be considered Individually Identifiable Health Information (IIHI).

- 8.3 **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's applicable regulatory board.
- 8.4 **Health Care Product Regulations:** Vendor acknowledges that each Product has, if required by law, a United States Food and Drug Administration approval or authorization on file and accepts the liability with which such application confers. Additionally, all Products should meet applicable industry standards such as but not limited to standards set by ISO or UL. The Vendor guarantees to furnish no Product under this Agreement that is adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the FDA, or as required by each member state's applicable laws, rules, or regulations.
- 8.5 **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 MMCAP Infuse 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.
- 8.6 **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.
- 8.7 **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.
- 8.8 **Product Warranty.** Vendor warrants that all materials, supplies, services and/or equipment provider under this Agreement is fit for the purposes for which intended and conform to the requirements and specifications herein. The Vendor will provide a factory and/or manufacturer's warranty that will cover 100% of parts, labor, material, and transportation for a Contracted Item for two (2) years from the invoice date.

ARTICLE IX ADMINISTRATIVE FEE AND REPORTING

9.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay the Administrative Fee on all items except for:

- A. Specialty and limited distribution medications
- B. IV and total parental nutritional (TPN) products
- C. Non-sterile medication compounds
- D. Courier services
- E. Medications sourced from a backup pharmacy

Vendor must provide Administrative Fee data to MMCAP Infuse within ten (10) business days after the end of each calendar month. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar month, but no later than thirty (30) calendar days after the end of the calendar month. The Vendor will submit a check payable to:

Financial Management & Reporting – MMCAP Infuse
50 Sherburne Avenue, Suite 309
St. Paul, MN 55155

Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.

9.2 **Reporting.** The Vendor must submit a monthly (1) administrative fee data report and (2) sales data report.

- A. **Administrative Fee Data Report:** The monthly administrative fee data report must contain the fields detailed below and the sales data report requirements can be found on **Attachment C**. All administrative fee data reports must be sent to: mmcap.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The Vendor will provide a dedicated person for contact related to these.

Administrative Fee Data Report fields:

- i. MMCAP Infuse Assigned Authorized Wholesaler Number — If not applicable, leave blank
- ii. MMCAP Infuse Assigned Vendor Number (Diamond = 4702)
- iii. Direct or Indirect Purchase Indicator (I=Indirect [Emergency or back-up pharmacy services], D=Direct [Provided direct from Vendor to Member])
- iv. Invoice Date (Point of Sale Date)
- v. Invoice Number
- vi. Member MMCAP Infuse ID Number (can be obtained from MMCAP Infuse Member Listing)
- vii. MMCAP Infuse Member Name
- viii. Vendor's Account Number for the MMCAP Infuse Member
- ix. MMCAP Infuse Member DEA Number, if applicable
- x. MMCAP Infuse Member HIN Number, if applicable
- xi. MMCAP Infuse Member Address
- xii. MMCAP Infuse Member City
- xiii. MMCAP Infuse Member State
- xiv. Product's NDC (Use all 11 digits (00076888888)) — If not applicable, leave blank
- xv. Product Name (e.g., Acetaminophen with Codeine, Acticin Cream 5%, or description of contracted service)
- xvi. Credit Indicator (C = credit)
- xvii. Contracted Units (The number of units or services purchased on contract.)
- xviii. MMCAP Infuse Contracted Unit Price (Dispensing Fee amount)
- xix. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number or contracted service. Report as a decimal (e.g., 0.030))
- xx. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
- xxi. Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)

- B. **Sales Data Usage Reports:** Vendor will supply to MMCAP Infuse monthly sales data on or before the tenth (10th) day of the subsequent calendar month. The report must include Contracted Item dollar spend amount sorted in descending order and grouped by the Contracted Item category. Also, the report MUST include the information set forth on **Attachment C**.

ARTICLE X INTELLECTUAL PROPERTY

10.1 **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), 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.

- 10.2 **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.
- 10.3 **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.
- 10.4 **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 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.
- 10.5 **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 MMCAP Infuse's discretion, either procure for 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 MMCAP Infuse will be in addition to and not exclusive of other remedies provided by law.
- 10.6 **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.
- 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 XI INSURANCE

- 11.1 **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.

11.2 **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.

11.3 **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 statutory requirements, 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 XII
GENERAL TERMS

- 12.1 **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.
- 12.2 **Rebates.** For all Products purchased by the Vendor on the Member's behalf, the Vendor will be the party that will claim and receive any applicable rebates and other benefits associated with those Products.
- A. **Exception:** If the Product was acquired by the Vendor using MMCAP Infuse contract pricing from other vendors or sources, then MMCAP Infuse would be the party to receive any applicable rebates and benefits.
- 12.3 **Audits.** 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.
- A. **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 and at reasonable intervals.
- B. **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.
- 12.4 **Assignment.** The Vendor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP Infuse and a fully executed assignment agreement.
- 12.5 **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.
- 12.6 **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 Paragraph, 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.
- 12.7 **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.
- 12.8 **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.
- 12.9 **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.
- 12.10 **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, Signature Page Follows]

VENDOR: Diamond Drugs, Inc.

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.

Name: DocuSigned by: Mark Zilner
Signature: Mark Zilner
Title: CEO
Date: 12/16/2022

**STATE OF MINNESOTA FOR MMCAP
INFUSE**

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

Name: DocuSigned by: Brandon Sis
Signature: Brandon Sis
Date: 12/16/2022

COMMISSIONER OF ADMINISTRATION

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

Name: DocuSigned by: Renata Vaschevici
Signature: Renata Vaschevici
Date: 12/16/2022

[Signature Page]

ATTACHMENT A
Contracted Items and Pricing

DISPENSING FEES:

**Non-Department of Corrections Member Correctional Facilities Including State
Jails and Other Detention Facilities Not Part of a Statewide DOC (Non-DOC)**

If ADP is between:	Each prescription and stock piece will have a not-to-exceed dispensing fee of:
1 and 249	\$4.75
250 and 499	\$4.25
500 and 1499	\$3.75
1500 and 4999	\$3.25
5000 and up	\$2.75

State Department of Corrections (DOC) Member Correctional Facilities

If ADP is between:	Each prescription and stock piece will have a not-to-exceed dispensing fee of:
1 and 2,500	\$3.25
2,501 and 5,000	\$3.00
5,001 and 14,000	\$2.85
14,001 and 25,000	\$2.75
25,001 and higher	\$2.65

SPECIALITY AND LIMITED DISTRIBUTION:IV MEDICATIONS:TPN:NON-STERILE COMPOUND MEDICATIONS:

AAC + \$250.00 per prescription

AWP per ingredient¹ + \$10.00 per bag

AAC per ingredient + \$75.00 per bag.

AAC + Labor² + \$25.00 per compound.

Long Term Care and Assisted Living Facilities (LTC)

Change orders are required for LTC facilities due to the variability of billing arrangements.

¹ Average Wholesale Price Per Medi-Span®

² Labor costs set forth on **Attachment A-2**

ATTACHMENT A-2
Labor Costs

- | | |
|--|--|
| 1. General Pharmacist Consulting | Free for video/remote; \$100/hour + travel costs for in-person |
| 2. General Nurse Consulting | Free for video/remote; \$25/hour + travel costs for in person |
| 3. Alternative Treatment Recommendations | Not to exceed \$350/per month/per Facility |
| 4. Individual Care Plans | Not to exceed \$150/per patient |
| 5. Video Consolation for complex/high acuity patients | \$125/hour; 1 hour minimum |
| 6. Non-sterile compounding labor | \$1 per minute of time spent making that compound |

ATTACHMENT A-3
Support Pricing

- | | |
|--|-------------------------------|
| 1. <u>Non-Formulary Alternative Treatment Recommendations:</u> | \$350/month/per Facility Code |
|--|-------------------------------|

Sapphire EHR

- | | |
|---|------------------------------------|
| 1. <u>Setup Fee:</u> | Not to exceed \$50,000 |
| 2. <u>Conversion of Paper forms to Sapphire (after 50):</u> | \$500 per form |
| 3. <u>Set up Training:</u> | \$3,000 per week + travel expenses |
| 4. <u>Monthly Fee for Licensing/Support:</u> | \$4.50/per inmate per month (PIPM) |
| 5. <u>Monthly Fee for Cloud Services:</u> | \$0.85 PIPM |
| 6. <u>Software Integrations/Customizations:</u> | \$150 per/hour |

The pricing quoted in this Attachment is the not-to-exceed price for any Member. Vendor reserves the right and may be willing to negotiate rates below those presented and detailed above to offer Members the best rate available based on the needed model to meet their needs.

**ATTACHMENT A-4
Equipment Pricing**

1. Oxygen Concentrators:
2. E-Tanks:
3. RX Destroyer:

\$75.00/month
\$20.00/refill
AAC + Dispensing Fee

EnviroClean Air Purification System

Type	Not to Exceed Price
Hextio	\$425.00
VK401	\$2,500.00
VK103	\$4,500.00
VK102	\$5,800.00
VK Medi	\$9,800.00

Hextio	VK401	VK103	VK102	VK Medi
Hextio is ideal for receptionist desks and small office spaces.	VK 401 is ideal for small commercial spaces, offices, and your home.	VK 103 is best for large communal areas and open-plan indoor spaces.	VK 102 is best for environments where keeping rooms clean and disinfected is essential.	VK Medi is ideal for high-traffic areas where indoor air safety is non-negotiable. The VK Medi provides exceptional air decontamination performance.

The pricing quoted in this Attachment is the not-to-exceed price for any Member. Vendor reserves the right and may be willing to negotiate rates below those presented and detailed above to offer Members the best rate available based on the needed model to meet their needs.

ATTACHMENT B
Required Member Onboarding

Reserved for Future Use

ATTACHMENT C
Reporting Requirements

EXCEL COLUMN	COLUMN HEADER	EXTENDED DATA FIELD NAME	HOW APPLIED TO MMS2200730
A	MMCAP_ID	MMCAP Infuse- assigned Member ID	Member ID number which MMCAP Infuse assigns the bill-to facility. If the ship-to location is not on the roster, MMCAP will assist in finding an appropriate entry.
B	MMCAP_Name	MMCAP Infuse Member Name	Name of facility to whom product is sent (vendor-defined).
C	DistributionCenter	Vendor Distribution Center Code	Vendor's code for the location where the product is loaded for shipment (e.g., 001 - Vendor's Primary Location, 002 - Backup Pharmacy, etc.)
D	VendAccountNo	Vendor-assigned Account Number for MMCAP Infuse Member	Vendor's account number for ship-to facility.
E	InvoiceNumber	Invoice Number	Vendor's invoice number to member.
F	InvoiceLineNo	Invoice Line Number	Unique identifier for each item billed.
G	poNumber	Purchase Order Number	A unique number that is generated when an order is placed (prescription number).
H	InvoiceDate	Invoice Date (MM/DD/YYYY)	The sales date on which product was invoiced (dispensed).
I	BuyerName	Buyer Name/ Buyer ID	If available, include the name/buyer id of the person submitting the invoice (may be left blank).
J	SKU	SKU/ Item Number	Vendor code used for item inventory (Rx, Specialty, or other identifier to designate the fee structure applicable).
K	NDC	NDC	NDC or NDC-like substitute of purchased product as stored in First DataBank, Inc (11-digits with leading zeros).
L	LabelName	Label Name/ Product Description	The name or product description of item.
M	UD	Unit Dose	The amount of medication administered for a dose (may be left blank for non-pharma lines).
N	Pack_Size	Pack Size	Package quantity per unit sold.
O	Unit	Unit	Package unit such as EA (each), CS (case), etc.
P	Case_Size	Case Size	Packaging of the item in a case.
Q	D	Dose	If applicable but required for pharmaceutical products. Ex: tablets/ capsule/ vial/ liquid
R	STR	Strength	If applicable but required for pharmaceutical products. Ex: Adult aspirin may be 325MG, but children's aspirin may be 81MG.
S	RT	Route	If applicable but required for pharmaceutical products. Ex: Oral/ Injection
T	UnitPrice	Unit Price (99999.9999)	Per tablet/ml price (4 decimal places) of just the medication component.
U	QuantityOrdered	Quantity Ordered (99999.9999)	Amount of product purchased. This amount will likely match the shipped quantity; Number of dispensing fees assessed
V	QuantityShipped	Quantity Shipped (99999.9999)	Amount of product sent.
W	ExtendedPrice	Extended Price (99999.9999)	The total cost of the sales transaction. Usually, Unit Price multiplied by Quantity Shipped plus the Service fee (dispensing fee).
X	SaleType	Type of Transaction	Indicator of whether a purchased item is on contract: 1= Contract item 2= Other contract (340B, PHS) 3= Not on contract (not likely to be used)
Y	BillToAddress1	Bill to Address 1	Street address where the sales bill was sent.
Z	BillToCity	Bill to City	City where the sales bill was sent.
AA	BillToState	Bill to State	Use the 2 alpha postal code of the state where the sales bill was sent.
AB	BillToZip	Bill to Zip	Use the standard 5-4 format, no dash necessary for the zip code to where the sales bill was sent.

AC	ShipToAddress1	Ship to Address 1	Street address where the purchased item was sent.
AD	ShipToCity	Ship to City	City where the purchased item was sent.
AE	ShipToState	Ship to State	Use the 2 alpha postal code of the state where the purchased item was sent.
AF	ShipToZip	Ship to Zip	Use the standard 5-4 format, no dash necessary for the zip code to where the purchased item was sent.
AG	ServiceFee	Service Fee	Amount of dispensing fee charged on the script. Report zero values as zero and not blank.
AH	ContractNumber	MMCAP Infuse Contract Number	The contract under which the sales transaction was conducted. (Hardcode to MMS2200730)
AI	AdminFee	Admin Fee	Fee charge to pay MMCAP Infuse as contracted items are sold. Calculated field: Service Fee * 3%. Report as zero for lines that do not have an Admin fee associated.
AJ	CreditIndicator	Credit Indicator	Indicator of a refund item: C= Credit [columns U, V and W would also have negative values]
AK	WholeCode	MMCAP Infuse Assigned Wholesaler Code	Use assigned vendor code 4702
AL	MfgName	Manufacture Name	Name of company who made the item.
AM	ClassOfTrade	Class of Trade	May leave blank
AN	OriginalOrderDate	Original Order Date (MM/DD/YYYY)	Date order was placed or transmitted to Vendor.
AO	340b	340B Purchase	Indicator of purchase under the federal 340B Drug Pricing Program, which provides access to reduced price prescription drugs to healthcare facilities certified by the US Department of Health and Human Services 1 = Yes 0 = No
AP	Category	Category	A group description to categorize products. Ex: oral supplements, thickeners, pediatric nutritionals
AQ	MfgPartNum	Manufacture Part Number	The item number used by manufacturer for inventory management.
AR	ListPrice	List Price	The catalog price of the product.
AS	UNSPSC	UNSPSC Code	The United Nations Standard Products and Services Code (UNSPSC) is an 8-digit alpha numeric code standard for classifying goods and services without referring to any suppliers codes and descriptions.
AT	UNSPSCDesc	UNSPSC Description	Description of the product group base on the UNSPSC Code.
AU	GLN	GLN	A unique number to identify the physical and functional location of a company.
AV	GTIN	GTIN	A unique and internationally recognized product identifier.

ATTACHMENT D
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.
 - B. 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, the Vendor must pay all subcontractors in accordance with Minn. Stat. § 16A.1245.