

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

NOTICE OF CONTRACT AWARD

DIAMOND DRUGS, INC. DBA	DATE ISSUED:	October 11, 2018
DIAMOND PHARMACY SERVICES	CURRENT REFERENCE NO:	19-054-R
645 KOLTER DRIVE		Prescription Filling and Pharmacy Benefits
INDIANA, PA 15701	CONTRACT TITLE:	Administration Services

**THIS IS A NOTICE OF CONTRACT AWARD 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. 19-054-R including any attachments or amendments thereto.

EFFECTIVE DATE: October 10, 2018

EXPIRES: OCTOBER 31, 2019

RENEWALS: THREE (3) ONE (1) YEAR RENEWAL OPTIONS FROM NOVEMBER 1, 2019 TO OCTOBER 31, 2022

COMMODITY CODE(S): 94872, PHARMACEUTICAL SERVICES

LIVING WAGE: N

ATTACHMENTS:

AGREEMENT No. 19-054-R

ATTACHMENT A – MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY

EMPLOYEES NOT TO BENEFIT:

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

VENDOR CONTACT: STEFAN V. BECK

VENDOR TEL. NO.: (724) 349-1111 EXT. 2695

EMAIL ADDRESS: SBECK@DIAMONDPHARMACY.COM

COUNTY CONTACT: JAVIER ITURRALDE, PUBLIC SAFETY

COUNTY TEL. NO.: (703) 228-0709

COUNTY CONTACT EMAIL:

JITURRALDE@ARLINGTONVA.US

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

AGREEMENT NO. 19-054-R

THIS RIDER AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between Diamond Drugs, Inc., dba Diamond Pharmacy Services, 645 Kolter Drive, Indiana, PA 15701 ("Contractor"), a Pennsylvania corporation 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 and quantity(ies) 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 Attachment A (Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP)), incorporated herein by reference), (collectively, "Contract Documents" or "Contract").

This Agreement rides a competitive procurement process conducted by MMCAP. The Contractor desires to extend to the County the same pricing as the Contractor's agreement with MMCAP.

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions 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 for the County ("Work") shall commence on the date of execution of this Agreement by the County and shall be completed no later than October 31, 2019 ("Initial Contract Term"), subject to any modifications as provided for in the Contract Documents.

Upon satisfactory performance by the Contractor, and with the concurrence of the Contractor, if MMCAP renews their agreement identified in Attachment A, the County may elect to renew this Agreement for three (3) RENEWAL PERIODS, under the same contract unit prices for not more than three (3) additional one (1) year periods from November 1, 2019 to October 31, 2022 ("Subsequent Contract Term"). However, if MMCAP does NOT renew their agreement identified in Attachment A, this Agreement shall automatically expire on the date of MMCAP's contract expiration date.

3. CONTRACT PRICING

The County will pay the Contractor in accordance with the terms of the Payment paragraph below, at the unit prices set forth in Attachment A for Work provided by the Contractor, as described and required in the Contract Documents, and accepted by the County.

4. SCOPE OF WORK

The Contractor agrees to provide the goods described in the Contract Documents. The primary purpose of the Work is to provide Prescription Filling and Pharmacy Benefits Administration 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 requesting the work under the Contract Documents. 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. PAYMENT TERMS

Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the County for goods or services furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of shipment or delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract,

except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. 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.

9. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction, indicating 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 sole expense.

10. DELIVERY

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

11. WARRANTY

All goods and materials provided to the County shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to Arlington County. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the County in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final

acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the County and the Contractor in advance and in a signed writing.

12. INSPECTION, ACCEPTANCE, TITLE, AND RISK OF LOSS

Inspection and acceptance of goods or materials by the County will be at the delivery location in Arlington County, Virginia, and within ten (10) calendar days of delivery, unless otherwise provided for in the Contract. The County will not inspect, accept, or pay for any goods or materials stored or delivered off-site by the Contractor.

Title and risk of loss or damage to all goods shall be the responsibility of the Contractor until acceptance by the County. The County's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The County reserves the right to conduct any tests or inspections it may deem appropriate before acceptance.

No goods or materials shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all goods or materials for which the Contractor invoices for payment.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- e. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by Arlington County, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

16. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The Contract shall remain in force for the Initial Contract Term or any Subsequent Contract Term(s) and until the County determines that all the following requirements and conditions have been satisfactorily met: the County has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, the County shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the County in its discretion.

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the County to the Contractor (unless the County in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the County for all costs incurred by the County after the effective date of termination, including costs required to be expended by the County to complete the Work covered by the Contract, including costs of delay in completing the Project or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the County upon demand by the County. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the County, and the County shall be entitled to recover, all damages to which the County is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the County to the Contractor under the Contract and all attorney fees and costs incurred by the County to enforce any provision of this Contract.

Except as otherwise directed by the County in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

17. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The performance of Work under this Contract may be terminated by the County Purchasing Agent, in whole or in part, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

18. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "County" for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees),

charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the County, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the County and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

19. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

20. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any Virginia or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

21. COUNTY EMPLOYEES

No employee of the County shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

22. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The County shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the County that make performance impossible or illegal, unless otherwise specified in the Contract.

23. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the County.

24. RELATION TO THE COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the County. The County will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The County will not withhold from payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the County for its employees.

25. ANTITRUST

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the County all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States or the Commonwealth of Virginia, relating to the goods purchased or acquired by the County under this Contract.

26. AUDIT

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

27. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the County.

28. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the County.

29. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

30. DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court.

31. 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 hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

32. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

33. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the County at law or in equity.

34. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

35. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

36. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the County pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County. The parties intend for this provision to be read as broadly as possible.

37. SURVIVAL OF TERMS

In addition to the numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; AUDIT; WARRANTY; AND CONFIDENTIAL INFORMATION.

38. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

39. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

40. 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 to 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:

Contact Information for the Contractor:

Diamond Pharmacy Services
Stefan Beck, Consultant Pharmacist
645 Kolter Drive
Indiana, Pennsylvania 15701

Contact Information for Arlington County

Sheriff's Office:

Arlington County Sheriff's Office
Javier Iturralde, Public Safety Procurement Specialist
1425 N. Courthouse Road, 7th Floor
Arlington, Virginia 22201

AND

Contact Information for Arlington County

(Legal Authorization):

Office of the Purchasing Agent
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Attn: Cynthia Davis, Procurement Officer
Email: cdavis@arlingtonva.us

41. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

42. INSURANCE REQUIREMENTS

The Contractor shall provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to the County. The minimum insurance coverage shall be:

- a. Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- c. Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d. The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e. Additional Insured - Arlington County, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insured on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- f. Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the Purchasing Agent immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify the County upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and the County notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- g. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

h. Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The County reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the County may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the County immediately upon request by the County.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to the County. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

AUTHORIZED

Diamond Drugs, Inc. dba
Diamond Pharmacy Services

AUTHORIZED

 MARK J. ZILNER

SIGNATURE: Cynthia Davis

NAME AND CYNTHIA DAVIS
TITLE: PROCUREMENT OFFICER

DATE: 10/10/18

SIGNATURE: Lou Ann Bowser

NAME AND Lou Ann Bowser
TITLE: Chief Financial Officer

DATE: 9/21/2018

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY**

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy (“MMCAP”) and **Diamond Drugs, Inc., dba Diamond Pharmacy Services**, 645 Kolter Drive, Indiana, PA 15701 (“Vendor”).

Under Minnesota Statutes Section 16C.03, the Commissioner of Administration may enter into this Contract on behalf of MMCAP for the benefit of its members.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run facilities, and contracts for pharmaceuticals and certain health care products for its members’ use. Participation in MMCAP is limited to government authorized facilities such as state agencies, counties, cities, townships, and school districts.

The Vendor wishes to contract with MMCAP to provide Prescription Filling and Pharmacy Benefits Administration Services to MMCAP Correctional and Institutional Members.

1 Term of Contract

- 1.1 **Effective date:** April 1, 2018, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** October 31, 2019, or as cancelled pursuant to Article 24. This Contract may be extended up to three additional one-year periods upon mutual agreement of both parties.
- 1.3 **Survival of Terms.** The following sections survive the expiration or cancellation of this Contract: 10. Liability; 11. State Audits; 12. Government Data Practices and Intellectual Property; 13. Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 20. Data Disclosure.

2 Contracted Services

2.1 Services Provided

Vendor will dispense prescriptions and distribute stock medications written by authorized medical staff at MMCAP Member Facilities. Vendor will provide professional comprehensive pharmaceutical services for all prescription, non-prescription, and intravenous (IV) solutions, as ordered by all prescribers, as well as clinical management and technology solutions, as offered by Vendor, that meet facilities’ requirements and are documented in Attachment A.

Vendor will establish and/or maintain a medication kit for emergency, urgent, and common first-dose needs of the Facility, where permitted in accordance with Board of Pharmacy regulations and state statutes.

By using this contract, Member agrees that no other prescription filling service is to be utilized concurrently.

2.2 Service Area

The Vendor retains the sole right to determine the class of trade and eligibility for services. While all Facilities accessing this contract need to be MMCAP Members, Vendor may recognize a parent-child relationship with Facilities and their administrative offices for purposes of accessing this Contract. Members and Facilities are terms used synonymously in this document. A listing of Facilities accessing this contract, as well as certain facility-specific negotiated elected services and billing rates, will be maintained jointly by MMCAP and Vendor as Attachment A, which is attached and incorporated herein.

Correctional Facilities

Vendor will provide pharmacy services to correctional facilities in all 50 states where FedEx, UPS, or the U.S. Postal Service provide delivery services. Correctional facilities include large and small state departments of corrections, county jails, privately owned correctional facilities, city jails, juvenile facilities, female facilities, intake centers, forensic treatment centers, and alcohol and drug detox centers.

Institutional (Long-term Care) Facilities

Vendor also will provide services to long-term care, assisted living, developmental disability and other healthcare facilities in Pennsylvania, Maryland, Ohio, New Jersey, New York, Delaware, Indiana, and Kentucky, based on their locations and service level needs.

2.2.1 *Initiating service*

To initiate service, MMCAP correctional Members must complete Attachment B, which is attached and incorporated, and submit to Courtney Adams at cadams@diamondpharmacy.com or fax to 724-599-3666. Institutional facilities must complete a new facility information sheet that has additional questions relating to institutional facilities. Interested facilities should contact Courtney Adams for a copy of the form. Within 14 days, Vendor must notify MMCAP of new MMCAP Members accessing this Contract by sending an updated Attachment A.

2.2.2 *Orientation.*

When Vendor begins servicing a new Facility, 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 Facility contract management. Prior to implementation, Vendor will have internal staff meetings to fully review Facility requirements and how they best apply to the Facility's specific needs.

Vendor's startup manual has detailed explanations of all medication management procedures and Vendor's electronic programs are supported by program specific user manuals that are reviewed during the initial training. If an on-site orientation is required, those will be provided according to terms agreed upon in Attachment A.

2.2.3 *Transition of Services.*

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. Vendor will provide a 30-45 day transition plan (including orientation) and 60-day follow-up period for questions that may arise and troubleshooting.

2.3 *Hours of Operation.*

Vendor will receive orders 24 hours a day, 7 days a week. Official business hours for the purposes of administrative concerns, financial concerns, and routine filling of medication orders are 8am to 6pm Eastern Time Monday through Friday, 8am to 4pm Eastern Time on Saturday, and on-call coverage for Sunday and holidays. Administrative and financial matters as well as routine filling of medication orders may not be available during certain holidays observed by the Vendor (New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas). One week's prior notice will be given to Members of upcoming modified holiday hours.

A pharmacist can be reached 24 hours per day by calling 1-800-882-6337 or faxing 1-866-307-9748. This pharmacist is able to provide clinical and operational consultation on medication orders and assist in after-hours filling of medication orders.

Licensed pharmacists will be available by toll free phone 24 hours a day, 7 days a week, and 365 days a year (24/7/365) to provide routine and emergency consultations regarding all phases of a Facility's pharmacy operation and to prescribing physicians and nurses regarding pharmaceutical therapy and cost recommendations. Pharmacists are experienced in correctional medicine, long-term care, assisted living, and mental health management, and understand the complexities associated with these settings.

Vendor will provide access to a clinical consulting department that will be staffed with personnel such as Doctors of Pharmacy, registered pharmacists, AAHIVP HIV Pharmacists™, a certified diabetes educator, a registered nurse practitioner, and a certified anticoagulation specialist.

For each Facility, Vendor will provide a lead pharmacist account manager who will serve as an active member of (and chair, upon request) a Facility's pharmacy and therapeutics (P&T), pharmacy, quality assurance (QA), continuous quality improvement (CQI), medical leadership, and other committees, as required and when requested. Consulting will be provided free of charge if via video- or teleconference or billable at \$75.00 per hour plus travel expenses, if on-site and not coordinated with a planned inspection visit. Any on-site consultations for facilities in Alaska or Hawaii will be billable at \$75.00 per hour plus travel expenses.

Vendor will have videoconferencing available for facilities with those capabilities for face-to-face meetings with Vendor staff any time.

2.4 Orders and Shipping.

Orders may be placed by phone, fax, or electronically 24 hours a day, 7 days a week, and 365 days a year (24/7/365). Physician's orders may be faxed directly by designated cut off time for shipment without transcribing as long as they are complete and legible. Correctional Facilities may order electronically using Sapphire eMAR, a web-based medication management system. Vendor will work with MMCAP member facilities that are long-term care or assisted living providers to encourage the electronic ordering software systems currently in place at those locations to interface with Vendor's Pharmacy Information System software. Vendor will assign one primary and one backup technician to process a Facility's orders which enables Facilities to talk to the same people every day as a main point of contact.

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, prescriber, prescription number, unique card identification, and date the next refill is due. The form can then be faxed to Vendor or scanned into the Sapphire eMAR system (for correctional member facilities) for electronic refill submission.

2.4.1 Order Cut-off times.

New medications ordered by the 2:00 pm facility-local cutoff time Monday through Friday are delivered by Overnight Carrier and received the next business day (unless in close proximity to Vendor where same day delivery may be offered by Vendor). This includes a Saturday delivery if the facility receives weekend deliveries. All orders received by member facility's specific cutoff time on Saturday (between noon and 2:00 p.m. eastern time) are received on Monday. Orders submitted after the cutoff time may still be able to be included in the next day's shipment by calling Vendor directly by 6:00 pm Eastern Time Monday through Friday. Any Facility-specific alternative cut-off times will be documented in Attachment A. Cutoff times for institutional facilities, as well as correctional facilities in Alaska or Hawaii are based on the specific needs of each facility and will be negotiated, between Member and Vendor, and documented in Attachment A.

Refills are preferred to be ordered with 2 business days' notice to the Vendor or orders may not arrive at the Facility in time for use. Refills needed more urgently can be placed by contacting the Vendor directly prior to the daily Facility order cutoff time.

Same-day delivery times for correctional facilities depend on the flexibility of the member facility—in terms of their preferred delivery time for same-day medications and the facility's distance from Vendor—as processing, packaging, and distance are important factors that need to be considered. A facility located a few miles from Vendor will obviously be afforded a later cut-off time for same-day delivery than will a facility located one hundred miles from Vendor.

Vendor will provide emergency medications that cannot be received through the normal delivery process from a Vendor-contracted local emergency back-up pharmacy. Emergency prescriptions also can be delivered directly to the facility using the local pharmacy's delivery service or a taxi or courier service that has been pre-arranged by Vendor, at the facility's request.

The backup pharmacy will invoice Vendor and Vendor will invoice the Member Facility. The amount of the charge is a discounted rate that is negotiated with the local provider of services. These charges are simply passed through at the negotiated rate, without any additional margin or markup. Charges may include, but are not limited to, the cost of the local pharmacy's prescription as a pass-through cost, plus any delivery, on-call, taxi, or courier charges.

2.4.2 **Shipping / Delivery**

Orders transmitted by the cutoff time will be delivered via Overnight Carrier (or same-day for facilities in close proximity to the Vendor) and received at the Facility the following business day (or Saturday, if applicable) according to the table below for facilities in the contiguous 48 United States. Facilities in Alaska or Hawaii will have cut off times negotiated and documented in Attachment A.

Standard Orders submitted by: ("local time" is local to facility)	2:00pm local time Monday	2:00pm local time Tuesday	2:00pm local time Wednesday	2:00pm local time Thursday	2:00pm local time Friday	Between 12pm (noon) and 2:00 p.m. ET Saturday (facility specific)
Rush Orders submitted by:	6:00pm ET Monday	6:00pm ET Tuesday	6:00pm ET Wednesday	6:00pm ET Thursday	6:00pm ET Friday	2pm ET Saturday
Delivered by*:	Tuesday 10:30am Local Time	Wednesday 10:30am Local Time	Thursday 10:30am Local Time	Friday 10:30am Local Time	Saturday 12pm (noon) Local Time	Monday 10:30am Local Time

*Delivery times are subject to the Overnight Carrier's restrictions and may vary in rural locations (4:30 p.m. local time) or in Alaska or Hawaii.

Vendor will be responsible for the shipping costs for provided medications as part of the dispensing fee for correctional facilities in the contiguous 48 states with an average daily population of more than 250 inmates/juveniles. For correctional facilities in Alaska and Hawaii and those facilities with an average daily population of less than 250 inmates/juveniles, shipping will be billed as a pass-through cost. Institutional facilities will have shipping and/or delivery costs documented in attachment A.

Most prescriptions will be dispensed from Vendor's corporate pharmacy and will be delivered by commercial package delivery services. Facilities within driving distance (approximately 2.5 hour one-way drive) of Vendor's pharmacies in Indiana, Pennsylvania will have the option to receive deliveries by

Vendor's courier service. Any such agreement between Vendor, Facility, and MMCAP will be documented in Attachment A.

Delivery and cutoff times for institutional facilities are highly variable and depend on the needs of each Facility. Vendor will negotiate the times in good faith following the best trades and practices of the industry while exceeding the needs of member facilities. Vendor's couriers deliver to institutional facilities at least once daily.

Vendor's shipping containers are prepared so medication will not be damaged during shipment. Vendor's shipment packaging maintains medications at the manufacturers' recommended specifications. All medications that require refrigeration will be shipped in either insulated expander packs or Styrofoam® coolers with a cold pack to ensure proper temperatures. Outer boxes containing refrigerated items are labeled with a fluorescent orange sticker that states, "Refrigerated Items Enclosed." Refrigerated items will not be shipped for weekend delivery unless requested.

Every medication shipment will contain a detailed computerized delivery manifest containing Vendor's name, patient name and identification number, prescription number, medication name and strength, manufacturer, quantity dispensed, date dispensed, Facility name, and price. If a Facility needs additional information on the delivery manifest, Vendor will make every effort to accommodate the request. Controlled substance medications will be packaged in a separate bag containing its own delivery manifest. In addition to a paper delivery manifest, correctional facilities that want to electronically reconcile their orders can review pending deliveries before they arrive on-site. Delivery reports will be sorted per Facility request by patient name, patient identification number, patient location, or medication. Institutional facilities will receive a paper delivery manifest.

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 delivery sheets. For correctional facilities reconciling their orders electronically, this information will be automatically included in Vendor's reconciliation program and can be reviewed daily. Items that need action by a nurse or medical provider prior to shipment can be reviewed before the order ships from Vendor, allowing facilities to be proactive and prevent medication delays. Any shortages will be corrected within 24 hours.

2.4.3 ***Emergency Service***

Emergency orders will be submitted directly to Vendor's toll-free stat fax line or electronically for correctional facilities through Sapphire, which connects to a dedicated server that is staffed 24/7/365. Emergency orders will be handled on a priority basis and, depending on account-specific policies and procedures, will be delivered directly by courier and will be billed from the Vendor to the Facility as a pass-through charge.

STAT & Emergency Medications—Emergency prescriptions for STAT orders will be provided through the emergency kit/starter packs or by a pre-arranged, subcontracted local backup pharmacy of the Facility's preference.

Emergency medications not found in either the emergency medication kit or the starter packs and unavailable from Vendor in sufficient time will be provided to the Facility when available in a minimum quantity by a local backup pharmacy in the immediate area.

Local Backup Pharmacies—When Facility needs an emergency prescription, the Facility staff faxes or electronically transmits the prescription using Vendor's STAT fax line, which is staffed and available

24/7/365. Upon order receipt, Vendor contacts the backup pharmacy and arranges for the emergency prescription.

Emergency prescriptions also can be delivered directly to the Facility using the local pharmacy's delivery service or a taxi or courier service that has been pre-arranged by Vendor, at the Facility's request.

If phoning Vendor with emergency orders, the Facility will be immediately transferred to a dedicated customer service technician or a pharmacist who can expedite the emergency/STAT need. If called in after hours, Vendor's answering service will patch the call through to an on-site pharmacist at the Vendor's pharmacy, on duty 24 hours a day, 365 days per year.

The backup pharmacy will invoice Vendor, and Vendor will invoice Facility. The amount of the charge will include the local pharmacy's Vendor-contracted rate plus any additional charges from the local pharmacy. These additional charges will be passed through at Vendor's cost, without any margin or mark-up. Charges may include, but are not limited to, the cost of the local pharmacy's prescription, if above Vendor's local pharmacy contract price, plus any delivery or on-call charges; taxi or courier charges; etc. Detailed reports of all emergency prescriptions will be provided with Vendor's invoice each month.

Emergency Kits—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 in conjunction with the facilities' medical director. 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 Facility.

Stock Cards for STAT/Emergency Administrations (correctional facilities only)

Prior to Facility initiation, Vendor will establish a sufficient stock inventory based on the 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:

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. To order, the Facility 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. Stock-card doses are packaged in tamper-proof blister packs. Over the counter and legend items will be packaged in blue blister cards, and controlled substance medications dispensed as stock will be packaged in red blister cards to differentiate the drugs and prevent diversion.

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 faxed to Vendor to reconcile doses. Medication can be reordered as needed by submitting by fax or electronically the peel-off

reorder label to Vendor or by using stock order forms. Vendor's system of accountability complies with all National Commission on Correctional Health Care (NCCHC) and American Correctional Association (ACA) guidelines.

To help minimize diversion, Vendor will require the prescriber and a member of the nursing department to sign order forms for controlled substance stock items before they are dispensed.

2.4.4 ***Receiving Shipments***

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 facilities the FedEx or UPS tracking information, including the tracking number and a link to the shipping company's website. Vendor can establish a special FedEx account for facilities, enabling staff to view the delivery status of all packages scheduled for the Facility. In addition, upon request, Vendor can provide reference numbers with Facility codes and dates, enabling the Facility to track packages over the telephone rather than online.

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 Facility 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. Those medication orders will immediately be sent to the backup by Vendor customer service technicians. The balance of the order will then be shipped for next-day delivery from Vendor to the Facility.

Vendor's reconciliation and inventory-management software, for correctional facilities, will allow a Facility's staff to quickly reconcile medication order shipments using barcode technologies, request/track refills, and managing returns online. Vendor's system will export order information in various file formats such as Excel, Word, or PDF.

Once scanning is completed, the software automatically notifies Facility staff of any missing items.

Facilities will be able to review shipments as they build each day. Regarding items that could not be shipped, Vendor's system will provide the Facility with information such as refills sent past the cut date, medications need a non-formulary approval, refills ordered too early, medications need a controlled substance hard copy, etc.

2.5 **Pharmaceutical Products**

Solid, orally administered medications will be provided in true unit-dose blister cards, in which medications eligible for credit 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 are customizable with Facility-specific information and are barcoded to allow for inventory management as well as quality assurance during med pass. Each prescription label will contain a two-part peel-off tab to allow easy refill processing.

Maintenance medications will be dispensed in a 30-day supply unless otherwise requested. Oral solid patient specific medications and legend oral-solid stock will be dispensed in 30-count blister cards with one unit per bubble. Vendor will dispense acute medications in quantities requested by the Member depending on the frequency of the dosing and the needs of the Member. OTCs can be ordered by the Member directly from their MMCAP wholesaler or from the Vendor. If packaging other than blister cards is required, a new rate will be negotiated and documented in Attachment A.

Patient medication information monographs are available for correctional Member Facilities 24/7/365 and can be printed at Facility level from Vendor's web-based Sapphire eMAR Program or via their free web-based Online Reporting Program (ORP). Institutional facilities may be granted access to the ORP upon request.

Vendor provides non-oral solids and products such as ear drops, liquids, creams, or ointments in the original manufacturer container or shall repackage in alternate containers if requested, with no packaging fee.

Vendor's blister cards will be true unit-dose packaging for medications eligible for reclamation from, and credit to correctional facilities. While the label itself contains detailed information, the back of each pill bubble in the blister card is labeled with the medication name and strength, lot number, expiration date, and manufacturer ID. Only true unit-dose packaging allows for credit on returned medications that are being reclaimed. This will apply to medications eligible for the Credit Returns Policy, described in Article 2.6.

2.5.1 ***Stock Pieces and Starter Medication***

Vendor will work with Facility to establish and maintain a stock / starter medication system and will promote the use of Stock Medication Flow Sheets with Facility's staff.

Vendor will maintain an emergency drug box located at the Facility, when permitted. Items in each drug box will be determined in consultation with Member's Health Services Administrator and the Medical Director.

2.5.2 ***Infusion Therapy***

IV mixtures will be dispensed compounded, labeled, and ready to administer or will be dispensed in Mini-Bag Plus packaging for easy self-mixing on site, upon request by the Facility.

2.5.3 ***Controlled Substances***

Prescriptions for CII (C2) controlled substances must be written on a hard copy prescription blank and forwarded to Vendor within 72 hours of being written. Some states permit Vendor to fill the prescription using a faxed image of the prescription, and upon verification, the Facility will mail the original. Other states require the prescription to be "in hand" prior to Vendor's dispensing medication. Vendor follows guidance established by each appropriate state and the U.S. Drug Enforcement Administration (DEA).

Prescriptions for CIII-IV (C3-5) controlled substances can be filled using a faxed image of the prescription as long as the order faxed to Vendor has a quantity, clear directions, and prescriber's signature. If an electronic order is submitted for a controlled substance, that image must be printed to hard copy, signed by the provider, and then faxed to Vendor in compliance with DEA rules and regulations.

Vendor and Facility will strictly adhere to rules and guidance established by the DEA regarding prescription requirements to ensure that a Facility and Vendor remain in full compliance. DEA restrictions apply to the electronic transmission of controlled substance orders, and Vendor follows all DEA rules and regulations on this subject.

Controlled substances, which are 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) to allow Facility staff to differentiate the schedules.

2.5.4 ***Generic Medications***

Vendor will dispense all medications as generics unless there is no approved generic substitute, or the prescriber has requested "no substitute" in accordance with applicable state laws. All generic medications will be A or AB rated by the Food and Drug Administration (FDA), when available. Vendor will report to the Member any generic substitution opportunities and offer alternatives to the prescriber on a monthly basis.

2.5.5 Discharge Medications

Discharge medications will be dispensed to the Facility in the quantity requested. Even if the discharge quantity exceeds a 30-day supply on those medications dispensed from Diamond, a single dispensing fee will be invoiced. 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.

2.5.6 Customizable Barcodes

Each correctional Facility's label's barcode will be recognizable by Vendor's ePrescribing and Sapphire eMAR software or by any in-house computer software that meets Vendor's label specifications. The barcode also can be accommodated, as space permits, to include specific prescription-related information requested by facilities.

2.5.7 Source of Medications

Vendor will fully comply with all requirements of the Drug Quality and Security Act (DQSA) Title II, also known as the DSCSA (Drug Supply Chain Security Act) and make electronic pedigrees (also referred to as transaction history records) available to Facilities. Pedigrees can be viewed by logging in to a secure password-protected site using Vendor's web-based software from any internet connected computer. Paper copies can be provided upon request.

Legal and regulatory requirements dictate that medications dispensed as stock must be distributed by a licensed drug wholesaler. Vendor is a Licensed Wholesaler in Pennsylvania and in all states in which it operates and distributes medications. Vendor will fully comply with all wholesale and repackaging requirements.

Vendor's wholly owned subsidiary, RemedyRepack is an FDA Registered Repackager, which permits it to legally distribute stock medications in 30-count blister packs as opposed to bulk bottles.

Vendor will maintain Verified-Accredited Wholesale Distributor (VAWD) designation. Vendor only uses wholesalers who are DQSA Compliant.

Vendor currently provides 340B services to correctional facilities and will work with Facility to discuss if a 340B program is a viable option for the member Facility. 340B dispensing and service fees will be negotiated on a case by case basis between Vendor and the Covered Entity. MMCAP will be informed of all final pricing.

2.5.8 Commissary

Vendor will dispense/distribute over-the-counter (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.

2.6 Returns**2.6.1 Product Recalls and Backorders.**

Vendor will have 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's software will provide reports to Member Facilities that list patients who received recalled medications. Vendor will notify all relevant prescribers and other personnel according to pre-established protocols and procedures. Vendor will notify all relevant facilities that may have received the particular lot by fax or email.

All notifications of a medication on national backorder or out-of-stock will be communicated to the Facility on the delivery manifest, or if using electronic reconciliation, will be provided online *prior* to the shipment being delivered.

2.6.2 ***Reverse Distribution and Waste Disposal.***

Vendor will refer Members to MMCAP's contracted vendor(s) to provide Reverse Distribution and Pharmaceutical Waste Disposal services. Unused medication must conform to Vendor's credit policy or the item will be properly discarded by Vendor without credit. Recalled product will be addressed on a case by case basis and Vendor will follow the guidelines provided by the manufacturer for the return of product as well as provision of credit in accordance with the manufacturer guidelines. In the event Facility needs reverse distributor or pharmaceutical waste management services, the Facility will be responsible for those charges.

2.6.3 ***Returns for Credit (Correctional Facilities Only)***

Vendor provides credit on unused oral solid medications, where permitted by law or regulation. Vendor will provide credit on both full and partial blister cards of medications.

Credit is offered on full and partial cards at 100% of the actual medication acquisition cost amount billed to a Facility less a \$1.00 processing fee per card, but not to exceed the current market value of the medication eligible for return. Non-creditable medications or medications that inmates brought into the Facility must be disposed of through a third-party vendor at Member Facility's expense.

When and where permitted by the State Board of Pharmacy and the U.S. Food and Drug Administration (FDA), Vendor offers credit to correctional member facilities on oral solid medications in full and partial blister cards returned to Vendor, provided the medications:

- Remain in their original sealed blister packs
- Have been stored under proper conditions
- Are not defaced and have not been adulterated
- Are not within 3 months of expiration
- Are packaged with one full unit per bubble
- Have not been released to the inmate population or labeled/dispensed as "keep on person"
- Are not controlled substances
- Have not been billed to a private insurance, Medicaid, U.S. Marshals Service (USMS), U.S. Immigration and Customs Enforcement (ICE), or other third party; or purchased through the 340B program

Vendor is responsible for once monthly shipping costs for all returned medications and provides the facility with prepaid preaddressed FedEx Package Returns Program (PRP) or UPS Authorized Return Service (ARS) labels. These labels are simply affixed to the return box, which is handed to express delivery personnel during their normal pickup/delivery to the facility.

Controlled substance medications and opened partial stock medications cannot be credited in accordance with federal regulations. Credit is issued on medications based upon the professional judgment of a Vendor pharmacist. Credit will not exceed the current market value per dose of medication eligible for return. Liquids, injectables, topicals, medications dispensed in vials or strip packaging, and inhalers will not be eligible for credit. Oral solid medications returned in a sealed manufacturer's bottles will be eligible for credit in accordance with the aforementioned policy. 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. Oral solid medications dispensed as "Brand Medically Necessary" or "Dispense as Written" will be credited at the Vendor's acquisition cost of the generic equivalent. Returns received by Vendor during the term of the contract by the 15th day of each calendar month will be credited on the next invoice for that calendar month. Credit memos will be deducted from payment of the oldest outstanding invoices. Medications ineligible for credit will not be returned to the Member Facility. Credits do not expire, but Vendor encourages Member Facilities to apply those credits on the next invoice.

2.6.4 Returns for Credit (institutional facilities)

Most states prohibit institutional facilities from returning unused medication for credit, except in limited circumstances when the jurisdiction's return requirements are strictly complied with. Vendor will credit non-controlled medication returned from an institutional facility so long as the facility'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, current agency interpretation of law, and Vendor's internal policies and procedures.

2.7 Compliance

Vendor must possess all necessary legal and regulatory qualifications, certifications, permits, and licenses when providing the services described in this Contract. 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 participate in meeting Vendor's control substance ratios according to the DEA Controlled Substance Act for all dispenses. This review will take place quarterly to assess stock versus patient specific ratios.

2.7.1 State Boards of Pharmacy Licensure

Vendor must be licensed in good standing with all applicable State Boards of Pharmacy and in accordance with the standards of the Commonwealth of Pennsylvania and as a non-resident pharmacy in the states where MMCAP Facilities are located.

2.7.2 DEA Registration

During the term of this Contract, Vendor must maintain its registration with the U.S. Drug Enforcement Administration to dispense controlled substances in Schedules II–V.

2.7.3 Licensed Wholesaler/FDA Approved Repackager

During the term of this Contract, Vendor must maintain its status as a licensed wholesaler in the Commonwealth of Pennsylvania and states where the participating Facilities are located and will provide repackaged stock medications in accordance with its status as an FDA Registered Repackager.

2.7.4 Joint Commission

Vendor will remain accredited by The Joint Commission, for pharmacy for the term of this agreement.

2.7.5 VAWD

Vendor will remain accredited as a Verified-Accredited Wholesale Distributor (VAWD) by the National Association of Boards of Pharmacy (NABP) for the term of this agreement.

2.7.6 Pharmacists with Specialized Credentials

Vendor currently has on staff and available to facilities two expert pharmacists who have earned the designation of American Academy of HIV Medicine (AAHIVM) HIV Pharmacist™ (AAHIVP). These experts are available to answer questions related to the treatment of human immunodeficiency virus (HIV), Hepatitis B virus (HBV), Hepatitis C virus (HCV), and HIV/HBV/HCV co-infected patients as well as questions relating to drug–drug and drug–disease state interactions. Vendor will employ and make available an AAHIVP certified Pharmacist for the term of this agreement.

2.7.7 FDA Risk Evaluation Mitigation Strategies

Vendor will follow all appropriate regulations, guidelines, and procedures established by federal and state laws including those of the U.S. Food and Drug Administration (FDA) for operating in compliance with FDA-approved Risk Evaluation and Mitigation Strategies (REMS).

2.7.8 HIPAA

Vendor 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).

2.8 Invoicing

Vendor will invoice a minimum of once a month or more frequently upon request. Each invoice will detail all charges for the current month, any unpaid balances, and any credits issued in the current month. Payment terms will be net 30 days.

Invoices will be provided in Excel, in the format of Facility choice including FTP-site download, hard copy, or CD-ROM. Invoices will include the contract number and/or purchase order number. Each line item will contain a prescription number, patient name and identification number, medication name and strength, quantity dispensed, price, NDC number, date the prescription was dispensed, prescriber name, and credits.

Invoices will be individually printed and billed directly for each patient or other jurisdiction such as for federal government agencies including U.S. Bureau of Prisons (BOP), U.S. Immigration and Customs Enforcement (ICE), U.S. Marshals Service (USMS), and for counties other than the one in which the inmate is housed. Vendor will bill worker's compensation orders for employees (where permitted), medical assistance (where permitted), 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 Pennsylvania Medicaid rate. If these invoices are not paid within 60 days, the contracted Facility will be responsible for all charges at the agreed upon Facility's rate, and Vendor will cease billing the alternate payers. Invoices for residents of institutional facilities will be billed in the same itemized manner.

Credits (for correctional accounts) will be individually listed, showing the amount of credit for each item. Vendor will provide a printout of all issued credits, alphabetized by patient name and including prescription number, date, medication name, the quantity returned, and amount of credit issued.

Vendor will invoice facilities for any backup and delivery charges in an itemized format.

Customized invoice reports will be available. Data in the invoices will be sorted according to the Facility's such as by inmate/patient name, medication name, medication category (psychotropic, HIV, etc.), dispense date, physician, or cost.

Invoice discrepancies should be noted by the Facility within 30 days of billing

A late fee of 1.25% per month will be applied to all past due balances, where permitted. Payment may be made to Vendor via EFT, check, or credit card/purchasing card. Payments by credit card or purchasing card will be assessed a 3% merchant fee.

2.8.1 **Third Party Billing**

Vendor will offer to provide third party billing services for federal inmates housed in MMCAP member Facilities (U.S. Immigration and Customs Enforcement, U.S. Marshals Service, Bureau of Prisons), Medicare, and Medicaid recipients (where permitted), and holders of private insurance where eligible and when the information is made available from the Facility to the Vendor at the time of order transmission.

Vendor will directly invoice medical assistance (where permitted), private health insurances, AIDS Drug Assistance Programs (ADAPs), the federal government, U.S. Immigrations and Customs Enforcement (ICE), the U.S. Marshals Service (USMS), and other sources of payment whenever the patient is eligible and when the billing information is provided to the Vendor by the Facility with the medication order at the time of dispensing and when permitted.

Medications invoiced to other payers will be billed at the Pennsylvania Medicaid rate. If these invoices are not paid within 60 days, the Facility will be responsible for all charges at the agreed upon Facility's rate, and Vendor will cease billing the alternate payers.

Invoices for residents of institutional facilities are billed in the same itemized manner. Vendor will bill Medicaid and third-party insurance providers in Delaware, Maryland, New York, New Jersey, Ohio, Indiana, Kentucky, Pennsylvania, and other states when permitted to bill and when patient is eligible.

U.S. Marshals Service - Vendor is a Heritage Health Solutions participating pharmacy. Prescriptions submitted by these sites for U.S. Marshals Service (USMS) inmates are noted as such by the site, and Vendor routes these appropriately for online adjudication and reimbursement. Vendor's third-party billing department will monitor these claims daily for any rejections or outstanding non-formulary medications; and will handle these claims directly with the Heritage Health Solutions customer service department.

Medicaid—Vendor is a Medicaid provider in most states that permit out of state billing and where patients can be billed. Vendor will use local backup pharmacies where available to fill and bill orders if patients are eligible for Medicaid benefits and when Vendor does not have a Medicaid provider number for the state.

2.9 **Facility Reporting**

Vendor will provide correctional Members access to its proprietary web-based program that will act as a nerve center where quantitative and qualitative information is readily available online, accessible 24 hours a day 7 days a week. Users will have various reporting options as well as multiple ways to view, sort, and print the dispensed data based on specified parameters. Vendor's statistical reports are a modular combination of Excel charts, graphs, figures, and reports that help illustrate monthly expenditures and usage, as well as prescribing habits and trends. The system currently contains over 300 available reports and charts, as well as over 400 yearly trending figures. Vendor customizes and creates reports to meet the needs of each Facility.

All Facilities may request Ad Hoc reporting at no charge.

2.10 **Reports to MMCAP and Contract Auditing**

Vendor will send to MMCAP a single monthly Excel file listing all sales transactions for the contracted Facilities in the prior calendar month. This report will contain all credits issued, all orders dispensed, and all services for which Facilities were billed.

Requirements:

- 1) A single monthly file of sales information
- 2) All sales transactions for the prior calendar month as well as credits issued, and other products and services provided.

- 3) Supplemental transactions from earlier months must be called out in the accompanying e-mail as either additional transactions, or a complete restatement of the sales in the month in question. "Edits" to previously reported individual transactions cannot be processed.
- 4) Patient-identifiable data is not to be sent to MMCAP.

Reports should follow the formatting in Appendix 1. Reports may be returned for correction and resubmission for improper file formatting as well as missing/invalid required information (especially Member IDs and NDC codes).

MMCAP may request a resubmission of prior reports at any time.

MMCAP reserves the right to audit reports and may ask for copies of invoices to substantiate charges. Vendor will supply to MMCAP the requested documents within one business week of the request.

2.11 Professional Services

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:

- a) Use of non-formulary medication;
- b) Antibiotic use;
- c) Psychotropic use;
- d) Drug Utilization by class;
- e) Specialized reporting as requested.

Patient profiles will be available upon request on a patient-specific or housing unit basis.

2.11.1 Formulary Development / Maintenance

Formulary development and enforcement, at no charge to the Facility, will be available to provide cost control and to ensure that the most appropriate medications are safely prescribed in accordance with manufacturer's recommendations and as written by the Facility's medical staff. If requested, and with appropriated access to the patient's full medical/medication chart, Alternative Treatment Recommendation (ATRs) will be provided for Member Facility at a negotiable rate not to exceed \$250 per month per Facility.

2.11.2 Facility Inspections

Vendor will provide a pharmacist for up to quarterly onsite inspections where required by law or accreditation, at correctional facilities with an ADP of greater than 250 inmates/juveniles, if requested. Inspections that are required more often than quarterly or inspections for facilities with an ADP of 250 or less or for facilities located in Alaska or Hawaii will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.

For institutional Facilities, Vendor will provide monthly on-site quality assurance inspections and reviews. The frequency of inspections will be determined by accreditation requirements, department of health regulations, and state law. Inspections will be billed at a rate of \$25.00 per hour spent in the facility and be completed by a Licensed Practical Nurse (LPN) or pharmacy technician.

Vendor will participate in Pharmacy and Therapeutics Committee meetings through teleconference or webinar unless coordinated with an on-site scheduled inspection. Committee meetings required on site that are not coordinated with a scheduled inspection visit or for member facilities in Alaska or Hawaii will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.

Inspection shall include, but not be limited to, the expiration dates, security, storage and a periodic review of medication records. The Facilities will be responsible for returning unused or discontinued medication to the medication return box monthly for pickup by Vendor and disposed of in accordance with State regulations.

Inspections will be based on NCCHC, ACA, and Joint Commission standards along with Vendor's experience in the institutional pharmacy industry. Vendor abides by all recommendations set forth by these organizations and will aid Members in meeting these standards as well.

2.11.3 *Collaboration with Facility Staff and Meetings*

Vendor will assist the Facilities in developing pharmacy policies, procedures and protocols, and will cooperate with Member's Clinical Pharmacy personnel to promote rational, cost effective pharmacy services. In addition, Vendor agrees to:

- a) Perform a quarterly review of the formulary. The review of the formulary will include Vendor representatives and Member representatives as designated by each party. Recommendations will be made, and final action approved within three (3) days of receipt of recommended formulary changes; and
- b) Perform a monthly review of non-formulary medications with written recommendations to the staff physicians regarding formulary alternatives.

The Policies and Procedures Manual will be continually updated as notifications of policy changes are received; in addition, each Facility will receive a complete update annually.

Reference materials will be offered to each Facility. Any reference material that Vendor is required to purchase will be billed to the Facility as a pass-through cost.

Vendor will designate an individual to serve as the Director of Clinical Pharmacy who will be responsible for overseeing and extending clinical pharmacy services provided by the Vendor. The Director will be responsible for establishing the research criteria and coordinating clinical consultations from various teaching institutions and research materials. This will include more analysis of medications usage within specific therapeutic drug categories and specific diagnoses. This will extend to the specific patient and prescriber. The information will be forwarded to the specific prescriber. The clinical reviews will be coordinated through the Facility Medical Director and the Pharmacy and Therapeutics Committee.

Vendor agrees to review the Member/Facilities Policies, Procedures and Formulary Document and Facilities Policies and Procedures prior to entering an Agreement. Without limiting or modifying Vendor's obligations under this Section, Vendor specifically agrees to observe, comply with, and participate in Member's Quality Programs, and utilization review and management programs or negotiate terms and conditions mutually agreed upon by both parties. Vendor acknowledges that Vendor's failure to maintain program compliance may result in removal of the Facility from this Contract and/or a delay or denial of compensation. Member and/or the Facilities may conduct an audit of the pharmacy services being provided by Vendor to assess the compliance of Vendor's services with all applicable laws and Member's Quality Assurance standards. Member and Facilities' staff shall provide a written report of such audit to Vendor and shall meet with the Vendor's personnel to review said audit. Vendor will be given a 45 day period to review any violations to provide a cure or resolution prior to any fines or contract terminations being enacted by Facility.

2.11.4 *Reference Materials*

Vendor will also provide basic manufacturer supplied reference materials/video library, in-service training when requested for a fee, commissary medical products supplies when requested for a fee, and an

information exchange from other facilities serviced by the Vendor. 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.

Quarterly company newsletters, written by Vendor pharmacists and guest industry experts, include articles and reviews on new medications, current disease strategies and therapies, operational procedures, formulary management, disease state reviews, and Vendor company news will be provided.

Vendor's Quarterly Drug Information Center Newsletter is written by a Vendor Certified AAHIVM Pharmacist and other Experts. This newsletter provides a wealth of knowledge and information specific to HIV and Hepatitis therapy and other issues impacting correctional and long-term care pharmacy services.

2.12 **Equipment**

Vendor will offer to loan to the facilities medication carts necessary for medication pass and a fax machine to each Facility throughout the duration of this contract. Fax machine replacement toner/cartridges can be purchased through Vendor at Vendor's actual acquisition cost plus dispensing fee. Number of carts supplied on loan will be based on the average number of blister cards utilized and cart capacity. If a new med cart or repairs are needed prior to end of contract, Vendor will replace the existing cart with a functional cart on loan.

Vendor will provide one barcode scanner on loan to correctional facilities for the purpose of medication reconciliation and return processing. Scanner will be compatible with Vendor's systems and updates are the responsibility of the Vendor.

2.12.1 ***Electronic Medication Administration Record (eMAR)***

Vendor will offer only correctional facilities Sapphire eMAR—a proprietary web-based electronic ordering, reconciliation, inventory and eMAR software. Vendor will provide the electronic order entry and eMAR portion of the software free-of-charge, on the condition that the member Facility uses it to order its medications primarily (e.g. 90+%) from Vendor. Vendor will also provide correctional facilities access to a free electronic reconciliation system. Vendor will also provide correctional facilities with access to a web-based Online Reporting Program (ORP) that is accessible 24/7/365 that allows staff at member facilities the ability to access patient data and to generate standard and custom reports. Vendor will also work with other vendors to establish an interface with providers of other electronic health records and comprehensive medication management programs for correctional and institutional facility clients.

If correctional Facility is seeking a comprehensive electronic health record (EHR) / electronic medical record (EMR) solution, Vendor offers an EMR/EHR at a negotiable price to be documented in Attachment A.

For any pharmacy interfaces, including those for prescription transmission, with other EMRs/EHRs or third-party vendors, Vendor will be responsible only for interface charges and programming required on Vendor's end of the interface.

Any transmission fees, submission fees, or other fees and charges which are charged by an EHR/EMR, or switch company, or Jail Management System (JMS), or any other company not specific to the above will be billed as a pass-through charge to Facility.

2.12.2 ***Fax Machine***

Vendor will offer to provide each Facility with a plain paper fax machine, on loan for the duration of the contract period, for the transmission and receipt of information between the Facility and Vendor. Fax

machine replacement toner/cartridges may be purchased through Vendor at Vendor's actual acquisition cost plus dispensing fee or procured by the Facility at Facility's cost.

3 Pricing

Pricing offered in this contract is dependent on the Facility's Class of Trade (Corrections or Institutional) and facility type (Non-Department of Correction or Department of Correction Correctional Facility) as determined by the Vendor. The following articles in Section 3 provide definitions and additional information, but Appendices 2, 3, and 4 contain actual rates to each class of trade and facility type. In the event of a conflict, the prices listed in the Appendices shall govern.

3.1 Medication Orders

3.1.1 *AAC-Based Dispensing Fee (correctional facilities)*

Medications will be invoiced at Vendor's Actual Acquisition Cost (AAC) at the time of dispensing plus the Dispensing Fee per prescription and stock piece as determined by the Member's ADP and the year of the contracting cycle.

Dispensing fee for patient-specific prescriptions is calculated on a per-order basis without regard to number of doses in the order. Average Daily Population (ADP) is also a factor and is calculated as the sum of ADPs from all Facilities in the Member's system.

For clarity: a 30-day, patient-specific prescription of 90 tablets will be dispensed in 3x30-count blister cards and charged a single dispensing fee for the prescription (there will not be 3 dispensing fees).

Stock pieces for those same 3x30ct blister cards would be assessed 3 dispensing fees as each card must be provided by a licensed wholesaler, a FDA Registered Repackager, and each must be accompanied with DQSA required transaction history documents (formerly known as pedigrees) in order for the Vendor to be in compliance with federal laws, rules, and regulations in addition to state specific wholesaling and repackaging laws, rules, and regulations.

Please refer to Appendices 2 and 3 for concise details of pricing and services offered respectively for Departments of Corrections and Non-Department of Corrections institutions.

Any costs for M/W/DBE (minority/women/disadvantaged business entity) program management are not covered under this agreement, but can be separately negotiated, if necessary, and documented in Attachment A.

Dispensing through automated dispensing units/cabinets are not covered under this agreement, but can be negotiated separately, and documented in Attachment A.

Member Facility is 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 facility provides a tax exemption certificate (blanket or transaction specific) to Vendor in a timely manner.

Vendor's proposed dispensing fees will remain fixed and firm for an initial three-year term from the Facility's start date and will be increased, upon amendment, as determined by the percentage increase in CPI for healthcare services, or three percent (3%), whichever is greater, every three years thereafter upon the anniversary date of the facility accessing this Contract.

Services and programs outside the specifications of this document, based on the unique needs of a Member Facility, will have any additional costs, management fees, or dispensing fees, negotiated in good faith

between the Member Facility, MMCAP, and Vendor for the provision of those unique services that are not listed herein.

Vendor may, at its discretion, negotiate with potential Members to establish a dispensing fee lower than the not to exceed rates in Appendices 2 and 3. Any such negotiated rates will be documented in Attachment A. If the member facility requires fewer days in the routine supply of maintenance medications, or if they require packaging other than blister cards, after an agreement has been signed, a new rate will be negotiated.

3.1.2 ***WAC-based Dispensing Fee (correctional facilities)***

Participating Facilities using MMCAP's previous contract with Vendor (MMS14004) that were billed using the WAC-minus-based pricing will be able to retain their pricing agreement from the previous contract with documentation on Attachment A. No new facilities will be permitted to access this pricing model through this new Contract (MMS17017).

3.1.3 ***Dispensing Fee (institutional facilities)***

Please refer to Appendix 4 for concise details of pricing and services offered for Institutional (Long Term Care or Assisted Living) Facilities.

Any costs for M/W/DBE (minority/women/disadvantaged business entity) program management are not covered under this agreement, but can be separately negotiated, if necessary, and documented in Attachment A.

Dispensing through automated dispensing units/cabinets are not covered under this agreement, but can be negotiated separately, and documented in Attachment A.

Member Facility is 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 Facility provides a tax exemption certificate (blanket or transaction specific) to Vendor in a timely manner.

Vendor's proposed dispensing fees will remain fixed and firm for an initial three-year term from the Facility's start date and will be increased, upon amendment, as determined by the percentage increase in CPI for healthcare services, or three percent (3%), whichever is greater, every three years thereafter upon the anniversary date of the Facility accessing this Contract.

Services and programs outside the specifications of this document, based on the unique needs of a Member Facility, will have any additional costs, management fees, or dispensing fees, negotiated in good faith between the Member Facility, MMCAP, and Vendor for the provision of those unique services that are not listed herein.

3.2 **Site Visits**

Vendor will provide a pharmacist for up to quarterly onsite inspections where required by law or accreditation, at facilities with an ADP of greater than 250 inmates/juveniles, if requested. Inspections that are required more often than quarterly or inspections for facilities with an ADP of 250 or less or for facilities located in Alaska or Hawaii or in the U.S. Territories will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.

The dispensing fee also covers pharmacist participation in Pharmacy and Therapeutics and other committee meetings through teleconference or webinar unless coordinated with an on-site scheduled inspection. Committee meetings required on site that are not coordinated with a scheduled inspection visit or for member facilities in Alaska or Hawaii or in the U.S. Territories will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.

3.3 Section Reserved**3.4 Shipping Charges**

Delivery and/or shipping costs are billed as a pass-through charge for member facilities in Alaska or Hawaii or U.S. Territories. Vendor will work with Members to minimize these charges through timing of shipments and efficient use of stock medications. Vendor utilizes a preferred shipping partner. If a common carrier other than Vendor's preferred shipping partner is requested, those costs for shipping will be billed as a pass-through charge to Facility.

If same-day delivery is requested and feasible, an additional cost for same-day delivery will be negotiated between the Member Facility, MMCAP, and the Vendor prior to the initiation of any services, and documented in Attachment A.

Shipping costs are included as part of the dispensing fee for Member Facilities in the contiguous United States. Shipping costs are included as part of the dispensing fee for facilities with an ADP of greater than 250 beds. All other facilities will have shipping billed as a pass-through cost. If medications need to be shipped to an outside facility address, the shipping cost will be billed as a pass-through charge.

3.5 Specialty Pharmacy

Specialty pharmaceutical items (items that are not available through primary wholesalers that must be ordered through specialty channels, that must be drop-shipped, and/or that require pharmacist or other intervention to procure—such as but not limited to plasma products, factor products, specialty vaccines, medications with REMS requirements, limited distribution medications, and chemotherapy agents) are invoiced at the price charged to Vendor from the specialty pharmacy plus a not to exceed dispensing fee of one hundred and twenty five dollars (\$125).

IV Medications are billed at the average wholesale price (AWP) per ingredient as published by Medi-Span, plus a not-to-exceed rate of ten dollars per piece (\$10).

Total Parenteral Nutrition (TPN) products will be billed at the AAC per ingredient plus a not to exceed dispensing fee of seventy-five dollars (\$75) per bag.

Non-sterile compounded medications will be billed at Vendor's actual acquisition cost per ingredient plus compounding labor plus a not to exceed dispensing fee of twenty-five dollars (\$25) per piece.

Medications dispensed under a 340B program will be billed under a separate negotiated rate (to be Determined, and documented in Attachment A) if Vendor is able to successfully operate a program with Facility and a covered entity.

3.6 Electronic Data Systems

Vendor will provide access to Sapphire eMAR and Computerized Physician Order Entry (CPOE) free of charge to eligible correctional Facilities purchasing all non-emergency prescription medications from the Vendor and using the system to transmit all orders to Vendor. Vendor will take full responsibility of deploying the product and its support. There are no additional charges for routine Sapphire software updates, initial training for member facilities in the contiguous United States, initial jail management system (JMS) interfacing, and 24/7 IT support. Member facility will be responsible for charges related to internet access, any ongoing JMS fees (if they are assessed by the JMS company), laptop(s), and scanner(s).

3.7 Medical and Surgical Supplies

Medical/Surgical Supplies are available at Vendor's correctional pricing and prices can be quoted, when requested. As MMCAP also holds contracts for many of these same items through its Healthcare products

and Services (HPS) program, Vendor agrees to not restrict Members' purchasing options on medical and surgical supplies.

3.8 **Rush Orders**

Rush Orders (which are defined as orders placed after the cutoff time, but prior to daily shipment), that would be shipped from the Vendor will be provided at no additional charge to Member.

3.9 **Backup Pharmacy**

Backup pharmacy services will be billed as a pass-through charge 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.

3.10 **Emergency Kit Exchanges**

Emergency Kit Exchanges will be provided at no additional charges to Member; however, the cost of medications that are replenished will be billed at actual acquisition cost (AAC) plus dispensing fee for correctional Facilities.

3.11 **Optional Clinical Service Enhancements**

3.11.1 ***Non-formulary Management***

With appropriate access to a patient's full medication chart, Alternative Treatment Recommendations (ATRs) are provided by Vendor's clinical pharmacists for non-formulary medication orders. If requested, Vendor will provide unlimited monthly routine ATRs for the member facility at a not-to-exceed rate of two hundred and fifty dollars (\$250) per month per Vendor's facility code.

3.11.2 ***Individualized Patient Care Plans***

With appropriate access to a patient's full medical/medication chart, Vendor will work to help manage high-risk and high-cost patients on a case-by-case basis with the development of individualized care plans, if requested. If a member facility is seeking individualized development of patient care plans, Vendor offers this service at a not-to-exceed price of one hundred and fifty dollars (\$150) per patient care plan.

3.11.3 ***Tele-pharmacy Consultations***

Vendor will provide targeted tele-pharmacy clinical consultations through videoconferencing for complex and high-acuity patients when requested, including direct adherence counseling for patients. These consults are billed per request at a not-to-exceed price of seventy-five dollars (\$75) per hour with a one-hour minimum.

3.11.4 ***On-site Clinical Pharmacist(s)***

If law, accreditation, contract requirement, or high cost-avoidance potential determines that an on-site clinical pharmacist is required, the costs for providing on-site pharmacist(s) will be negotiated based upon the specific member facility's needs and the number of pharmacists needed within their system. Pricing will be negotiated on a case-by-case basis if coordinated through Vendor. Negotiated rates will be documented in Attachment A.

3.11.5 ***340B program***

Medications dispensed under a 340B program will be billed under a separate negotiated rate (to be determined and documented in Attachment A) if Vendor is able to successfully operate a program with Facility and a covered entity.

4 **Ordering and Purchase Orders**

As a condition for purchasing under this Contract, purchasers must be MMCAP Members in good standing with MMCAP, as defined in Article 7. Members may purchase pharmaceuticals outside this Contract if it is in their best interest to do so or if it is required to obtain a product.

4.1 **Purchase Orders.**

MMCAP Members may use their own forms for Purchase Orders. To the extent that the terms of any form conflict with the terms of this Contract, the terms of this Contract supersede. Each MMCAP Member will be responsible for payment of goods and services provided by Vendor; and the MMCAP Office will have

no liability for any unpaid invoice of any MMCAP Facility. Vendor agrees to invoice the MMCAP Member for all products shipped or services provided. Vendor will accept Electronic Funds Transfer (EFT) for payment. At time of new account set up, the MMCAP Member will initiate this process with its bank.

4.1.1 *Funds available and authorized/non-appropriation.*

By submitting a Purchase Order, the MMCAP Member represents it has sufficient funds currently available and authorized for expenditure to finance the costs of the Purchase Order.

4.1.2 *Termination of Individual Purchase Orders.*

MMCAP Members may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Vendor, or at such later date as the MMCAP Member may establish in such notice, upon the occurrence of any of the following events:

- (i) The MMCAP Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or the MMCAP Member is prohibited from paying for such goods from the planned funding source; or
- (iii) Vendor commits any material breach of this Contract or a Purchase Order.

Upon receipt of written notice of termination, Vendor will stop performance under the Purchase Order as directed by the MMCAP Member.

Termination of a standing Purchase Order does not extinguish or prejudice the MMCAP Member's right to enforce such Purchase Order with respect to Vendor's breach of any warranty or any defect in or default of Vendor's performance under such Purchase Order that has not been cured, including any right of the MMCAP Member to indemnification by Vendor or enforcement of a warranty. If a standing Purchase Order is terminated, the MMCAP Member must pay Vendor in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Member.

Terminations for convenience are not permitted within 12 months of Members accessing this contract. Within 12 months of initially accessing this MMCAP contract, purchase orders and contracts entered into by a member Facility with Vendor for prescription filling and pharmacy benefit administration cannot be terminated to move services to another MMCAP Vendor for prescription filling and pharmacy benefit administration services unless mutually agreed upon in writing between MMCAP Facility and MMCAP Vendor that is currently providing the prescription filling and pharmacy benefit administration services.

4.1.3 *Jurisdiction and Venue of Purchase Orders.*

Upon completion of the Dispute Resolution process outlined in this Contract, and solely with the prior written consent of MMCAP and the State of Minnesota Attorney General's Office, the MMCAP Member may bring a claim, action, suit or proceeding against Vendor. The MMCAP Member's request to MMCAP to bring the claim, action, suit, or proceeding must state the initiating party's desired jurisdiction, venue and governing law. Upon completion of the Dispute Resolution process outlined in this Contract, the Vendor may bring a claim, action, suit or proceeding against MMCAP Member, in Vendor's sole discretion.

As it applies to purchases made by a MMCAP Member, nothing in the Contract will be construed to deprive the MMCAP Member of its sovereignty, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Contract or afforded by the MMCAP Member's law.

5 Customer Service

5.1 Primary Account Representative.

Vendor will assign a Primary Account Representative to MMCAP for this Contract and must provide a minimum of 72 hours' advanced notice to MMCAP if that person is reassigned. The Primary Account Representative will be responsible for:

- Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- Timely response to all MMCAP inquiries
- Performance of the business review

In the event that the Primary Account Representative is unresponsive and does not meet MMCAP's needs, the Vendor will assign another Primary Account Representative upon MMCAP's request.

5.2 Business Reviews.

Vendor will perform a bi-annual business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor and MMCAP and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees, supply issues, customer issues, and any other necessary information.

5.3 Dispute Resolution

Vendor and MMCAP will handle dispute resolution for unresolved contract issues using the following procedure:

5.3.1 Notification.

The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. And if necessary, MMCAP and the Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

5.3.2 Escalation.

If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The Vendor will have up to 45 calendar days to cure the issue.

5.3.3 Performance while Dispute is Pending.

Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP Members as a result of such failure to proceed will be borne by the Vendor.

5.3.4 No Waiver.

This clause will in no way limit or waive either party's right to seek available legal or equitable remedies.

6 MMCAP Members

6.1 Membership Listing.

MMCAP will provide Vendor a complete listing of all MMCAP members, which is password protected and published at www.mmcap.org. MMCAP reserves the right to add and remove MMCAP Members during the term of this Contract.

6.2 New Members.

The Vendor must allow new MMCAP Members that join MMCAP to access contract prices throughout the term of this Contract. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Membership List has been posted online.

The goal of this Contract is to extend offerings to Members within the MMCAP program that have undergone a state-approved procurement process. This Contract cannot be used as a procurement vehicle by which the Vendor and Member enter into their own stand-alone agreement.

6.3 Member-Required Participating Addenda

In order to access this Contract some members require jurisdiction-specific additional paperwork or contract language. Vendor must not sign any member documents without prior MMCAP review and approval. If needed, MMCAP will issue a Member-requested Participation Agreement (MPA) that will be amended into this Contract. No other mechanism of modifying or “attaching to” MMCAP contracts is authorized. The MPA, which will only apply to the requesting Member and must be signed in the following order: Member, Vendor, then MMCAP. 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 Member. In the event a Member requires a fee be added to the Contract price (e.g., member levied procurement fee or system use fee), that fee must be added on top of the MMCAP-contracted pricing. Vendor may not absorb the fee. Vendor must not pay a member levied fee without first collecting the fee through increased product costs. The fees will be set aside and paid to the member as would be detailed in an MPA.

6.4 Removing Members from Contract Pricing.

Vendor must notify MMCAP at least 30 days prior to removing any MMCAP Members from contract pricing. Notices must be sent to: MMCAP.Contracts@state.mn.us. If MMCAP does not receive notification that an MMCAP Member has been removed from contract pricing, Vendor will honor pricing until 30 days after such notice is provided to MMCAP.

6.5 Verification of Authorized Purchasers.

Upon request of MMCAP, Vendor must verify that it provides goods and/or services and pricing under this Contract only to MMCAP Members.

7 Administrative Fee

In consideration for the reports and services provided by MMCAP, the Vendor will pay an administrative fee that is calculated based on the total dispensing fees of dispensed/distributed products from Vendor to the MMCAP Member Facility, excluding Durable Medical Equipment (DME), medical supplies, and 340B dispensing fees. The Vendor will submit a check payable to “State of Minnesota, MMCAP Program” for an amount equal to 3% of all dispensing fees on orders placed by Facilities and dispensed by the Vendor excluding DME, medical supplies, and 340B dispensing fees. Billed clinical services and any monthly management fees for deployment of Sapphire EHR to correctional facilities will have an administrative fee rate of 1% of the monthly Software Licensing and Support Fee. The administrative fee must be paid as soon as is reasonable after the end of each month, but no later than 30 calendar days after the end of the month. Payments must be sent to Financial Management and Reporting - MMCAP, 50 Sherburne Avenue, Suite 309, St. Paul, MN 55155. The Vendor must submit a monthly Administrative Fee Data Report. The monthly Administrative Fee Data Report must contain the fields detailed in Appendix 1. All Administrative Fee Data Reports must be sent to: MN.MMCAP@state.mn.us at the end of each month, but no later than 30 days after the end of the month. Failure to comply with this provision may constitute breach of this Contract. MMCAP reserves the right to collect interest on payments 30 days past due at a rate consistent with Minnesota Statutes Section 16D.13.

Administrative Fee Data Report fields are detailed in Appendix 1 and submission rules governed by Section 2.10

In the event the Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and reject any proposal submitted by the Vendor in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

8 Authorized Agent.

MMCAP's Authorized Representative is the MMCAP Managing Director, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155.

The Vendor's Authorized Agent is Mark Zilner

9 Assignment, Amendments, Waiver, and Contract Complete

9.1 *Assignment.* Neither the Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement.

9.2 *Amendments.* **Any amendment to this Contract must be in writing and will not be effective until it has been fully executed by the parties.**

9.3 *Waiver.* If either party fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

9.4 *Contract Complete.* This Contract contains all negotiations and agreements between MMCAP and the Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

10 Liability

The Vendor must indemnify, save, and hold MMCAP, MMCAP Participating Facilities, including their agents, and employees harmless from any and all claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the performance of this Contract by Vendor. Nothing herein, whether express or implied, may be deemed to create an obligation on the part of the State of Minnesota or MMCAP to indemnify, defend, hold harmless or release the Vendor, Vendor's subcontractors, or Vendor's agents. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify the Vendor.

11 State Audits

Under Minnesota Statutes Section 16C.05, subdivision 5, books, records, documents, and accounting procedures and practices of the Vendor relevant to this Contract are subject to examination by the State of Minnesota, including its MMCAP program, and/or the Minnesota State Auditor or Minnesota Legislative Auditor, as appropriate, for a minimum of six years for the end of this Contract. This clause extends to MMCAP Members as it relates to business conducted with and sales to that MMCAP Member. The State of Minnesota reserves the right to authorize delegate(s) to audit this Contract and transactions.

12 Government Data Practices and Intellectual Property

12.1 **Government Data Practices.** The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this article, the Vendor must immediately notify MMCAP, and consult with MMCAP as to how the Vendor should respond to the request. The Vendor's response to the request will comply with applicable law.

The Vendor agrees to indemnify, save, and hold the State of 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 Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Contract by Vendor, including resulting from Vendor's failure to properly secure data. In the event that the Vendor subcontracts any of the work to be performed under the Contract, the Vendor shall retain responsibility under the terms of this paragraph for such work.

- 12.2 Intellectual Property.** The Vendor warrants that any materials or products provided or produced by the Vendor or utilized in the performance of this Contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify the Vendor.

If such a claim of infringement has occurred, or in the Vendor's opinion is likely to occur, the Vendor must either procure for MMCAP the right to continue using the material or product or replace or modify materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor, and at the Vendor's expense.

MMCAP and Member Facility agrees that Vendor and its affiliated company SapphireHealth, LLC retains all rights, title, interest in and ownership, and reserves the right to use and control the use of its intellectual property rights in its assets including, but not limited to, its software, reporting packages and user documentation; operations, procedures and strategies; formulary and clinical services; manufacturer, wholesaler, group purchase, vendor contracts and resultant data and information; patient, prescription claim and drug utilization submission; trademarks and service marks. This Contract creates no express or implied license for MMCAP or Facility to use such intellectual property for any purpose other than carrying out its responsibilities under this Contract.

13 Publicity and Endorsement

13.1 Publicity

Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. 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 Contract.

13.2 Marketing

Any direct advertising, marketing, or direct offers with MMCAP Member must be approved by MMCAP. Materials should be sent to: MMCAP.Contracts@state.mn.us. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for pharmaceutical and related products.

13.3 Endorsement

The Vendor must not claim that MMCAP endorses its products or services.

14 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota. Except to the extent that the provisions of this Contract are clearly inconsistent therewith, this Contract will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this Contract entails delivery or performance of services, such services will be deemed “goods” within the meaning of the UCC except when to do so is unreasonable.

15 Antitrust

The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

16 Force Majeure

Neither party to this Contract will be held responsible for delay or default caused by fire, riot, war, or acts of God.

17 Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions; if the remainder of this Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

18 Default and Remedies

Either of the following constitutes cause to declare the Contract or any order under this Contract in default:

- (a) Nonperformance of contractual requirements, or
- (b) A material breach of any term or condition of this Contract.

Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.

If the default remains after the opportunity for cure, the non-defaulting party may:

- (a) Exercise any remedy provided by law or equity; or
- (b) Terminate the Contract or any portion thereof, including any orders issued against the Contract.

19 Certifications

- 19.1 **Debarment and Suspension Certification** 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 MMCAP Member Facility; and has not been convicted of a criminal offense related to the subject of this Contract. Vendor further warrants that it will provide immediate written notice to the MMCAP Authorized Representative if this certification changes at any time.
- 19.2 **Compliance with Law** Any and all services, articles or equipment offered and furnished shall comply fully with all state and federal laws and regulations, including Minnesota Statutes Section 181.59 and Minnesota Statutes Chapter 363A prohibiting discrimination and business registration requirements of the Minnesota Secretary of State's Office.

- 19.3 **DSCSA** Vendor is in compliance with all currently applicable sections of the Drug Quality and Security Act (DQSA) Title II.
- 19.4 **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all amendments, 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.

20 Data Disclosure

In the event MMCAP obtains the Vendor's Federal Tax Identification Number, the Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota and other MMCAP Participating Facility obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

21 Insurance Requirements

- 21.1 Vendor must maintain the following insurance (or a comparable program of self-insurance) in force and effect throughout the term of the Contract.
- 21.2 Vendor is required to maintain and furnish satisfactory evidence of the following insurance (or of their program of self-insurance):
- Commercial General Liability Insurance:** Vendor will 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 Contract whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Contract.

Insurance **minimum** limits are as follows:

- \$5,000,000 – per occurrence
- \$5,000,000 – annual aggregate
- \$5,000,000 – annual aggregate – Products/Completed Operations

Workers' Compensation Insurance: Vendor will provide Workers' Compensation insurance at statutory minimums for all its employees, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the same:

Insurance **minimum** limits are as follows:

- \$500,000 – Bodily Injury by Disease per employee
- \$500,000 – Bodily Injury by Disease aggregate
- \$500,000 – Bodily Injury by Accident

Commercial Automobile Liability Insurance: Auto Liability insurance is not necessary unless the Vendor, Vendor's employees, or subcontractors will be driving on state property or on the property of MMCAP Members or will be using, owned, hired, or non-owned vehicles to conduct business on behalf of MMCAP.

Vendor will maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted the Vendor will require the subcontractor to maintain Commercial Automobile Liability insurance.

Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-Owned Automobile

The following coverages must be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

MMCAP named as an Additional Insured

21.3 **Additional Insurance Conditions:**

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will notify MMCAP within 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 30 days' advance written notice to MMCAP;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor's policy(ies) will include legal defense fees in addition to its liability policy limits;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- 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 Contract.

21.4 MMCAP reserves the right to immediately terminate the Contract 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, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

22 Affirmative action requirements for contracts in excess of \$100,000 and if Vendor has more than 40 full-time employees in Minnesota or its principal place of business. The State of Minnesota intends to carry out its responsibility for requiring affirmative action by its vendors.

22.1 ***Covered contracts and Vendors.*** If the Contract exceeds \$100,000 and Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then Vendor must comply with the requirements of Minnesota Statutes Section 363A.36 and Minnesota Rules 5000.3400-5000.3600. If Vendor is covered by Minnesota Statutes Section 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, it must certify that it is in compliance with federal affirmative action requirements.

22.2 **Minnesota Statutes Section 363A.36.** Minnesota Statutes Section 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

22.3 **Minnesota Rules 5000.3400-5000.3600.**

- (a) *General.* Minnesota Rules 5000.3400-5000.3600 implements Minnesota Statutes Section 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 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 Minnesota Rules 5000.3400-5000.3600 including, but not limited to, Minnesota Rules 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (b) *Disabled Workers.* Vendor must comply with the following affirmative action requirements for disabled workers.
 - (1) 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. 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.
 - (2) 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.
 - (3) In the event of Vendor's noncompliance with the requirements of this article, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) 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 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.
 - (5) Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Vendor is bound by the terms of Minnesota Statutes Section 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.
- (c) *Consequences.* The consequences for 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 Contract by the Commissioner or the State of Minnesota.
- (d) *Certification.* Vendor hereby certifies that it is in compliance with the requirements of Minnesota Statute Section 363A.36 and Minnesota Rules 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

23 **E-Verify Certification (In accordance with Minn. Stat. §16C.075)**

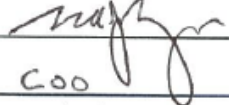
Vendor certifies that it and all its subcontractors have implemented the federal E-Verify program, as described in 48 CFR 52.222-54, for all newly hired employees in the United States who will perform work under this Contract. All subcontractor certifications must be kept on file with Vendor and made available to MMCAP upon request.

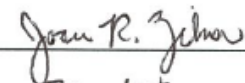
24 Cancellation.

- 24.1 *For Cause.* MMCAP or Vendor may cancel this Contract at any time, with cause, upon 60 days' written notice to the other party first and an opportunity to cure. The non-breaching party may terminate this Contract if the alleged breach has not been remedied within the 60-day period to cure.
- 24.2 *For Convenience.* MMCAP or Commissioner of Administration may cancel this Contract at any time, without cause, upon 60 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services performed or Products supplied through the Contract cancellation date.

1. Diamond Drugs, Inc., dba Diamond Pharmacy Services

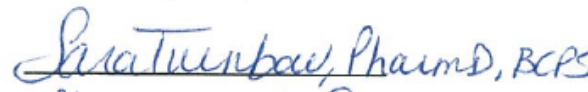
The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: 
 Title: Coo
 Date: 3/16/18

By: 
 Title: President
 Date: 3/16/18

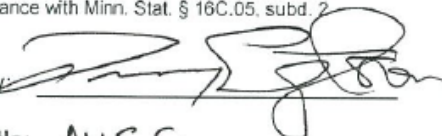
2. STATE OF MINNESOTA FOR MMCAP

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

By: 
 Title: Pharmacist Sr.
 Date: 3-16-18

3. COMMISSIONER OF ADMINISTRATION

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

By: 
 Title: AMS Sr
 Date: 3/16/18

Attachments:

Appendix 1: MMCAP Monthly Data Report fields

Appendix 2: Pricing Sheet for Departments of Corrections (DOC) Facilities

Appendix 3: Pricing Sheet for Non-DOC Correctional Facilities

Appendix 4: Pricing Sheet for Long Term Care and Assisted Living (Institutional) Facilities

Attachment A: Listing of facilities using contract and negotiated prices. Vendor and MMCAP will update monthly.

Attachment B: Facility information form to initiate service. Member submits to Vendor for Facility set-up.

Attachment C: (C-1, C-2, etc.) for MPA's (Member-requested Participating Agreements).

Appendix 2 – Pricing Sheet for Department of Corrections (DOC) Facilities

Each prescription and stock piece will be billed as follows:

Actual Acquisition Cost (AAC) plus a not-to-exceed (ceiling) dispensing fee:

If ADP is between:	Each prescription and stock piece will have a not-to-exceed dispensing fee of:
1 and 2,500	\$3.30
2,501 and 5,000	\$3.20
5,001 and 14,000	\$3.10
14,001 and 25,000	\$3.00
25,001 and higher	\$2.90

- ◆ Actual Acquisition Cost (AAC) is defined as Diamond's direct upfront wholesaler medication cost at the time of dispensing.
- ◆ The average daily population (ADP) is defined as the aggregate number of individuals housed by an MMCAP Member DOC at any given time. ADP is calculated by calculating the sum of each day's actual inmate census over a calendar month, and then dividing the sum by the number of calendar days in the respective calendar month. For the purpose of this agreement, ADP will be calculated on a monthly, per DOC, basis.
- ◆ The dispensing fees quoted are the not-to-exceed dispensing fee per prescription and stock piece. As all Member DOC requirements are specific to their unique needs, Diamond reserves the right and may be willing to negotiate rates below those presented in the table above to offer MMCAP DOC Members the best rate available based on the needed services and program management.
- ◆ The dispensing fee includes:
 - A pharmacist for up to quarterly onsite inspections where required by law or accreditation, at Member DOCs, if requested. Inspections that are required more often than quarterly or inspections for Member DOCs located in Alaska or Hawaii will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.
 - Pharmacist participation in P&T and other committee meetings via teleconference or webinar unless coordinated with an on-site scheduled inspection. Committee meetings required on site that are not coordinated with a scheduled inspection visit or for Member DOCs in Alaska or Hawaii will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.
 - No additional software charges for electronic ordering and electronic medication administration records (eMARs) if you choose Diamond's Sapphire computerized physician order entry (CPOE) and eMAR solution when Diamond is the sole prescription filling service provider and all orders are transmitted via Sapphire.
- ◆ Shipping costs are included as part of the dispensing fee for Member DOCs in the contiguous United States. If medications need to be shipped to an outside facility address, such as a farm-out location or county jails housing DOC inmates, the shipping cost will be billed as a pass-through. For Member DOCs in Alaska or Hawaii, shipping costs will be a pass-through charge.
- ◆ Durable medical equipment (DME) and medical supplies are billed at Diamond's correctional pricing, and prices will be quoted on a case-by-case basis, when requested.
- ◆ Startup in-service training, orientation, and ongoing training for Facilities in the contiguous United States is included in the quoted rates. Any on-site training for Facilities in Alaska or Hawaii are billed as a pass-through cost to Facility.

Appendix 3 – Pricing Sheet for Non-Department of Corrections (Non-DOC) Corrections Facilities**Including State Jails and Other Detention Facilities Not Part of a Statewide DOC System**

Each prescription and stock piece will be billed as follows:

Actual Acquisition Cost (AAC) plus a not-to-exceed (ceiling) dispensing fee:

If ADP is between:	Each prescription and stock piece will have a not-to-exceed dispensing fee of:
1 and 200	\$5.75
201 and 300	\$4.75
301 and 400	\$3.75
401 and 500	\$3.55
501 and 750	\$3.35
751 and 1,000	\$3.25
1,001 and 2,500	\$3.15
2,501 and 5,000	\$3.05
5,001 and 10,000	\$2.95
10,001 and 20,000	\$2.85
20,001 and higher	\$2.75

- ◆ Actual Acquisition Cost (AAC) is defined as Diamond's direct upfront wholesaler medication cost at the time of dispensing.
- ◆ The average daily population (ADP) is defined as the aggregate number of individuals housed by an MMCAP member facility at any given time. ADP is calculated by calculating the sum of each day's actual inmate census over a calendar month, and then dividing the sum by the number of calendar days in the respective calendar month. For the purpose of this agreement, ADP will be calculated on a monthly basis per facility.
- ◆ The dispensing fees quoted are the not-to-exceed dispensing fee per prescription and stock piece. As all member facility requirements are specific to their unique needs, Diamond reserves the right and may be willing to negotiate rates below those presented in chart above to offer MMCAP member facilities the best rate available based on the needed services and program management.
- ◆ The dispensing fee includes:
 - A pharmacist for up to quarterly onsite inspections where required by law or accreditation, at facilities with an ADP of greater than 250 inmates/juveniles, if requested—Inspections that are required more often than quarterly or inspections for facilities with an ADP of 250 or less or for facilities located in Alaska or Hawaii will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.
 - Pharmacist participation in P&T and other committee meetings via teleconference or webinar unless coordinated with an on-site scheduled inspection. Committee meetings required on site that are not coordinated with a scheduled inspection visit or for Member DOCs in Alaska or Hawaii will be billed as a pass-through cost at \$75.00 per hour plus travel expenses.
 - No additional software charges for electronic ordering and electronic medication administration records (eMARs) if you choose Diamond's Sapphire computerized physician order entry (CPOE) and eMAR solution when Diamond is the sole prescription filling service provider and all orders are transmitted via Sapphire
- ◆ Shipping costs are included as part of the dispensing fee for member facilities in the contiguous United States. Shipping costs are included as part of the dispensing fee for facilities with an ADP of greater than 250 beds. All other facilities will have shipping billed as a pass-through cost. If medications need to be shipped to an outside

facility address, the shipping cost will be billed as a pass-through charge. For member facilities in Alaska or Hawaii, shipping costs will be a pass-through cost.

- ◆ Durable medical equipment (DME) and medical supplies are billed at Diamond's correctional pricing, and prices will be quoted on a case-by-case basis, when requested.
- ◆ Startup in-service training, orientation, and ongoing training for Facilities in the contiguous United States is included in the quoted rates. Any on-site training for Facilities in Alaska or Hawaii are billed as a pass-through cost to Facility.

Appendix 4 – Pricing Sheet for Long Term Care and Assisted Living (Institutional) Facilities

The pricing quoted below is the not-to-exceed price for long-term care and assisted living (Institutional) member facilities. As all member facility requirements are specific to their unique needs, Diamond reserves the right and may be willing to negotiate rates below those presented and detailed below to offer MMCAP long-term care and assisted living (Institutional) member facilities the best rate available based on the needed services and program management.

Prices include any costs associated with the dispensing and delivery of medication to the Institutional facility by Diamond Courier. For those facilities not within reasonable driving distance from Diamond, delivery fees, if any will be negotiated in good faith.

Diamond's Not-to-Exceed (Ceiling) Price for Non-Third Party Dispensed Prescriptions

- ◆ Cost of Brand Name and Single-Source Medications (Non-IV Infusion) not-to-exceed Wholesale Acquisition Cost (WAC) plus 5% plus \$3.50
- ◆ Cost of Generic Multi-Source Medications (Non-IV Infusion) not-to-exceed Average Wholesale price (AWP) minus 50% plus \$3.50
- ◆ Stock and Resident-Specific Over-the-Counter (OTC) Medications not-to-exceed Actual Acquisition Cost (AAC) plus 10%
- ◆ Non-Sterile Compounds will be billed at a not-to-exceed rate of AWP plus compounding labor plus \$15.00 per piece with a minimum charge of \$25.00
- ◆ There will be a \$2.50 minimum price on all prescriptions
- ◆ If the discount to WAC or AWP falls below Diamond's AAC, then the prescription will be billed at AAC plus a not-to-exceed dispensing fee of \$4.45 per prescription
- ◆ Pricing will not be billed below the state Medicaid rate.
- ◆ Actual Acquisition Cost (AAC) is defined as Diamond's direct upfront wholesaler medication cost at the time of dispensing
- ◆ WAC is defined as the Wholesale Acquisition Cost as updated by Medi-Span at the time of dispensing
- ◆ AWP is defined as Average Wholesale Price as updated by Medi-Span at the time of dispensing.

Medical Supplies /Respiratory services (if applicable)

- ◆ Oxygen Concentrators will be billed at a not-to-exceed rate of \$50.00 per month
- ◆ E-Tanks will be billed at a not-to-exceed rate of \$10.00 per refill
- ◆ Medical Supplies will be quoted on a case-by-case basis upon request of the member facility

IV Therapy Pricing and Services

- ◆ Diamond will prepare and provide parenteral products and supplies necessary for IV medication therapy; provide an IV policy and procedure manual; furnish emergency hydration, antibiotic, and IV administration supplies via an e-kit onsite at the member facility.
- ◆ Therapy Price includes all supplies at a not-to-exceed price of WAC plus 25%
- ◆ Sterile Compounded IV Preparations (including antibiotics and custom electrolyte preparations)

- ◆ Brand name preparations will be billed at a not-to-exceed price of WAC plus 15% plus \$5.00
- ◆ Generic preparations will be billed at a not-to-exceed price of AWP minus 15% plus \$5.00
- ◆ Hydrations are billed at a not-to-exceed price of WAC plus 10% plus \$3.00
- ◆ Pain Management medications are billed at a not-to-exceed price of:
- ◆ Brand name preparation at a not-to-exceed price of WAC plus 10% plus \$5.00
- ◆ Generic preparations at a not-to-exceed price of AWP minus 15% plus \$5.00
- ◆ Pump Rentals at billed at a not-to-exceed rate of \$15.00 per day while in use
- ◆ TPNs are billed at a not-to-exceed rate of \$120/day for standard base formulations, additives, lipids and supplies
- ◆ Non-Standard Additives are billed at a not-to-exceed price of
- ◆ Brand preparations will be billed at a not-to-exceed price of WAC plus 15%
- ◆ Generic preparations will be billed at a not-to-exceed price of AWP minus 15%

IV Access Fees, Peripheral, Midline, and PICC Lines

- ◆ Insertions will be billed at a rate not-to-exceed the cost invoiced to Diamond by the IV insertion company plus 10% (provided by contracted service)
- ◆ Clinical Support will be billed at a rate not-to-exceed the cost invoiced to Diamond by the IV insertion company plus 10% (provided by contracted service)

Clinical Services Pricing

- ◆ IV Certifications, if requested, will be billed at a not-to-exceed rate of \$100.00 per student with an 8-hour class commitment and a 7-student minimum/10-student maximum
- ◆ Diamond will provide monthly quality assurance inspections for each facility, if requested, covering but not limited to medication room audits, storage and temperature inspections, medication cart audits and medication expiration date checks, preparatory pre- and mock surveys including med-pass observation of facility designated staff, medication cart and medication room/storage areas at a not-to-exceed rate of \$25.00 per hour for licensed practical nurse/pharmacy technician (time in facility only). Hourly fee will be subject to an annual increase equal to the most recently published Consumer Price Index percentage increase or 2.5%, whichever is greater.
- ◆ Monthly Pharmacist Consulting, if requested or where required by law will be billed at a not-to-exceed rate of \$100.00 per hour. Service includes monthly Medication Regimen Reviews (MRRs) for each resident at the current census, interim consults, and any additional meetings requested (quality assurance meeting, psychotropic meeting, etc.). Hourly fee will be subject to an annual increase equal to the most recently published Consumer Price Index percentage increase or 2.5%, whichever is greater.
- ◆ Medical Records/Paper (if applicable) will be billed at a not-to-exceed rate of \$2.50 per resident per month cumulative charge for all forms utilized on a monthly basis (MAR, POs, DCs, TARs, Psychotropic drug monitoring sheets, etc.)
- ◆ eMAR/EHR pricing is dependent on specific software and interface configurations and will be quoted on a case-by-case basis.
- ◆ For any medication or IV that is billable to the facility, Medicare A, or HMO, Diamond and the facility can establish a benchmark maximum cost. If this is initiated, any medication in excess of the agreed-upon

maximum cost per fill will be communicated to facility's designated person prior to the medication being dispensed.

- ◆ A therapeutic interchange protocol may be established in collaboration with the facility and the facility's medical director.
- ◆ Diamond will provide Medicare Part D plan evaluation for any existing resident or any new admission as requested. There is no charge to the facility for this service.
- ◆ Durable medical equipment (DME) and medical supplies are billed at Diamond's correctional pricing, and prices will be quoted on a case-by-case basis, when requested.
- ◆ Startup in-service training, orientation, and ongoing training for Facilities in the contiguous United States is included in the quoted rates. Any on-site training for Facilities in Alaska or Hawaii are billed as a pass-through cost to Facility.



Facility Information Form

We are looking forward to the opportunity to service your facility and we will strive to provide you the best service possible. In order to adequately prepare to begin services with your facility, we need some additional information. Please complete this form for each unique facility as soon as possible and email to Courtney Adams at cadams@diamondpharmacy.com or fax to 724.599.3666. If you require assistance completing this form, contact Courtney at 1.800.882.6337 x 1036.
Rev.10/27/11

FACILITY INFORMATION

Requested Start Date: _____

Facility Full Name: _____

Fed Ex/UPS Shipping Address (No PO Boxes): _____

Medical Phone: (____) _____ ext. _____ Medical Fax: (____) _____

Contact Person: _____ Title: _____

E-mail: _____

Estimated Average Daily Population: _____ Facility Capacity: _____

Are you accredited by any of the following agencies? ☐ NCCHC ☐ ACA ☐ STATE
Other _____

Who is your current pharmacy provider? Name: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

Packaging

How are your medications currently packaged?

☐ Blister/Bingo Cards ☐ Stock Bottles ☐ Stock Blister Cards ☐ Pill Vials/Bottles

Would you prefer different packaging than you are currently receiving? ☐ YES ☐ NO

If so, describe _____

Would you like controls packaged differently? ☐ YES ☐ NO

If yes, describe packaging _____

Are you permitted to receive metal ointment tubes? ☐ YES ☐ NO

Are you permitted to receive glass for items such as eye and ear drops? ☐ YES ☐ NO

Facility Information Form Continued

Medication Orders

Does your facility utilize unique inmate numbers as identifiers or can the same identifier refer to multiple inmates (such as a date of birth)? ___ Unique ___ Not unique

Please indicate _____

Please indicate how your facility prefers Diamond to label and dispense your orders:

☐ **Refills with Discontinue Date** – Prescriptions will be dispensed based upon quantity written by the prescriber and will be considered invalid once that anticipated therapy is depleted. e.g. Routine medications ordered for a month with two refills will be viable for dispensing for 90 days from the date written so long as there is quantity remain on the prescription. Label will contain the number of refills and the discontinue date.

☐ **Discontinue Date Enforced** - Prescriptions will be sent in a month supply or a lesser quantity not to exceed the discontinue date. This could result in prescriptions being sent in quantities less than a 30 day supply for the last prescription fill. This method is utilized for institutions who want the amount of drug dispensed to the end date the prescriber has indicated. The label will just contain the discontinue date but not the number of refills.

☐ **Discontinue Date Not Enforced** - Prescriptions will be sent in a month supply for standing therapies, regardless of physician indicated cut date. This method is utilized for institutions who want to insure that patient therapy is not interrupted; therefore, full quantities of standing therapies are dispensed. Short term orders and controlled medications are dispensed in quantities not to exceed what a prescriber has indicated. The label will just contain the discontinue date but not the number of refills.

Would you like us to restrict sending refills which are ordered too soon? ☐ YES ☐ NO

If so, please list in the spaces below how many days of medication you want sent at a time and how much time must pass for the medication to be refilled (Diamond will always send medication early upon special request of the medical staff so as not to endanger a patient).

Unless contract specified, routine medications are always sent as a 30 day. Please indicate if you have an exception to this rule. _____

Number of days that must pass before a medication is permitted to be refilled. _____

Are there any specific medications or classes you do not want dispensed under any circumstances? (Items prohibited or contract obligations with another party) If so, please list: _____

Are there specific medications or classes that you require to be dispensed only as stock and never patient-specific? If so, please list: _____

Is your institution utilizing an EMR/EHR program that contains a prescription number that needs to be cross referenced on your prescription labels? ☐ YES ☐ NO

Equipment

Do you have a fax machine in your medical area? ☐ YES ☐ NO

Do you need us to provide a fax machine? ☐ YES ☐ NO

If so, provide the access code you must first dial to get an outside line. _____

Facility Information Form Continued

List all fax number(s) throughout your facility you will utilize to transmit orders?

() () ()
()

Do you require us to provide medication carts? ☐ YES ☐ NO If so, how many? _____

Which size(s) are needed?

3 wide (450 Card Capacity) Qty _____

4 wide (600 Card Capacity) Qty _____

5 wide (750 card capacity) Qty _____

Our medication cart technicians will call you to discuss such items as:

1. How many sets of keys are required? _____
2. Will your cart(s) be: ☐ stationary, at a pill line ☐ mobile, rolled to the cell blocks
3. If rolled, do carts roll over(check all that apply): ☐ smooth floor ☐ high thresholds
☐ elevator ☐ carpet
4. Current average number of blister cards per cart _____
5. Current average number of patients serviced by each cart _____
6. Number of Units/Pods/Stations at your facility _____
7. Number of different people passing medications at the same time _____
8. Number of floors where medications are passed _____
9. Which drawer would you like the narcotic compartment? ☐ Top ☐ Middle ☐ Bottom
10. Which accessories would you like included? _____
11. Does your facility have a loading dock for deliveries? ☐ YES ☐ NO
12. Who may we contact with cart questions? _____

Formulary

Does your facility currently utilize a drug formulary?

☐ YES

☐ NO

Do you want to utilize Diamond's formulary?

☐ YES

☐ NO

(If not, send us a copy of the formulary you wish to utilize)

Will you require completion of a non-formulary (NF) form prior to receiving NF medications?

☐ YES

☐ NO

If yes, do you want NF medications sent prior to completing the NF form?

☐ YES

☐ NO

If yes, how many days supply should be sent prior to approval? _____

Medical Administration Records

Diamond provides its Sapphire eMAR, a fully HIPAA-compliant electronic application, free to its pharmacy customers.

Are you interested in our free Sapphire eMAR program?

☐ YES

☐ NO

If so, please provide contact information below, and a member of the Sapphire team will be in touch.

Name:

Title:

Facility:

Phone:

Email:

If not, would you like monthly **printed** Medical Administration Records (MARs)? ☐ YES ☐ NO

If so, which day of the month would you like to receive them? _____

Please list your normal specific medication Hours of Administration (HOAs) you would like us to print on your MARs (List all specific administration times for **all four (4)** administration frequencies, if applicable)

Facility Information Form Continued

QD _____ BID _____ - _____ TID _____ - _____ - _____ QID _____ - _____ - _____

Which time format would you like printed?

☐ Standard

☐ Military

What order do you prefer your MAR's to be printed in?

☐ Alphabetically by inmate name

☐ Alpha-numerically by inmate number

☐ Cell block then alphabetically by inmate name

☐ Cell block then alpha-numerically by inmate number

Reports

Would like to utilize on our Online Reporting Program (ORP)?

☐ Yes

☐ No

Would you like to receive printed monthly Formulary Management Reports?

☐ Yes

☐ No

In what format would you like to receive them?

☐ Electronic

☐ Paper

If electronic, please provide your first and last name and the email address(es) to send them to:

This reporting option is a password protected website in which you may sort from various usage reports and real-time order data. This system will not replace your invoice or formulary management reports.

For the most accurate reports, we will need your monthly inmate census provided to your billing representative each month. Who at your facility will be sending this?

Name and Title: _____

Phone Number: _____

Email Address: _____

Electronic Pedigree Paper

The FDA requires us to send pedigree papers with certain stock prescription medications which must remain on file. We will provide these via electronic access through a website to eliminate filing unless your facility does not have internet service. Please provide the following information:

Pedigree Contact Name: _____

Email: _____

If internet access is not available at your site, provide appropriate fax number: _____.

Emergency Services

Which local backup pharmacy do you wish to utilize for emergency prescriptions?

Primary Pharmacy Backup Name: _____

Address: _____

Contact Name: _____ Email: _____

Phone Number: (____) _____ Fax Number: (____) _____

Does this pharmacy have delivery services available to your facility?

☐ YES

☐ NO

If not, does your facility prefer to pick up?

☐ YES

☐ NO

If not, would you need us to arrange taxi services and bill to your facility?

☐ YES

☐ NO

Is the above pharmacy your current provider?

☐ YES

☐ NO

If yes, please let us know a date when it is acceptable to contact them about providing backup services, after they are notified by your facility that they will no longer be the primary pharmacy provider. _____

Facility Information Form Continued

Specific patients such as ICE or patients with third party insurance (Medicaid, US Marshall, or other) where prescriptions are covered by another party need to be provided to the backup pharmacy with proper billing information prior to filling the order. Your facility is responsible to provide all insurance information to the backup pharmacy with the orders. Otherwise the transaction cannot be billed. If any charges are incurred or cannot be billed or are not paid, they will be passed through to Diamond, and the facility will be responsible for reimbursing Diamond.

Delivery

We will utilize FedEx for shipping Monday-Saturday where available. Does your facility have any special weekend or holiday delivery requirements i.e., deliver to the front door, no deliveries accepted on weekends (even at front door), etc? If so, please list: Please note: we will not ship refrigerated items unless it will be delivered with staff available on the next day.

Is there staff available on weekends or holidays to receive shipment of medications.? ☐ YES ☐ NO

Would you like set up on our Online Reconciliation Program? (Barcode Medication Check-in Program) ☐ YES ☐ NO

We have the ability to send order confirmations the evening your order has been placed. These may be delivered via email or fax. The purpose of this confirmation is to inform you of exactly what will be on your delivery the following day. These items will also be listed on your delivery sheet accompanying your delivery.

Please Initial appropriate space:

I would like to receive daily confirmations sent to me via email. _____
(Email address to send confirmations: _____ @ _____)

I would like to receive daily confirmations sent to me via fax. _____
(Fax number to send confirmations: _____ - _____ - _____)

I do not wish to receive daily confirmations. _____

Invoicing

Is your facility exempt from state and/or local sales tax? ☐ YES ☐ NO

If yes, please provide all applicable tax exemption certificates.

Monthly invoices can be sorted in a variety of different formats, which would you prefer?

☐ Alphabetical by Inmate Name ☐ By Date ☐ Alphabetical by Medication, Then by Inmate
☐ Drug Class by Inmate ☐ Drug Class by Date

Billing Contact Person: _____

Bill To Address: _____

Phone: () _____ Fax: () _____ Email: _____

May we send your bills electronically via a secure FTP site instead of hard copy? ☐ YES ☐ NO

If hardcopy, how many copies are needed? _____

Do you require a purchase order to process payment? ☐ YES ☐ NO

Facility Information Form Continued

Which type of additional inmate populations do you house:

☐ U.S. Marsha

☐ ICE/INS

☐ BOP

US Marshal Number _____

☐ DOC

☐ Other Counties

ICE Number _____

Would you prefer us to bill these other entities directly?

☐ YES

☐ NO

If yes, please list appropriate agencies with billing addresses:

Do you house inmates with health insurance that covers prescriptions such as Medicaid or Medicare?

☐ YES

☐ NO

How would you prefer to make your payments?

☐ EFT (electronic funds transfer-direct deposit)

☐ Check

Prescriber Information

Prior to filling prescriptions, we are required to have each of your prescriber's state medical licenses and DEA numbers on file. You can either provide us the numbers or copy(ies) of their license(s). **Please do not hold up this form if you do not have this information available yet. Please email or fax them ASAP with your facility's name written on each license.** We will also need a physician's signature log showing the physician's printed name and signature to help us identify signatures on the orders.

List all prescribers' names here with their NPI # _____

Medical Supplies

Will you be ordering medical equipment and supply items from us?

☐ YES

☐ NO

Contact: first, last name and email: _____

List any certain procedures required, such as issuing a purchase order or special authorization.

Medical Supplies are normally sent for ground delivery. Is it acceptable to send some lighter medical supplies with your medication order?

☐ YES

☐ NO

May we send Medical Supply invoices separate of the pharmacy invoices?

☐ YES

☐ NO

Fax Confirmation

We offer an additional confirmation receipt for faxed orders which sends a fax or an email notification confirming we actually received your fax, which is in addition to your local fax machine's confirmation sheet. This receipt will state the actual fax receipt time and the number of pages received. If interested, please complete the box below for **each** fax machine that may transmit orders. Use additional sheets if necessary.

Primary Fax Number: () _____	Fax Machine Location: <input type="checkbox"/> Med Room <input type="checkbox"/> Infirmary <input type="checkbox"/> Office <input type="checkbox"/> Administration <input type="checkbox"/> Other _____
Additional Fax Number: () _____	Additional Fax Location: <input type="checkbox"/> Med Room <input type="checkbox"/> Infirmary <input type="checkbox"/> Office <input type="checkbox"/> Administration <input type="checkbox"/> Other _____

Please notify of fax confirmations via:

☐ Email

☐ Fax

☐ Do not notify

Facility Information Form Continued

Facility Notifications

Would you like to receive STAT notifications from Diamond, such as delivery delays, drug recalls, holiday schedules, new procedures, etc.?

If yes, how would you like notifications to be sent?

☐ Contact name _____

☐ Email _____

☐ Fax (____) _____ - _____

☐ Both

Stock Medications

We are required by Federal Law to maintain the proper licensing records in order to provide any **stock** (non-patient specific prescription) medications to your facility. In order for us to provide this service, **one** of the following two sections must be completed:

1.) If your **facility** currently has a state pharmacy license and/or DEA license, please complete the following information.

Facility Name _____

Pharmacy State License # _____ Expiration Date: _____

Pharmacy DEA # _____ Expiration Date: _____

A copy of each license must be provided.

2.) If your **facility** does not have a state pharmacy license and/or a DEA license, one of your prescribers must take responsibility for oversight of all stock medications for your facility, specifically for purchasing and dispensing. The prescriber must complete the following information listed below. In addition, the physician **MUST** log onto the DEA website and change his/her **BUSINESS ADDRESS** to the address of the facility. The mailing address on the website can be set to their office or home. Failure to have their DEA business address changed will prohibit Diamond from sending stock prescriptions to your facility. If a single prescriber is taking responsibility for multiple sites, the physician must have multiple DEA licenses for each site reflecting the address of each individual facility.

Facility Name _____

Physician State License # _____ Expiration Date: _____

Prescriber Federal DEA # _____ Expiration Date: _____

A copy of each license must be provided.

I, _____ (prescriber's name printed) take full responsibility of all **stock**, non-patient specific medications ordered and received by the facility listed above. In addition, I hereby permit Diamond Pharmacy Services to ship all stock medications to the address listed below.

Facility Name and Address _____

Prescriber Signature _____ Date _____

If you have any procedural changes that we may accommodate in the future, please contact us for assistance.