

Accurate as of Mar. 29, 2023

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<https://members.infuse-mn.gov/user/login>



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

McKesson Medical-Surgical Government Solutions LLC

MMCAP Infuse Agreement: MMS2200736

Prepared on March 28, 2023

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Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** The application of this can be found at Paragraph 9.1.
2. **Authorized Subcontractors:** Reserved.
3. **Contract(ed) Items:**
 - A. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in the collective **Attachment A's**.
 - i. **Core:** Means the group of products offered by the Vendor identified in **Attachment A-1**.
 - ii. **Non-Core:** Means all other products (not otherwise excluded under this Agreement) offered by Vendor.
 - iii. **MMCAP Infuse Products:** Means the product categories and/or products offered by the MMCAP Infuse Manufacturers.
 - iv. **Lab Products:** Means laboratory instruments and reagents (waived & non-waived), laboratory diagnostics (waived & non-waived), general laboratory supplies (ex. refrigerators, incubators, timers, thermometers, microscopes, etc.). Lab Products will not include diabetic lancets.
 - B. **Services:** Reserved.
4. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
5. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
6. **MMCAP Infuse Base Cost:** Means the price (before the Mark-Up) for a MMCAP Infuse Product determined by a pricing contract between MMCAP Infuse and the applicable MMCAP Infuse Manufacturer.
7. **Holidays:** No Day shall be considered a holiday unless it is listed here: New Year's Day, MLK Jr. Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day After Thanksgiving Day, and Christmas Day.
8. **Mark-Up:** Means the agreed upon percentage to be added to MMCAP Infuse Products in accordance with **Attachment A-3**.
9. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
10. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **MMCAP Infuse Manufacturer:** Means manufacturers and suppliers, identified on **Attachment A-3**, who have a separate arrangement with MMCAP Infuse for specific Products at arranged Pricing.
12. **Onboarding Date:** Means the Vendor must allow new Members access to the Agreement within seven (7) business days of notice by MMCAP Infuse.
13. **Onboarding Forms:** Means all forms the Member is required to complete before purchasing from the Vendor. Examples are set forth on **Attachment D**.
14. **Order(ing) System:** Means the document or electronic platform Member utilizes to obtain Contracted Items.
15. **Price/Pricing:** Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership as set forth on the **Attachment A's** and any subsequent amendment to this Agreement.
16. **Purchase Order:** Means any document formalizing the selection of and scope of Products and Services selected by a Member. Additionally, this means any form submitted by the Vendor for a Bulk Order (see Paragraph 3.9).
17. **State:** Means one of the recognized fifty (50) states of the United States of America.

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THIS Agreement ("**Agreement**") is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of MMCAP Infuse ("**MMCAP Infuse**") and McKesson Medical-Surgical Government Solutions LLC, a limited liability company located at 9954 Mayland Drive, Suite 5176, Henrico, VA 23233 ("**Vendor**" or "**MMSG**").

Agreement Term:

1. **Effective Date:** May 2, 2023 or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** May 2, 2025.
3. The Agreement Term may be extended upon mutual agreement of MMCAP Infuse and Vendor in accordance with Minn. Stat. § 16C.06, Subd. 3b.

AGREEMENT COMPONENTS

The following components are the Agreement; all referenced Prefix and Attachments, are attached and incorporated into this Agreement.

1. **Prefix A:** Definitions
2. **Attachment A:** Products and Pricing
 - **A-1:** Core
 - **A-2:** Discounts and other Cost Saving Opportunities
 - **A-3:** MMCAP Infuse Loaded Product Categories, Vendors, and Mark-Ups
 - **A-4:** Vendor Exclusive Brands
 - **A-5:** Additional Exceptions to Prohibited Products
3. **Attachment B:** Alternative Product Categories
4. **Attachment C:** Services
5. **Attachment D:** Member Onboarding Forms
6. **Attachment E:** Reporting Requirements
7. **Attachment F:** MN Statutory Language
8. **Attachment G:** Return Goods Policy

ARTICLE I
PRODUCTS

- 1.1 **Product Categories.** The four to eight (4-8) digit United Nations Standard Products and Services Code (**UNSPSC**) for a Product will establish the default classifications. The parties may establish alternative classifications or provide clarifications in **Attachment B**.
- 1.2 **Core.** These are Products that are specifically identified on a "line-item" basis on **Attachment A-1**.
 - A. **Package Size:** All package size offerings for that Product will be considered part of the Core list.
 - B. **"Annual Refresh":** Annually, at a minimum, it is expected that the top fifty percent (50%) (in both unit and dollar volume) of collective Core and Non-Core Products from the previous year will be classified as Core for the applicable upcoming year. MMCAP Infuse will provide Vendor a proposed Core list sixty (60) days in advance. The Vendor may review and appeal items on the list, however the Vendor must provide (i) written justification and supporting evidence; and (ii) alternative product to replace the item on the Core list. MMCAP Infuse will then review and consider the appeal. A final Core list must be approved by both parties within the sixty (60) days, otherwise the previous year's Core list will automatically renew for another year or until the parties agree to an updated Core list.
 - i. **Historical Sale History.** If the Vendor has a historical sale history with MMCAP Infuse and/or the Membership, that will be used to create the initial Core list.
 - C. **Product Additions/Removals:** The Vendor may add Products to the Core list at any time with three (3) days' written notice to MMCAP Infuse, however, removals can only occur on an annual basis. Once a change has occurred, the Vendor must wait six (6) months from each change date to make further adjustments.
 - D. **MMCAP Infuse Products:** Unless stated on **Attachment A-5**, the Vendor will be prohibited from selling MMCAP Infuse Products and competing equivalent items under the Core category.
 - E. **Vendor Exclusive Brands:** [Intentionally Omitted]
- 1.3 **Non-Core.** These are all other Products in the Vendor's catalog sold to the Membership that are not prohibited by **Paragraph 1.5**. These offerings will receive a discount off the disclosed catalog price at the time of the Member's purchase in accordance with **Attachment A-2**. The Vendor may fluctuate the Pricing and Product offerings as displayed in the Vendor's catalog without notice to MMCAP Infuse.
 - A. **MMCAP Infuse Products:** The Vendor may compete with the MMCAP Infuse Products by offering competing items under Non-Core but must still make MMCAP Infuse Products visible

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- B. Over the Counter Pharmaceuticals: With MMCAP Infuse's prior review and approval of each Product, the Vendor may sell over-the-counter pharmaceuticals to the Membership under this category. A list of pre-approved over-the-counter pharmaceuticals can be found on **Attachment A-5**. However, upon mutual consent with Vendor, MMCAP Infuse may classify a Product as a MMCAP Infuse Product. The Vendor may be required to remove Product from Non-Core or the catalog entirely if the Vendor cannot follow the requirements for MMCAP Infuse Products or the Vendor withholds consent.
- C. Drug and Alcohol Testing Products: With MMCAP Infuse's prior review and approval of each Product, the Vendor may sell drug and alcohol testing items to the Membership under this category. A list of pre-approved Products can be found on **Attachment A-5**. However, upon mutual consent with Vendor, MMCAP Infuse may classify a Product as a MMCAP Infuse Product the Vendor may be required to remove from Non-Core or the catalog entirely if the Vendor cannot follow the requirements for MMCAP Infuse Products or the Vendor withholds consent.
- D. Diabetic Supplies: With MMCAP Infuse's prior review and approval of each Product, the Vendor may sell Diabetic Supplies to the Membership under this category. A list of pre-approved Diabetic Supplies can be found on **Attachment A-5**. However, upon mutual consent with Vendor, MMCAP Infuse may classify a Product as a MMCAP Infuse Product. The Vendor may be required to remove Product from Non-Core or the catalog entirely if the Vendor cannot follow the requirements for MMCAP Infuse Products or the Vendor withholds consent.
- E. Nutritionals: With MMCAP Infuse's prior review and approval of each Product, the Vendor may sell Nutritionals to the Membership under this category. A list of pre-approved Nutritionals can be found on **Attachment A-5**. However, upon mutual consent with vendor MMCAP Infuse may classify a Product as a MMCAP Infuse Product. The Vendor may be required to remove Product from Non-Core or the catalog entirely if the Vendor cannot follow the requirements for MMCAP Infuse Products or the Vendor withholds consent.
- F. Prohibited Products (see Paragraph 1.5): Unless stated otherwise, the Vendor cannot sell any Prohibited Products under Non-Core offerings.

1.4 **MMCAP Infuse Products**. MMCAP Infuse and/or MMCAP Infuse Manufacturer will provide forty-five (45) days' notice of a Product listing (and applicable MMCAP Infuse Base Cost) to the Vendor. The Vendor must be listed as an Authorized Distributor in the MMCAP Infuse Manufacturer agreement in order to have Products added to the MMCAP Infuse Product listing to ensure the Vendor will be able to honor chargebacks. The Vendor will be required to load the Products in the Ordering System within five (5) business days of the notice. The Vendor will have thirty (30) days to obtain the inventory before Paragraph 4.1 will be applied. The Vendor will be required to sufficiently carry and stock MMCAP Infuse Products unless there are fewer than three (3) units sold per month or Membership demand does not meet the minimum order requirements a MMCAP Infuse Manufacturer places on the Vendor. Vendor will be required to make all MMCAP Infuse Products searchable within the Vendor's online Ordering System; however, Paragraph 4.1 will not apply. If the Vendor cannot sell the MMCAP Infuse Products, the Vendor must: (A) provide written justification to MMCAP Infuse; and (B) obtain the written approval of MMCAP Infuse.

- A. Eligibility Requirements: If a MMCAP Infuse Manufacturer requires a form to be signed by a Member for certain specialty pricing eligibility based on the MMCAP Infuse Manufacturer guidelines, MMCAP Infuse will be responsible for obtaining the document from the Member and submitting it to the MMCAP Infuse Manufacturer. In the event Vendor receives such document from a Member, it will submit to MMCAP_infuse.hpscontracts@state.mn.us before providing the applicable specialty pricing to the Member.
- B. MMCAP Infuse Manufacturer Special Pricing: Vendor will ensure only eligible Members see MMCAP Infuse Manufacturer driven special pricing in the Vendor's ordering platform and only eligible Members will have access to that special pricing. It is the responsibility for the Vendor to bill Members at the correct tier by working with the MMCAP Infuse Manufacturer.
- C. Changes: MMCAP Infuse reserves the right to modify the MMCAP Infuse Products at any time during the Agreement Term and the Vendor will have five (5) business days to adjust their catalog.
- D. Monitoring: Upon request, the Vendor will provide an inventory forecasting report to MMCAP Infuse.
- E. Chargeback Denials: Within five (5) business days of notice from supplier, the Vendor will provide notice to MMCAP Infuse of a chargeback denial from an MMCAP Infuse Manufacturer. Upon the guidance and request from MMCAP Infuse, the Vendor agrees to resubmit chargebacks.
- F. Contract File: Vendor will provide an accurate monthly file of the MMCAP Infuse Products loaded before the first day of the month. The file may be zipped and should be submitted to MMCAP_infuse.hpscontracts@state.mn.us.

1.5 **Prohibitions**. Unless otherwise stated under this Agreement (**Attachment A-2** through **Attachment A-5**) or if MMCAP Infuse provides written approval by an amendment to this Agreement, the Vendor will be prohibited from selling the following Product categories to the Membership (**Prohibited Products**) pursuant to this Agreement. For the sake of clarity, Vendor may sell these Product categories to customers that are Members of MMCAP Infuse so long as this Agreement or other MMCAP Infuse contracts are not accessed in such sale. This Agreement and the associated solicitation cannot be used as procurement vehicle for those sales. MMCAP Infuse may amend this list with sixty (60) days' notice; the Vendor will be required to remove affected Products from the Agreement and catalog offerings. The following categories are prohibited under this Agreement:

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- A. All influenza and general vaccines: None; MMCAP Infuse has awarded separate agreements through a different request for proposal (Generally, UNSPSC 5015050000).
 - B. Pharmaceuticals: Except for those authorized under MMCAP Infuse Products, Core, and Non-Core (Generally, UNSPSC 5110-5125).
 - C. Diabetic supplies: Except for those authorized under MMCAP Infuse Products, Core, and Non-Core (Varies but can fall under the following UNSPSC: 421425; 421426; 4222; 411220).
 - D. Incontinence: Except for those authorized under MMCAP Infuse Products, Core, and Non-Core. (Generally, UNSPSC 42142700; 42443800; 42143900).
 - E. Nutritionals: Except for those authorized under MMCAP Infuse Products, Core, and Non-Core. (Generally, UNSPSC 422318; 5119; 8515).
 - F. Drug and alcohol testing: Can be sold under Non-Core (Generally, UNSPSC 8512810).
 - G. Condoms: Except for those authorized under MMCAP Infuse Products (Generally, UNSPSC 53131622).
 - H. Dental Supplies: None; MMCAP Infuse has awarded separate agreements through a different request for proposal (Generally, UNSPSC 4215).
- 1.6 **Product Preference**. The Vendor agrees to prioritize MMCAP Infuse and Core Products (unless there is an unavailability of a Product, the Vendor will not encourage the purchases of Non-Core Products over a MMCAP Infuse or Core Product). Additionally, the Vendor will notify Members of their ability to set up formularies or order lists within McKesson Supply Manager, so they can prioritize MMCAP Infuse and Core Products in the Ordering System. Upon six (6) months following the Effective Date of this Agreement, on a quarterly basis or as requested by MMCAP Infuse, the Vendor will provide contract compliance reports to monitor purchases of Non-Core products compared to their MMCAP Infuse and Core Products equivalents in the Product category. Unless the Vendor can show evidence that there is a lack of availability, at no point should the Non-Core Products exceed forty percent (40%) of a purchase makeup for Product category for any three (3) month period when there are MMCAP Infuse Product and Core Product equivalents. The compliance formula is found on **Attachment E** and data received from the Vendor via **Table 1, Sales Data Report** will be used to review compliance.
- 1.7 **Product Dating**. All Products excluding consumable lab Products supplied to Members must have an expiration date of at least six (6) months from the date of manufacture and have a least a three (3) month shelf life from the date of acceptance of the Product by the Member. If a Member notifies Vendor that a Product (excluding consumable lab Products) has an expiration date less than six (6) months, Vendor will process a return of the Product.
- A. Bulk Order: For purchases that fall under Paragraph 3.9, the expiration date of the Products must have a shelf life of at least five (5) years remaining. If a Product does not have an expiration date, the lot number cannot be older than one (1) year from the date of production/shipment.
- 1.8 **Product Dating – Consumable Lab Products**. Vendor will provide consumable lab Products with at least thirty (30) days shelf life remaining prior to the expiration date of such Products, unless dictated otherwise by the supplier or otherwise agreed to by the Member. In the event that the shelf life remaining prior to its expiration date at the time of delivery is unacceptable to the Member, Member has five (5) business days from date of receipt to contact Vendor to mutually agree on a resolution.

ARTICLE II

PRICING AND CHANGES

- 2.1 **Notices**. All notices under this Article must be sent to: MMCAP_infuse.hpscontracts@state.mn.us.
- 2.2 **Core Pricing Structure**. Pricing for Core Products are listed on **Attachment A**. In the event Vendor desires to change pricing within six (6) months of the previous pricing change, MMCAP will review such request and will have the discretion to reject such request.
- A. Required Format: All changes must be done in MMCAP Infuse's required format; an example can be found on **Attachment E, Table 4**.
 - B. Package Variations: Per Paragraph 1.2(A), all package sizes for applicable manufacturer and/or Vendor part number will be under the terms of Core Pricing. The Vendor can sell the package sizes at different Pricing, however "per item" basis must remain consistent.
 - C. Price Reductions: After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must provide at least three (3) days' notice to MMCAP Infuse before they can take effect.
 - D. Annual Refresh: During the Annual Refresh (see Paragraph 1.2(B)), Vendor may propose price increases for products remaining on Core or being added to Core. The Vendor must provide at least ninety (90) days' written notice for any change to take effect.
 - E. Price Increases: Outside the Annual Refresh, price increases will only be accepted (i) with at least sixty (60) days' written notice; (ii) if a force majeure condition can be established; and (iii) with approval by MMCAP Infuse. Except as provided for in this Agreement, no fee, percentage, or other cost may be added to the Products purchased under this Agreement unless it has been approved in writing by MMCAP Infuse. In the event Vendor does not notify MMCAP Infuse of an increase, Vendor must honor chargebacks for the most recent previous Price until such time as MMCAP Infuse receives notice of and approves the increase.

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- 2.3 **Non-Core Pricing.** Pricing for Non-Core Products will be fluid at Vendor's discretion. However, all Members (at no cost to Member) will be able to view the current Non-Core prices in Vendor's electronic catalog. If the Vendor is unable to display the full list price in the Vendor's electronic catalog, the Vendor will provide the Member with a non-ordering full list price account upon request for auditing purposes.
- 2.4 **MMCAP Infuse Pricing.** MMCAP Infuse has (or will provide) Vendor a list of MMCAP Infuse Products and MMCAP Infuse Base Cost within forty-five (45) days of the effective date of the agreement between MMCAP Infuse and the applicable MMCAP Infuse Manufacturer. MMCAP Infuse and the Vendor have agreed to a Mark-Up, which will be added to the MMCAP Infuse Base Cost for each applicable Product; the sum of the MMCAP Infuse Base Cost and Mark-Up will be the Price the Vendor discloses to the Member.
- A. **Price Loading.** Vendor will be responsible for processing the MMCAP Infuse Products and MMCAP Infuse Base Cost sent to them by a manufacturer or MMCAP Infuse itself by the earlier of either the effective date of the MMCAP Infuse Base Cost or within five (5) business days of receipt. If the Vendor decides to offer a different case/package size than what MMCAP Infuse negotiated with the manufacturer, the cost basis must match the MMCAP Infuse Base Cost on a "per-item" basis.
- Manufacturer Verification (if applicable).** If a manufacturer requires verification or provides data that is inconsistent with MMCAP Infuse, the Vendor will notify MMCAP Infuse in writing within twenty-four (24) hours of the impasse occurring.
 - Notice.** If a Vendor receives a notice of a change from a MMCAP Infuse Manufacturer but did not receive the same notice from MMCAP Infuse, the Vendor will forward the information to MMCAP Infuse within three (3) days.
 - Disagreements.** The Vendor agrees to provide credits/rebills at no charge to correct pricing in the event that MMCAP Infuse and the MMCAP Infuse Manufacturers have a disagreement regarding a Product or MMCAP Infuse Base Cost.
 - Failure to Negotiate.** The Vendor must notify MMCAP Infuse immediately of any issues with MMCAP Infuse Manufacturers that could affect the Vendor's ability to stock, sell, or perform chargebacks on these Products. Notices must be sent to: mmcap_infuse.hpscontracts@state.mn.us.
- B. **Auditing.** Vendor will perform audits, matching MMCAP Infuse Base Cost information provided by MMCAP Infuse against the MMCAP Infuse Base Cost provided by MMCAP Infuse Manufacturers. If Vendor discovers discrepancies, the Vendor will notify the MMCAP Infuse Manufacturer and MMCAP Infuse of the discrepancy in order to reach resolution. Upon resolution, Vendor will correct the errors, will create a sales history report, and enter credit(s)/rebill(s) for each Member connected to the contracts within forty-five (45) days. Vendor is expected to continue to provide the process, which was the outcome of the collaboration between the Vendor and MMCAP Infuse, to deliver comprehensive and efficient means to provide continuous MMCAP Infuse Base Cost audit data.
- 2.5 **Services.** Intentionally left blank.
- 2.6 **Competitive Pricing.** If MMCAP Infuse is made aware and determines during the Agreement Term that a Member is purchasing Core Products at better pricing than offered in this Agreement, Vendor and MMCAP Infuse shall meet to discuss the alleged pricing situation and determine whether adjustments will be made to fees, prices and/or terms available to Members under this Agreement and shall amend the Agreement if applicable. Notwithstanding the foregoing, Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and Services covered by this Agreement.
- 2.7 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Pricing; the fee, assessment, and/or additional costs must be added on top of the Pricing and/or an adjustment to the discounts must be made so Vendor does not absorb the fee. Vendor must not pay a Member levied fee without first collecting the fee through increased Pricing for the applicable Member. The fees will be set aside and paid to the Member as detailed in a form provided and approved by MMCAP Infuse.

ARTICLE III

ORDERS, DELIVERY, AND PAYMENT; SELECTION OF SERVICES

- 3.1 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Members on the Membership Roster. Vendor may use their own Ordering Systems and Purchase Order Forms. Except for Services and Bulk Orders (see Paragraph 3.9), to the extent that the terms of any Ordering System(s) and Purchase Order conflict with the terms of this Agreement, the terms of this Agreement supersede. Each Member will be responsible for payment for Contracted Items to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Member. Vendor agrees to invoice the Members as established in this Agreement.
- A. The use of obtaining a Contracted Item from the Ordering System or Purchase Order constitutes a binding contract. All Products furnished will be subject to inspection and acceptance by the ordering entity after delivery. Back orders, failure to meet delivery requirements, or failures to meet specifications in the Ordering System, Purchase Order, and/or the Agreement authorizes the ordering entity to cancel the order, or any portion of it, purchase elsewhere, and charge up to 150% of the cost and administrative handling to the Vendor.

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- B. Order System minimum requirements. At a minimum, the Order System must (i) have the outlined capability and (ii) display the following to each Product in the catalog offered to the Membership.

i. Capability:

- a. Secure login/user name and payment processing;
- b. Provide a PDF invoice to the Member within twenty-four (24) hours of a confirmed order;
- c. Product substitution search option;
- d. Product inquiry search option;
- e. Auto-backordering; and
- f. Show cost-saving opportunities/alternatives.

ii. Display:

- a. Product name and picture;
- b. Manufacturer product number;
- c. Product description;
- d. NDC/UPC;
- e. Manufacturer name;
- f. Packaging size;
- g. Price for package/dose size and per item basis;
- h. Inventory Status and Quantity Available; and
- i. If only available by "drop-shipment" (if applicable).

- C. Vendor will provide MMCAP Infuse with at least one login and password to access and view Vendor's Ordering System and/or online catalog it displays to the Membership.

3.2 **Product Substitution**. In the event the Products covered by this Agreement are not available at the time of order placement, Product substitution will only be permitted upon the written consent of the Member. In the notification, the Vendor will inform the Member the reason the requested Product is not available and suggest possible substitutes.

- A. Reporting: The Vendor will provide a report to MMCAP Infuse covering all orders that had an item replaced or not fulfilled during the previous month, the reporting requirements are on **Attachment E, Table 2** and must be delivered to: mmcap_infuse.hpscontracts@state.mn.us.

3.3 **Termination of Individual Orders**. Members may terminate, immediately or as identified by Member, individual orders (other than purchase orders for special orders, where the Vendor has obtained customized products from a supplier, Emergency Orders, Drop Shipments, or Bulk Orders) in whole or in part, upon written notice to Vendor upon the occurrence of any of the following events:

- A. The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contracted Items to be purchased;
- B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Contract Items are prohibited, or the Member is prohibited from paying for the Contracted Items from the planned funding source; or
- C. Vendor commits any material breach of this Agreement.

Upon receipt of written notice of termination, Vendor will stop performance under the Agreement as directed by the Member. If a standing order is terminated, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.

3.4 **Jurisdiction and Venue of Orders**. As it applies to purchases made by a Member, nothing in the Agreement will be construed to deprive the Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Agreement or afforded by the Member's law.

3.5 **Shipment for Products**. Vendor must distribute and deliver the Products covered under this Agreement to all Members, including the states of Alaska and Hawaii. If the Member account is in good standing, the Vendor will at no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination unless otherwise agreed to by Vendor and Member in a Purchase Order. For orders for Products not regularly stocked by Vendor's local servicing distribution center, Vendor may add to the invoice a handling charge determined by Vendor and disclosed to Member prior to or at the time of order. For orders in Hawaii or Alaska that are less than \$300, Vendor may add to the invoice a handling charge determined by Vendor and disclosed to Member prior to or at the time of order. Vendor has the right to ship Products at all times via its own vehicle or a carrier selected by Vendor.

- A. Fees: All Members receive seven (7) free deliveries a week.. For orders exceeding seven (7) per week, Vendor may add to the invoice a handling charge determined by Vendor and disclosed to Member prior to or at the time of order. For orders less than \$100, Vendor may add to the invoice a handling charge of \$7.50.

- B. Delivery Schedule: Upon request from Member, Vendor will work with Member to establish a routine delivery schedule. Delivery for stock items will occur within three (3) days, from the date the Product is ordered; this includes the Vendor's processing window. It is understood that deliveries to Alaska or Hawaii may take longer. All expedited deliveries will be made next day, or on the next scheduled delivery day (excluding Alaska and Hawaii), unless communicated otherwise. If there is a Holiday during the ordering process, the Vendor shall have one additional day per Holiday day.

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- i. Cut-off Time. Vendor's daily order cut off time will be 1:00PM local time to the Member.
- C. Damaged Products: All damaged products will be reported to Vendor's customer service department and applicable credits will be issued pursuant to Vendor's Return Goods Policy, as more fully described in Paragraph 4.3.
- D. Lost Products: All lost Products will be reported to Vendor's customer service department. Vendor will issue credit within ten (10) days of notification of lost Product; alternatively, re-shipment of missing Product will occur immediately after notification.
- E. Special Conditions for Products: If applicable to the Products offered under this Agreement, Vendor will maintain appropriate temperatures and environmental conditions in accordance with manufacturer requirements for delivery of the Products to the Members. All refrigerated Products will be shipped in returnable coolers or disposable coolers with appropriate packaging to maintain the required temperature range. Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the manufacturer. If Member refuses Products that have been inadequately packaged, the Member will notify Vendor's customer service department to log the complaint. Any costs associated with the return of Product due to improper packaging or transport, will be at the expense of the Vendor. For Products that require special temperature and/or environmental conditions (e.g., cold chain and hazmat), Vendor may add to the invoice a handling charge determined by Vendor and disclosed to Member prior to or at the time of order.

3.6 Patient Home Delivery.

- A. Vendor may, in its sole discretion, offer delivery directly to an end-user patient/consumer's place of residence made at the direction of a Member ("**Patient Home Delivery**"). In addition to Patient Home Delivery shipping and handling fees, Vendor may charge Members additional surcharges, including, but not limited to, signature fees, address or billing information correction fees, delivery area surcharges, and other accessorial fees. All fees that will apply will be disclosed to the Member and MMCAP Infuse before the Patient Home Delivery is implemented for the Member under this Agreement. For reporting purposes to MMCAP Infuse, the shipping address will be reported as the Member's address, not the patients' address(es). Ownership of the Products will transfer to Member at the time Member places the Product order with Vendor but risk of loss will remain with Vendor until the Products reach their designated destination.
- B. If Vendor is providing third-party logistics provider services to a Member or otherwise providing direct patient/consumer shipment services for Member, Member represents and warrants that (i) it has all required permits, licenses and prescriptions/physician orders necessary to dispense or administer Products to its patients, including, without limitation, all required licenses to dispense or administer the Products into the states in which the Member dispenses, administers or sells Products and (ii) it has verified that all recipients of the Products are appropriately registered or otherwise authorized to receive delivery of the Products. The Member is solely responsible for confirming that the Products ordered are appropriate and medically necessary for its patients and in compliance with the required prescriptions or physician orders.
- C. In connection with the performance of Vendor's services hereunder, Vendor may have access to patient level information of Member, including individually identifiable health information. Accordingly, the Member and Vendor will enter into a Business Associate Agreement, which Business Associate Agreement shall exclusively govern the terms and conditions of those parties with respect to individually identifiable health information.

3.7 Emergency Orders. Vendor may agree to offer and accept emergency orders under this Agreement. An emergency order is defined as one necessary for immediate and specific patient care which falls outside the normal order and delivery parameters. Using air and ground options, Vendor will exhaust all commercially reasonable resources in delivering emergency Product in the most timely and efficient method. Vendor will make a good faith effort to make emergency deliveries within four (4) hours following receipt of the order; emergency deliveries to Alaska and Hawaii will likely take longer.

- A. Contact/Ordering Initiation: Members can make emergency orders via reaching out to Vendor's customer service (See Paragraph 7.4). Vendor can provide that contact information upon request. The cut off for next day deliveries is 1:00PM local time.
- B. Costs: Vendor may pass through all shipping costs to the Member, however it will not assess any "handling" fees or assessments. The Vendor should but is not required to disclose the costs before processing this type of order. However, after shipped, the Vendor will provide documentation to the Member, verifying the actual shipping costs.
- C. Delivery: Order must be processed and shipped the same day. If the Product is not delivered to the Member within twenty-four (24) hours, the Member will not have to reimburse the Vendor for shipping; Holidays do not exempt this time requirement. If the delay is due to the carrier, the Vendor will seek remedies from the carrier, not the Member.

3.8 Drop Shipment. The Vendor will act as a conduit to expedite and simplify the ordering and payment of drop shipped Products directly from a manufacturer. All estimated fees associated with drop shipments will be provided at time of order.

3.9 Bulk Orders/Price Inquiries. The Member must reach out to the Vendor to discuss parameters and terms.

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- 3.10 **Invoicing.** Vendor will submit an invoice with each order.
- A. **Invoice Fields:** At a minimum, vendor's invoice will contain the following fields:
- Member name and Vendor-assigned account number for the Member;
 - Invoice line number and Member's order number (Member must provide an order number at the time of order for this to appear on Vendor's invoice);
 - Bill to and ship to address;
 - Invoice date;
 - Vendor's SKU item number, Contracted Item name/description and packaging as associated with NDC/UNSPSC number (if applicable to this Agreement);
 - Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), and total invoice price; and
 - Applicable omit codes (e.g., manufacturer backorder, manufacturer discontinued, etc.).
- B. **Invoice Rounding:** All Pricing should be to the second decimal spot. Vendor agrees to round down if the third digit after the decimal is four (4) or less. Vendor agrees that any rounding will occur at the Member invoice unit price.
- C. **Invoice Disputes:** Member will notify Vendor of any known dispute with an invoice within fifteen (15) days from receipt of the invoice. If all or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the Member appropriately and provide a corrected invoice. Where the above is prohibited by a Member state's applicable law(s), the Vendor shall comply with requirements of that state's law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Agreement pricing within thirty (30) days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.
- In the event that applicable state law mandates set-off by a Member, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.
- 3.11 **Payment Terms.** All undisputed invoiced amounts are due within thirty (30) days of the date of the invoice, unless stated otherwise on the invoice. Any undisputed invoiced amount remaining unpaid after the due date will be "**Past Due.**" Member agrees to render payment in full to Vendor on the applicable due date without making any deductions or adjustments to such payment obligation; or seeking to condition such remittance on any demand for or receipt of proofs of delivery unless allowable by statute
- A. **Past Due.** Past Due balances are subject to an interest charge of one and one-half percent (1.5%) per month. Any interest charged and collected in excess of applicable state law will be returned. If Member fails to pay any or all of the undisputed invoiced amount when due Vendor may: (i) immediately suspend Vendor's performance or cancel all or any part of an order hereunder, (ii) impose the requirement of cash payment upon delivery; (iii) pay any Vendor incentives, Vendor rebates, Vendor fees, or other Vendor discount arrangements net of any (a) amounts due hereunder from Member, (b) unauthorized deductions and service charges and (iv) terminate and/or declare Member ineligible for any Vendor incentives, Vendor rebates, Vendor fees, or other Vendor discount arrangements; (v) declare immediately due and payable all other amounts invoiced by Vendor to Member regardless of when such payments would otherwise be due from Member.
- B. **Holidays.** If any of the specified payment term due dates fall on a weekend day or Holiday, payment is due and payable on the preceding business day.
- C. **Bankruptcy and Insolvency.** In the event Member files or is involved in any bankruptcy, insolvency or similar case or proceeding, Vendor shall, unless prohibited by law, apply any amounts owed by Vendor to the Member, first to any pre-bankruptcy, non 11 U.S.C. § 503(b)(9) claims, and then to the 11 U.S.C. § 503(b)(9) claims. Vendor may, unless prohibited by law, set off any amount owing at any time from Member (and with respect to any Member account) to Vendor (including its subsidiaries and affiliates) against any amount payable at any time by Vendor to Member, whether arising under this Agreement or otherwise. Unless prohibited by law, Member agrees to provide Vendor with financial statements upon request. Unless it is prohibited by a Member's applicable public disclosure and other data practice laws, Vendor, its employees, representatives, and agents to, may, (i) investigate information provided and Member's credit, financial and banking records, (ii) obtain Member's credit bureau report and (iii) share with its affiliates experiential and transactional information regarding Member and Member's account. Unless prohibited by law, Vendor is authorized to retain information obtained as part of the application process whether or not the requested account and/or credit is granted. Member guarantees the performance of all obligations under this Agreement, including the prompt payment of the purchase price and any applicable interest and other charges for all Products shipped to its facilities, and agrees to pay any outstanding past due amounts to Vendor in accordance with its statutes immediately upon demand by Vendor. Member agrees, unless prohibited by law, including prohibitions against making payment without a preapproved encumbrance, to pay all reasonable attorney fees and expenses or cost incurred by Vendor in enforcing its rights to collect amounts due from Member.
- 3.12 **Conditions of Payment.** All Contract Items provided by the Vendor under this Agreement must be performed to the satisfaction of MMCAP Infuse and the Member, and in accordance with all applicable federal, state, and local

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laws, ordinances, rules, and regulations. The Vendor will not receive payment for work found by MMCAP Infuse to be unsatisfactory or performed in material violation of federal, state, or local law applicable to the performance of this Agreement.

- 3.13 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), credit card, or P-Card as a payment method and Member will start this process with its financial institution.
- 3.14 **Federal Funds.** Payments under this Agreement may be made from federal funds. Purchasing Member must notify Vendor of such Federal Fund payment(s) and provide a copy of the applicable Federal flow down requirements. The Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with federal requirements.
- 3.15 **Credits and Rebills.** Vendor will process credits and rebills as notifications are received from a Member and agreed upon by Vendor. In the case of an invoice dispute, Vendor will promptly issue credits/rebills, after the Dispute Resolution process set forth in this Agreement.
- A. Vendor credits are valid until they are refunded or the account has used payment.
 - B. In the event of a facility closure, or other extreme event where the Member will not be making another purchase through Vendor, the Member may cash out its credit(s).
 - C. If directed by a Member, a credit can be transferred from one account to another account.
 - D. The Vendor will take all commercially reasonable steps to ensure that credits that become available close to the end of the Member's fiscal year are activated for use by the Member no later than five (5) days before the end of the fiscal year.
 - E. Vendor's credit memo will contain, but is not limited to the following information:
 - i. original order number and invoice number;
 - ii. itemized listing of the Contract Items affected;
 - iii. any new invoices associated with the credit; and
 - iv. Net credit amount available to the Member.
 - F. Vendor's rebill memo will contain, but not limited to the following information:
 - i. Original purchase order
 - ii. Original Vendor invoice number
 - iii. Itemized listing of the Product(s) affected
 - iv. Credit memo associated with the rebill
 - v. Reason(s) for the rebill (e.g., manufacturer chargeback denial, pricing error, etc.)
- 3.16 **Price Audits and Corrections.** In the event of a Pricing error that is attributable to the Vendor, Vendor agrees to process credit/rebills for the past twelve (12) calendar months in the Member's favor. Vendor will have sixty (60) days to process credit/rebills that would result in the Member paying more than originally charged. When a Member or MMCAP Infuse discovers an error in pricing, they will notify Vendor. Vendor will research all Members affected by the error and will process credit/rebills to ALL affected Members for the time period of the error until it is resolved.
- 3.17 **Shareback Credits.** Vendor will manage, at no additional cost to MMCAP Infuse or Members, the MMCAP Infuse disbursement of shareback credits, according to the process below:
- A. MMCAP Infuse will provide Vendor with: (i) an accurate list of Members receiving a credit; (ii) the MMCAP Infuse ID numbers, facility names, facility addresses, facility's city, facility's state, and the credit amount for each facility; and (iii) a check for the total amount of all credits to be provided;
 - B. Vendor must apply the credit to all listed Members within fifteen (15) days of the receipt of the funds;
 - C. Within thirty (30) days of the receipt of the funds, Vendor must provide to MMCAP Infuse, an Excel Spreadsheet detailing the credit memo information. This Excel listing must include the following fields: distribution center, account number, Member ID, name, address, city, state, DEA (if applicable), HIN (if applicable), date of credit memo, credit memo number, and credit memo amount.
 - D. Within sixty (60) days of the receipt of the funds, Vendor will refund to MMCAP Infuse, any remaining dollars for which it was unable to issue credit; this may be for any Member determined to no longer be valid Member, or that were not able to be located for any variety of reasons. Vendor will work with MMCAP Infuse, in order to identify all Members to the best of its ability, in an effort to issue all necessary credits, before refunding dollars back to MMCAP Infuse. Upon initiating the refund to MMCAP Infuse, Vendor will provide a copy of the original shareback credit spreadsheet, detailing the credit information (received from MMCAP Infuse), the reason for non-application of funds, and the dollar amount of the funds being returned to MMCAP Infuse.
- 3.18 **Member Punchout Systems:** Members may submit a request to a Vendor to connect their ordering system through an electronic data interchange, also referred to as a "**Punch-Out System.**" The Vendor may consider connecting to said system and load information related to this Agreement. However, all costs associated with setting up the system will be paid by the requesting Member(s). The Vendor will not pass along any direct or indirect costs relating to the system directly or indirectly (i.e., reflected in increased Pricing) to the rest of the Membership. If there is a conflict between this Agreement and a Punch-Out System, specifically highlighting Product Offerings and Pricing, this Agreement will supersede.
- A. Attachment: By the tenth (10) day of the month, both the Vendor and Member will send reports to MMCAP Infuse regarding the usage of the Punch-Out System. Pursuant to 42 CFR § 1001.952(j), purchases made by users that are not registered with MMCAP Infuse will be excluded from the calculation of the

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Administrative Fee and related reporting. However, if the applicable State has a state-wide joint-power agreement with MMCAP Infuse, all purchases made through the Punch-Out System by a user will be included in the calculations of the Administrative Fee and related reports to MMCAP Infuse for a period of thirty (30) days following the first purchase by such user. After such thirty (30) day period, purchases by such entity will not be included in the calculations of the Administrative Fee or in related reports to MMCAP Infuse unless such entity has become a Member. The reporting requirements are on **Attachment E, Table 3**. If, it is found that a user has not completed an MMCAP Infuse Membership Agreement and does not have an MMCAP Infuse ID, the Vendor will notify MMCAP Infuse and the Member. MMCAP Infuse and the Member will assist the user in completing the registration process. If the user fails to complete the registration process with MMCAP Infuse within thirty (30) days following the first purchase by such entity, MMCAP will immediately notify both the Member and Vendor so that Vendor can also cut off the user from receiving the MMCAP Infuse benefits received under this Agreement, such as Pricing and access to Contracted Items.

- B. **Shareback**: The State and/or Member owner understands that until an end user of the Punch-Out System is attached to MMCAP Infuse, there will not be any credit attributed for those purchases with respect to the annual shareback calculations.

- 3.19 **Individual Member Selection of Services**. Due to the individuality and customization each Member requires for Services, the Vendor and Member will document the selection of Services and the applicable pricing through a Purchase Order (type of form is dependent Vendor's and Member's mutual selection). Vendor will endeavor to discuss new services being offered with MMCAP Infuse to determine if it's appropriate for the entire Membership. If the Vendor (or its Authorized Subcontractors) need to perform work outside the agreed upon parameters in the Purchase Order, the Vendor must obtain prior written approval from the Member. The Vendor will be responsible for fixing and covering the costs for any damage and contingencies not addressed and described in the Purchase Order.

ARTICLE IV SUPPLYING AND AVAILABILITY

- 4.1 **Product Outages**. For Core and MMCAP Infuse Products, it is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Members. If Vendor cannot fulfill orders made by Members, it will be considered a failure to perform by the Vendor unless such failure is due to an instance of Force Majeure or due to the manufacturer of the applicable Product. The Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.

- A. **Immediate Notification**. Vendor's Ordering System will provide notice within twenty-four (24) hours to MMCAP Infuse and its Members of any Products covered by this Agreement that the Vendor has placed on backorder.
- B. **Substitution**. If Members consents, Vendor may offer like-kind Products as the out of stock product. If no acceptable substitution can be offered, the Member may purchase the same or equivalent Product from an alternative MMCAP Infuse vendor, or if unavailable through an alternative MMCAP Infuse vendor, Member may purchase an alternative equivalent Product on the open market, including retail, for the period in which the Vendor is unable to provide the Products. The Vendor will reimburse for any excess costs (including shipping and third-party fees) over the Pricing of this Agreement, of up to 150%, sustained by government Members via a credit within thirty (30) days of receipt of the claim.
 - i. Vendor must pay claims directly to the Member within thirty (30) days of receipt of a claim. The Member has the right to charge, and Vendor agrees to pay, a late fee equal to the statutory maximum allowable percentage per month of the amount of any claim within thirty (30) days from receipt of the claim.
 - ii. **Force Majeure**: Any instances of Force Majeure, as identified in Paragraph 5.4, will exempt Vendor from providing a credit to Member.
 - iii. **Manufacturer Created**: If the Vendor can provide sufficient evidence (at MMCAP Infuse's discretion) that the supply shortage is due to the Manufacturer, the Vendor will be exempt from this Subparagraph.
- C. Vendor will be responsible for all product outage claims for 180-calendar days unless the Vendor has provided MMCAP Infuse with at least 180 calendar days' advanced written notice of the intent to remove a Contracted Item from production and discontinue distribution in the market. Vendor will remain responsible for all claims during the 180-day notice period.

- 4.2 **Product Discontinuation**. If the Vendor discontinues or deletes a Core or MMCAP Infuse Product during the Agreement (without the supplier of such Product discontinuing it), Vendor must provide written notice to MMCAP Infuse at least ninety (90) days prior. If the Vendor removes the item, the Vendor will honor Pricing until the inventories are depleted or an agreed upon removal date. If inventory is depleted prior to the end of the ninety (90) day period, Paragraph 4.1 will apply.

Accurate as of Mar. 29, 2023

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- 4.3 **Products Returned to the Vendor.** Subject to applicable law, Vendor will process returns in accordance with its Return Goods Policy currently in effect, or as otherwise agreed to by Vendor and Member. The current Return Good Policy is attached as **Attachment G**.
- 4.4 **Product Recalls.** In the event a Product is recalled, whether initiated by its manufacturer/supplier or as required by the U.S. Food and Drug Administration (FDA) or a governmental entity, Vendor will cooperate with such manufacturer/supplier or the FDA/governmental entity, as appropriate, follow its established procedures and will manage the recall in accordance with applicable laws and government regulations, and will notify MMCAP Infuse and Member within three (3) days via electronic ordering platform, electronic mail and United States Postal Service of Vendor becoming aware of any such recall and receipt of all necessary information to process the recall from the manufacturer/supplier and/or the FDA/governmental entity. Member agrees to cooperate fully with Vendor in responding to the recall notification, including without limitation, returning any unused Product(s) to Vendor's designated location(s) or providing Vendor with Vendor's requested information regarding the recall. Members will not incur costs for Product returns related to recalls and the Vendor will issue credit for recalled Products.
- 4.5 **Backorders.** To the extent provided by the supplier, Vendor must provide notice of all Product backorders expected to last longer than thirty (30) calendar days and/or inability to supply situations to MMCAP Infuse. Notices will include the reason(s) for and the expected duration of the issue if such information is provided by the manufacturer
- 4.6 **Failure to Provide Service.** Reserved.
- 4.7 **Authorized Subcontractors.** If the Vendor wants to change any Authorized Subcontractors during the Agreement Term, the Vendor must provide at least thirty (30) days' notice. Additionally, if the Vendor or Authorized Subcontractor changes any forms it requires the Members to sign to obtain the Service, the Vendor must provide the new forms to MMCAP Infuse the new forms with thirty (30) days advance notice. For clarity, Vendor does not consider national third-party freight an Authorized Subcontractor or subcontractor for purposes of this Agreement.

ARTICLE V

TERMINATION, CANCELLATION, AND REMEDIES

- 5.1 **Termination Without Cause.** Either party may terminate this Agreement at any time during the term of this Agreement, without cause, upon no less than one hundred twenty (120) days' written notice to the other party. Upon termination, Vendor will be entitled to pro rata payment for Services performed in accordance with the terms and conditions in this Agreement.
- 5.2 **Termination for Cause.** Either party may terminate this Agreement at any time on the basis the other party breached this Agreement. The moving party must provide written notice to the other party, which upon the receiving, the other party has thirty (30) days to cure the defects. Upon the thirty (30) days, the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.
- 5.3 **Termination for Insufficient Funding.** MMCAP Infuse may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Contracted Items covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Contracted Items that are provided after notice and effective date of termination. However, the Vendor will be entitled to payment, determined on a pro rata basis, for Contracted Items satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any costs, fees, or other charges if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP Infuse must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP Infuse receiving that notice.
- 5.4 **Force Majeure.** A party will not be considered in default in the performance of its obligations in the Agreement to the extent that performance of any such obligations is prevented or delayed by any cause beyond the reasonable control of a party, including but not limited to any acts of God, war, riot or other catastrophes, destruction of production facilities, terrorism, embargoes placed by the United States against country where the applicable impacted Product is manufactured, labor disputes or stoppages amongst the Vendor's suppliers or third-party couriers, pandemics or quarantine restrictions declared by an authoritative third party. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.
- 5.5 **Breach.** In the event of a breach of this Agreement, each of Vendor, MMCAP Infuse, and Members reserve the right to pursue any other remedy available by law. Vendor may be removed from Minnesota's vendor list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 5.6 **Failure to Perform.** MMCAP Infuse will provide an initial notice to the Vendor that there is a violation under one of the following categories. All such notices shall be sent to mckmmcap@mckesson.com. The Vendor will have thirty (30) days from the date of such notice to Vendor to rectify the issue, otherwise the following fees shall be paid by Vendor:
- A. Failure to implement shareback. In the event that the report and/or data provided by the Vendor pursuant to Paragraph 3.17, is not received according to schedule, Vendor will pay MMCAP Infuse \$500/day, until resolved.
 - B. Late Administrative Fee Payments. As provided for in statute for late payments to the State of Minnesota.

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- C. Failure to Provide Reports. In the event that the report and/or data provided by the Vendor pursuant to Paragraph 9.2, is not received according to schedule, Vendor will pay to MMCAP Infuse \$500/day.
- D. Selling Prohibited Products or mis-selling brands. When the Vendor knowingly sells Products in violation of this Agreement to the Membership, Vendor will pay MMCAP Infuse five percent (5%) of the total net sales relating to the violation.
- E. Excess Non-Core sales. If Non-Core sales make up over sixty percent (60%) of a Product category when there are available MMCAP Infuse and Core Products, Vendor will pay MMCAP Infuse \$10,000/per Product category violation for each quarter.
- F. Product Categories. In connection with this Agreement, if the Vendor allows pricing to any Product category that has not been pre-approved by MMCAP Infuse, Vendor will pay MMCAP Infuse \$200/per violation.
- G. Adding and Removing Members (Attachment). Every time the Vendor fails to the timeline requirements in this Agreement to add or remove a Member's eligibility to purchase Contracted Items, Vendor will pay: \$500/per violation.
- H. Application of Fees. The application of the amounts herein shall not excuse Vendor's performance obligations as set forth in this Agreement, nor will it waive any rights of MMCAP Infuse or Members to seek any and all available legal and equitable remedies. Vendor acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP Infuse and Members whole for any failure of performance by the Vendor, as based upon good faith estimates as agreed to by the parties.

No fees shall accrue or be assessed during the first sixty (60) days following the Effective Date of this Agreement. Following the initial sixty (60) days, the total aggregate fees that may be due and payable by Vendor to MMCAP Infuse (i) each year, shall not exceed \$100,000 in the aggregate for Paragraph 5.6 (A), (D), and (E); and (ii) each month, shall not exceed \$10,000 per Failure to Perform and will not exceed \$25,000 in the aggregate for all other subparagraphs (currently, (B), (C), (F), (G), and (H)). Additionally, a single event shall not be counted against more than one failure to perform criteria. Interest for Late Administrative Fees is controlled by Minn. Stat. § 16D.13 and not subject to the cap. MMCAP Infuse agrees to timely notify Vendor of a Failure to Perform any of the service categories above. For the avoidance of doubt, a fee described above shall not be assessed or begin accruing until ten (10) days following Vendor's failure to rectify the issue, regardless of when the underlying failure to perform occurred.

ARTICLE VI MEMBERSHIP

- 6.1 **Onboard, Transition, and Implementation.** Each Member must designate MMCAP Infuse as its primary group purchasing organization ("GPO") to be eligible to acquire the Contracted Items. Members identified in the reporting mutually agreed upon by the parties as of the Effective Date will be deemed to have designated MMCAP Infuse as their primary GPO. Each new Member will be required to designate MMCAP Infuse as its primary GPO via (A) Vendor's standard Primary Designation Form, or (B) a mutually acceptable written notice in which a Member notifies Vendor of its desire to designate MMCAP Infuse as its primary GPO. If the Vendor requires additional paperwork for Members to acquire the Contracted Items, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition. The link to Vendor's standard Primary Designation Form is set forth on **Attachment D**.
- 6.2 **Membership Eligibility Verification.** MMCAP Infuse will provide Vendor online access to a complete listing of the Membership ("Membership Roster") which the Vendor is expected to actively utilize to verify Member status. MMCAP Infuse will update the Membership Roster daily and reserves the right to add and remove Members from the Membership Roster during the Agreement Term. MMCAP Infuse will send Vendor a monthly e-mail with instructions on how to obtain the Membership Roster.
 - A. New Members. The Vendor must allow new Members to access the Agreement by the Onboarding Date, provided all Onboarding Forms have been completed.
 - B. Removing Members. If a Member selects a different primary group purchasing organization/collective or decides not to participate in the Membership of MMCAP Infuse, the Vendor will notify MMCAP Infuse pursuant to Paragraph 6.3(A) below and suspend access to MMCAP Infuse's catalog to that Member. MMCAP Infuse must dispute a change in its status as primary GPO for any Member within ninety (90) days of such change becoming effective.
- 6.3 **Member Attachment.** Upon confirming eligibility per Paragraph 6.1 and Paragraph 6.2 above, Vendor will ensure Members are attached to the Agreement for all Contracted Item purchases made by Member. Upon request of MMCAP Infuse, Vendor must verify only the Membership has access to the Pricing and Contracted Items.
 - A. By the fifteenth (15) business day of the month, the Vendor will provide a list of purchasers who were either added or removed from MMCAP Infuse Membership in the Vendor's system during the previous month. At a minimum, the report will contain the following for each purchaser:
 - i. Member Name
 - ii. MMCAP Infuse ID
 - iii. Vendor ID (if applicable)
 - iv. Date attached or detached from MMCAP Infuse

Accurate as of Mar. 29, 2023

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- v. Address
- vi. City
- vii. State
- viii. Phone Number

- 6.4 **Non-Solicitation.** During the term of this Agreement, Vendor will not knowingly solicit any Members to enter into or negotiate a separate contract or agreement for the same or substantially equivalent products and services offered in this Agreement without MMCAP Infuse's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and Services covered by this Agreement. However, if the Vendor uses MMCAP Infuse and/or this Agreement as a vehicle to those responses, those sales will still be considered sales under this Agreement and reported and paid an Administrative Fee as outlined in **Article IX.**
- 6.5 **HIN.** The Vendor and/or MMCAP Infuse may require a Health Industry Number from Member, which MMCAP Infuse will work with the Member to obtain.
- 6.6 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.
- 6.7 **MPA.** In order to use this Agreement, some States will require jurisdiction-specific paperwork or statutory language to establish a statewide contract for Members. These are separate from Purchase orders; these are addendum to this Agreement to provide for laws specific to a State jurisdiction. If these circumstances exist, the Vendor will work with MMCAP Infuse and applicable State to prepare an MPA to set forth the additional or altered terms and conditions. An MPA must clearly apply only to the requesting State and will not affect the rights of MMCAP Infuse, other States, and/or their Members, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein. When the specific terms are agreeable to the Vendor and the State, the MPA will be presented by MMCAP Infuse to each party for execution. No other mechanism of modifying or "attaching to" the Agreement is authorized. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that State/Member. No verbal or written instructions from State/Members to change any provision of this Agreement will be accepted by Vendor without the prior approval of MMCAP Infuse. For purposes of clarification, Members may enter into separate agreements with Vendor (e.g. special order agreements), however such separate agreements will not modify or 'attach to' the Agreement. The Vendor may not use this Agreement or the related solicitation as a basis to establish the relationship with the Member outside of the Agreement.
- A. **Services and Purchase Orders.** If a Member is electing to utilize a Service from the Vendor, the Member and Vendor can utilize a Purchase Order to write specific unique details regarding the scope of Service being provided; MMCAP Infuse does not have to be involved with that process, however a final draft should be provided to MMCAP Infuse before execution. However, the Member will not attempt include any boiler plate terms that modify items covered under this Agreement or try to add any additional fees/costs that the Vendor would be required to pay with the Purchase Order.

ARTICLE VII

AGREEMENT MANAGEMENT

- 7.1 **Required Vendor Personnel.** Vendor must maintain sufficient personnel who can provide comprehensive and timely customer service to the Membership and MMCAP Infuse. Vendor's personnel must have professional qualifications, training and experience, to provide support related to the Contracted Items. In addition, Vendor represents and warrants that its personnel have all the required licenses and certifications in accordance with all applicable law and regulatory agencies. To manage this Agreement, at a minimum, the Vendor must have the following point of contact to support this Agreement. The Vendor will provide a list of all personnel and contact information to MMCAP Infuse on the Effective Date. At a minimum, the Vendor will provide an updated list every six (6) months or when there is a change, whichever occurs first.
- A. Account representative and an alternate for MMCAP Infuse and eligible Members;
 - B. Customer service;
 - C. Clinical representative;
 - D. Distribution center representative(s);
 - E. Emergency or bulk order contact;
 - F. Product training and education contact;
 - G. Supply chain improvement contact;
 - H. Product ordering system technical support and training contacts;
 - I. Membership/customer attachment contact;
 - J. Accounting contacts, capable of addressing and timely solving invoice/credit re-bill inquiries and shareback; and
 - K. Reporting contact.
- 7.2 **MMCAP Infuse Account Representative.** Vendor will assign an account representative to MMCAP Infuse for this Agreement and must provide a minimum of five (5) business days advanced notice to MMCAP Infuse if that person is reassigned. In the event that the account representative is unresponsive (does not respond to inquiries within

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twenty-four hours) or does not meet MMCAP Infuse's needs, the Vendor will assign another account representative upon MMCAP Infuse's request. This account representative will be responsible for:

- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
- B. Timely response to all MMCAP Infuse inquiries
- C. Performance of the business review as described in Paragraph 7.3.
- D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the account representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- E. Member Dedicated Representative. For any Member whose purchase volume exceeds five-hundred thousand dollars (\$500,000) annually, they are eligible for a dedicated account representative. If the Member elects this option, they will provide written notice to the Vendor. The Vendor will have thirty (30) days to provide a dedicated account representative to the Member. This account representative will be the sole point of contact for the Member regarding any issues or inquiries.

7.3 **Reviews.** Quarterly, the Vendor will provide a list of Members and their dedicated account representative. Additionally, Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information. If the Member is eligible for an account representative, the Vendor must provide at least one in-person review.

7.4 **Customer Service Department.** Vendor must maintain a toll-free customer service center that operates Monday to Friday, 8:00AM to 8:00PM EST except for Holidays. The center must be capable of responding to telephone or electronic message inquiries (email, or text inquiries, from hand-held messaging devices. Additionally, any customer service representative must have the corporate authority, experience and training to respond to any inquiry related to the Agreement. If a Member has an account representative, the requirements in this paragraph can be met by them.

ARTICLE VIII

WARRANTS, COVENANTS, AND DUTIES OF VENDOR

8.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.

8.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse.

8.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish Products that have not been adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each Member's applicable regulatory board.

8.4 **cGMP.** If applicable, Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) and the current United States Food, Drug, and Cosmetic Act. If the Vendor receives a 483 or similar type warning letter for any Product, it must be provided to MMCAP Infuse within ten (10) days of receipt by Vendor.

8.5 **Health Care Product Regulations.** Vendor acknowledges that each Product has, if required by law, a United States Food and Drug Administration approval or authorization on file and accepts the liability with which such application confers. Additionally, all Products should meet applicable industry standards such as but not limited to standards set by ISO or UL. The Vendor guarantees to furnish no Product under this Agreement that is knowingly adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the FDA, or as required by each Member state's applicable laws, rules, or regulations.

8.6 **DSCSA.** If the Vendor is selling pharmaceuticals to the Membership under this Agreement, it will pursue DSCSA licensing standards to be classified as an Authorized Trading Partner (as defined by the FDA). If there is a licensing standards issue, the Vendor will provide written notification to MMCAP Infuse within five (5) business days. The Vendor will retain all 3T Data per the requirements specified by the DSCSA, for a minimum of six (6) years. Access to the 3T Data will be provided to Members at no charge.

8.7 **Debarment.** Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide written notice to MMCAP Infuse if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

- A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor

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certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the Social Security Administration's Executive Order 12549.

- 8.8 **Indemnification.** Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Vendor will indemnify, defend, and hold the MMCAP Infuse harmless from and against any and all losses, damages or fines (collectively, "**Losses**") incurred by MMCAP Infuse as a result of a third-party claim of bodily injury to the extent such Losses are solely caused by Vendor's gross negligence or willful misconduct in the performance of Vendor's obligations under a Contract with MMCAP Infuse. This indemnity does not extend to any Losses arising out of, resulting from or related to MMCAP Infuse's negligence, recklessness or willful misconduct. A party's right to indemnification is conditioned upon the indemnified party satisfying the following requirements: (A) the indemnified party must promptly notify the indemnifying party of any claim for which indemnification will be sought; (B) the indemnified party must give the indemnifying party control of the defense against the claim (including the right to select counsel and settle or compromise such claim, but the indemnifying party must not agree to a consent decree or similar order binding the indemnified party or to any settlement that specifically apportions fault or liability to the indemnified party without the indemnified party's prior written consent); and (C) the indemnified party must reasonably cooperate with the indemnifying party's defense against the claim.
- 8.9 **Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota, and/or the antitrust laws of any Member unless otherwise assigned directly to that Member by Vendor with MMCAP Infuse's approval.
- 8.10 **Product Warranty.** Vendor agrees to use commercially reasonable efforts to pass on, on a non-exclusive basis, all manufacturer/factory warranties to the purchasing Member to the extent such warranties are transferable. For all Products manufactured under the label of the Vendor and purchased from Vendor ("**Private Label Products**"), Vendor warrants that all Private Label Products shall be free from defects in material and workmanship for a period of ninety (90) calendar days from the date of shipment. Vendor's obligation under this warranty is limited to the repair or replacement of the affected Private Label Product, at Vendor's option. If the Private Label Product cannot be repaired or replaced, the Vendor will reimburse the Member. This warranty will not apply (A) if purchasing Member misuses the Private Label Product, (B) alters or modifies the Private Label Product in any way, or (C) resells the Private Label Product or does not otherwise use or administer the Private Label Product through its employees or authorized agents.
- 8.11 **WARRANTY DISCLAIMER (Outside of Paragraph 8.10).** VENDOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED BY VENDOR INCLUDING THE WARRANTY OF MERCHANTABILITY OR THE FITNESS FOR ANY PARTICULAR USE OR PURPOSE. MMCAP INFUSE AND/OR MEMBERS SHALL LOOK TO THE MANUFACTURER OF PRODUCTS AND THE PROVIDER OF SERVICE FOR ANY WARRANTY THEREON. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF VENDOR HAS ANY AUTHORITY TO MAKE ANY AFFIRMATION, REPRESENTATION, OR WARRANTY CONCERNING PRODUCTS OR SERVICES NOT SET FORTH IN THE AGREEMENT.
- 8.12 **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES INCURRED BY THE OTHER PARTY, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

ARTICLE IX

ADMINISTRATIVE FEE AND REPORTING

- 9.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee as follows on purchases by Members, provided that an Administrative Fee will only be paid to MMCAP Infuse for Products purchased by Members who have completed the MMCAP Infuse registration process and have designated MMCAP Infuse as such Member's primary group purchasing organization as provided in Paragraph 6.1, and provided that MMCAP Infuse fulfills the obligations below:
- Lab Products:** Vendor will pay an Administrative Fee of 0.5% of Net Purchases of Lab Products, excluding Excluded Products
 - All Other Products:** Vendor will pay an Administrative Fee of 2.15% of Net Purchases, excluding Lab Products, flu Products, and vaccine Products, and Excluded Products.
 - "Excluded Products"** means COVID test kits, Specialty Rx Products, Continuous Positive Airway Pressure ("CPAP") Products, and Bilevel Positive Airway Pressure ("BiPaP") Products. Excluded Products will also include flu Products and vaccine Products until such Products are added to this Agreement.
 - "Net Purchases"** means the total dollar volume of Products purchased from Vendor by Members under this Agreement reduced by: credits, discounts, supplier rebates, and other allowances or adjustments passed on to Member or MMCAP Infuse; and (ii) returns or any purchases for which such Member has not paid its account in full on or before the due date. The following charges will not be included in "Net Purchases": freight charges, fuel charges, and technology system fees. "**Specialty Rx Products**" means

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Product designated as Specialty product by a majority of third-party industry sources, including but not limited to CMS, health insurance providers and pharmacy benefit managers, or Product that meets similar characteristics reasonably designated by Distributor (the "Criteria"). Distributor may add products that reasonably meet the Criteria to the Specialty Rx Products list at any time. The Specialty Rx Product list is made available on McKesson SupplyManagerSM, and will be updated within a reasonable timeframe after any change or addition. For the avoidance of doubt, reference in this Paragraph to any particular product or product category does not represent an agreement by the parties to include such product in this Agreement, and it is not intended in any way to supersede Paragraph 1.5 (Prohibitions).

- E. To be eligible for an Administrative Fee MMCAP Infuse will meet the following obligations: (i) Maintain written agreements with each Member specifying the Administrative Fee; and (ii) disclose in writing to each Member at least annually, and to the Secretary of the U.S. Department of Health and Human Services upon request, the Administrative Fees paid by Vendor to MMCAP Infuse as a result of that Member's purchases under this Agreement, as may be required by the Federal Anti-Kickback Law.
- F. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar month, but no later than thirty (30) calendar days after the end of the calendar month. The Vendor will submit a check payable to:

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

9.2 Administrative Fee and Sales Reporting. The Vendor must submit a monthly (1) administrative fee data report and (2) sales data report that includes Products purchased by Members who have completed the MMCAP Infuse registration process and have designated MMCAP as such Member's primary group purchasing organization.

- A. **Administrative Fee Data Report.** The monthly administrative fee data report must contain the fields detailed below. All administrative fee data reports must be sent to: MMCAP.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The Vendor will provide a dedicated person.

- i. Administrative Fee Data Report fields:

- a. MMCAP Infuse Assigned Authorized Wholesaler Number
 - b. MMCAP Infuse Assigned Manufacturer Number (for MMCAP Infuse Products)
 - c. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
 - d. Invoice Date (Point of Sale Date)
 - e. Invoice Number
 - f. MMCAP Infuse Member
 - g. Vendor's Account Number for the MMCAP Infuse Member
 - h. MMCAP Infuse Member DEA Number, if applicable
 - i. MMCAP Infuse Member HIN Number, if applicable
 - j. MMCAP Infuse Member Address
 - k. MMCAP Infuse Member City
 - l. MMCAP Infuse Member State
 - m. Product's NDC (Use all 11 digits (00076888888))
 - n. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
 - o. Credit Indicator (C = credit)
 - p. Contracted Units (The number of units purchased on contract.)
 - q. MMCAP Infuse Contracted Unit Price
 - r. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
 - s. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
 - t. Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)

- B. Sales Data Usage Reports. Vendor will supply to MMCAP Infuse monthly sales data on or before the tenth (10th) day of the subsequent calendar month. The report must include Contracted Item dollar spend amount sorted in descending order and grouped by the Contracted Item category. Also, the report MUST include the information set forth on **Attachment E, Table 1**.

9.3 Reporting Tools. For no additional charge or subscription fee, the Vendor agrees to provide all purchasing data history to MMCAP Infuse and purchasing Members, upon request. The data provided by the Vendor must be manipulatable by MMCAP Infuse and the Members; it also must be able to manipulate the data in a "XLSX" format.

- A. Customized Member Requests. A Member may request additional reporting from the Vendor, however any additional costs associated with those requested reports will be borne by the requesting Member and the Vendor may not pass on those costs directly or indirectly to the rest of the Membership and/or MMCAP Infuse. Members that have an account representative may have up to three (3) different custom types of reports provided to them at no cost.

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ARTICLE X

INTELLECTUAL PROPERTY

- 10.1 **MMCAP Infuse Ownership.** MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IQVIA and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13.
- 10.2 **Vendor Ownership.** Vendor owns all rights, title, and interest to any aggregated data not identifiable as arising from this Agreement and any other intellectual property created for or presented to MMCAP Infuse. Vendor grants to MMCAP Infuse an unlimited, non-revocable, non-transferable, fully paid, perpetual license, to use all intellectual property created for or presented to MMCAP Infuse under this Agreement.
- 10.3 **Use of Member Data.** Purchasing data of Members captured by Vendor's purchasing platforms ("Member Data") may be used by MMCAP Infuse solely for internal purposes to provide GPO-related support services for Members, provided such Member Data is treated such that it in no event discloses the identity of Vendor, its net pricing, or any price adjustments except to the Member who is affiliated with such. For purposes of clarification, "GPO-related support services" will not include, directly or indirectly, the provision, access or use of any Member Data to or by any online e-commerce marketplace (an "E-commerce Marketplace"), including but not limited to any E-commerce Marketplace developed or operated by MMCAP Infuse, any of MMCAP Infuse affiliates or any third party. This does not include any exchange or marketplace developed by the State of Minnesota or other Government Unit with the purpose of Government Unit to Government Unit transactions. With the exception of IQVIA, NDC Health, or another data aggregator entity (that is not an operator/developer of a marketplace) that performs technology exchange services similar to IQVIA and NDC Health and that is not affiliated with MMCAP Infuse, under no circumstances will MMCAP Infuse, directly or indirectly, provide Member Data or any information related thereto to any operators/developers of a marketplace or exchange, regardless of whether such operator/developer was acting as a consultant to MMCAP Infuse. Vendor may provide Member Data to data aggregators, including IQVIA and NDC Health, and to suppliers, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party.
- 10.4 **Pre-Existing Intellectual Property.** MMCAP Infuse and Vendor will each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. The Vendor grants Minnesota a perpetual, irrevocable, non-exclusive, royalty free license for Vendor's pre-existing intellectual property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Agreement. The aforementioned license is solely for use by Members, and their agents related to an internal business or governmental purposes.
- 10.5 **Intellectual Property Warranty and Indemnification.** Except as otherwise set forth below, Vendor warrants that any materials, software, or products directly manufactured by Vendor will not infringe upon or violate any U.S. 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 Infuse, MMCAP Infuse will promptly notify Vendor. Vendor, at its own expense, will indemnify, defend to the extent permitted by the Minnesota Attorney Generals Office, and hold harmless MMCAP Infuse against any and all claims, losses, cost, or expense caused as a result of such a claim, whether or not such claim is successful against MMCAP Infuse, provided that MMCAP Infuse provides Vendor with all reasonably requested cooperation, information, and assistance, and gives Vendor sole authority to defend and settle the claim.
- Vendor will have no obligations under this Paragraph with respect to claims arising from: (i) modifications to materials, software, or products directly manufactured by Vendor that were not performed by Vendor or authorized by Vendor in writing; (ii) misuse or mishandling of the materials, software, or products directly manufactured by Vendor; (iii) compliance with specifications provided by Member; or (iv) the use or integration of materials, software, or products directly manufactured by Vendor delivered under this Agreement in combination with other products or other technologies not provided by Vendor, if the claim would not have arisen but for the particular combination.
- 10.6 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.

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- A. Marketing. Any direct advertising, marketing, or direct offers targeted only to Members (as opposed to provided to Vendor's customer base in general) must be approved by MMCAP Infuse.
- B. Endorsement. The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

ARTICLE XI

INSURANCE

11.1 **Notice.** The Vendor is required to submit accord form Certificates of Insurance to MMCAP Infuse evidencing the insurance required for this Paragraph prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below and MMCAP Infuse has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. In the event that a court of competent jurisdiction orders Vendor to disclose its insurance policy(ies) in connection with discovery during litigation brought as a result of a dispute between the parties, Vendor agrees to adhere to such court's order with respect to disclosure of such policy(ies). The Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

11.2 **Additional Insurance Conditions.**

- A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP Infuse with respect to any claim arising out of Vendor's performance under this Agreement, except to the extent a claim or loss arises from MMCAP Infuse's or Members acts or omissions;
- B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will use commercially reasonable efforts to notify MMCAP Infuse within five (5) business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP Infuse;
- C. Vendor is responsible for payment of Agreement related insurance premiums and deductibles;
- D. If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- E. Vendor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
- F. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.

11.3 **Coverage.** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- A. Workers' Compensation Insurance. Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

- i. \$100,000 – Bodily Injury by Disease per employee
- ii. \$500,000 – Bodily Injury by Disease aggregate
- iii. \$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements. If during the course of the Agreement the Vendor becomes eligible for Workers' Compensation statutory requirements, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.

- B. Commercial General Liability Insurance. Vendor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Agreement. Insurance minimum limits are as follows:

- i. \$5,000,000 – per occurrence
- ii. \$5,000,000 – annual aggregate
- iii. \$5,000,000 – annual aggregate – Products/Completed Operations
- iv. The following coverages shall be included:
 - a. Premises and Operations Bodily Injury and Property Damage
 - b. Personal and Advertising Injury

Accurate as of Mar. 29, 2023

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- c. Contractual Liability
- d. Products and Completed Operations Liability

e. MMCAP Infuse included as an Additional Insured, to the extent permitted by law

ARTICLE XII GENERAL TERMS

- 12.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email. Either party must notify the other of a change in address for notification purposes.
- 12.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales to a Member.
- A. **Invoice and Pricing Audit.** MMCAP Infuse and Members served by this Agreement may periodically audit validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
 - B. **Costs.** Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 12.3 **Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP Infuse and a fully executed assignment agreement. MMCAP Infuse may assign to an affiliate government agency if order to by a Minnesota branch of government.
- 12.4 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 12.5 **Order of Precedence.** Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, Order System, Purchase Orders, website use of terms, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this Paragraph, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.
- A. **Purchase Orders and MPA.** In respect to the relationship between the Vendor and Member, a Purchase Order and/or MPA may override certain aspects of this Agreement under narrow circumstances outlined and specified in the aforementioned documents.
- 12.6 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.
- 12.7 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP Infuse and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding and will be fully performed.
- 12.8 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 12.9 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

[Signature Page Follows]

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VENDOR: McKesson Medical-Surgical Government Solutions LLC

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

Name: Deborah Haywood
Signature: 
Title: Vice President, General Manager
Date: 3/28/2023

STATE OF MINNESOTA FOR MMCAP INFUSE

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

Name: James Babbitt
Signature: 
Date: 3/29/2023

COMMISSIONER OF ADMINISTRATION

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

Name: Christina Fox
Signature: 
Date: 3/29/2023

[Signature Page]

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ATTACHMENT A-1
Core Products

[To be added on later date]

Current version can be accessed here:
<https://members.infusean.com/user/login>

ATTACHMENT A-2

Discounts and Other Cost Saving Opportunities

Discounts on Non-Core Purchases

Brand-name Products	Minimum of 37% off MMSGs government list price
Vendor private label or generic Products	Minimum of 42% off MMSGs government list price

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 MMCAPI Intra-Loaded Product Categories, Vendors, and Mark-Ups

<u>Categories</u>	<u>Mark-Up % (Not to Exceed)</u>	<u>UNSPSC Codes</u>
Incontinence	■	421427; 424438; 421439
Attends Healthcare Products, Inc.		
Essity HMS North America, Inc.		
First Quality Products, Inc.		
Medline Industries, Inc.		
Nutritionals	■	422318; 5119; 8515
Abbott Laboratories, Inc.		
Ajinomoto Cambrooke, Inc.		
Gerber Products Company		
GVM Associates, Inc.		
Mead Johnson and Company, LLC		
Nestle Healthcare Nutrition, Inc.		
Nutricia North America, Inc.		
Diabetic Products; Needles and Syringes	■	421425; 421426; 4222; 411220
Abbott Diabetes Sales Corporation		
Agamatrix, Inc.		
Lifescan, Inc.		
MediPurpose, Inc.		
Owen Mumford USA, Inc.		
Retractable Technologies, Inc.		
Roche Diagnostic Corp.		
Trividia Health, Inc.		
Ultimed, Inc.		
Pharmaceuticals	TBD	5110-5125
HR Pharmaceuticals, Inc.		
Unifirst-First Aid Corporation DBA Medique Products		
Containers and Vials	TBD	411041; 422217
Berry Global, Inc.		
Centor, Inc.		
Condoms	TBD	53131622
B Holding Group, LLC	TBD	
Global Protection Corp.	TBD	
SXWELL USA, LLC	TBD	
Epinephrine	■	
HOSPIRA/PFIZER		
MYLAN SPECIALTY		
AMNEAL PHARMACE		
BPI LABS, LLC		
FOCUS HEALTH GR		
INTERNATIONAL M		
SNAP MEDICAL IN		
USWM, LLC, D.B.		
KALEO, INC.		
TEVA USA		
Naloxone	■	
AKORN INC.		
Padagis Sourcing Solutions LLC		
PFIZER INJECTABLES		
Eugia US, LLC		
EMERGENT DEVICES INC.		
AMPHASTAR PHARMACEUTICALS, INC.		
USWM, LLC		
Hikma Specialty USA Inc		

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TEVA PHARMACEUTICALS USA, Inc.		
REMEDY REPACK		
Hikma Pharmaceuticals USA Inc.		
DR REDDY'S LABORATORIES		

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ATTACHMENT A-4

Vendor Exclusive Rights

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ATTACHMENT A-3
Additional Exceptions to Prohibited Products

<http://members.mckesson.com/govsuper/login>

The following are exceptions to Prohibited Products and/or are preapproved:

1. Cold/Cough Remedies
2. Vitamins
3. Supplements
4. Pain relievers
5. Irrigation Solutions
6. Topical Pain Relief
7. Antifungals
8. Antiseptics
9. Allergy Relief
10. Digestive Medication
11. All Private Label Products
12. Naloxone (As allowed and identified on **Attachment A-3**); if classified as a **Specialty Rx Products**, exception will be revoked upon thirty (30) days written notice.
13. Epinephrine (As allowed and identified on **Attachment A-3**); if classified as a **Specialty Rx Products**, exception will be revoked upon thirty (30) days written notice.
14. Lancets
15. Fentanyl Test Strips that do not require special licenses and are rapid (does not need to be processed by a lab and does not have a service component)

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[None]

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Current version can be accessed here:

<https://members.office.mn.gov/user/login>

ATTACHMENT D

Member Onboarding forms

Vendor's standard Primary Designation Form:

<https://forms.office.com/Pages/ResponsePage.aspx?id=G-9n2InKsk2ajKqNIGF6FlwIRa34yNxMrms7-HmqJ9VUQIZORUVXTIINWEY1RUZDNVIRtQ1VVraVy4u>

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 Current version can be accessed here:
<https://members.infuse-mn.gov/user/login>

Table 1: Required Data Field for Sales Data Report (Paragraph 9.2(B))

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP Infuse-assigned Member ID
B	MMCAP Infuse Member Name
C	Vendor Distribution Center Code
D	Vendor-assigned Account number for MMCAP Infuse Member (this should be the ship-to account number)
E	Invoice Number
F	Invoice Line Number
G	Purchase Order Number
H	Invoice date (MMDDYYYY)
I	Buyer name or equivalent of buyer ID for person submitting the invoices (if available)
J	Vendor's (distributor) SKU item number
K	NDC of purchased Product as stored in First DataBank, Inc. (Required for pharmaceutical Products)
L	Label Name/Product Description
M	Unit Dose (Required for pharmaceutical Products)
N	Pack Size
O	Unit
P	Case Size
Q	Dose (Required for pharmaceutical Products).
R	Strength (Required for pharmaceutical Products).
S	Route (Required for pharmaceutical Products).
T	Unit Price (99999.9999)
U	Quantity Ordered (not Vendor repackaged or re-bundled quantity)(99999.9999)
V	Quantity Shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)
W	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999.9999)
X	Type of transaction (MMCAP Infuse Product, Core, Non-core) 1= Core/MMCAP Infuse Product, 2=Non-Core, 3=Excluded Products (non-admin fee sales)
Y	Bill to Address 1
Z	Bill to City
AA	Bill to State (2 alpha postal code)
AB	Bill to Zip (standard 5-4 format, no dash necessary)
AC	Ship to Address 1
AD	Ship to City
AE	Ship to State (2 alpha postal code)
AF	Ship to Zip (standard 5-4 format, no dash necessary)
AG	Service Fee (99999.9999)
AH	MMCAP Infuse Contract Number (MMSxxxxx)
AI	Admin Fee
AJ	Credit Indicator (C for credit)
AK	MMCAP Infuse Assigned Wholesaler Code (Codes will be assigned to PPV's during implementation period of the contract)
AL	Manufacturer Name (MFG Name)
AM	Class of Trade
AN	340B Purchase
AO	Category

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AP	Manufacturer Part Number
AQ	List Price
AR	UNSPSC Code (XXXXXXXX)
AS	UNSPSC Description
AT	GLN
AU	GTIN
AV	Order Date (MMDDYYYY)

Table 2: Substitution Report (Paragraph 3.2)

Excel Column	Required Data Field Full Name for Substitution Report
A	MMCAP Infuse ID
B	Vendor ID
C	Customer Name
D	Invoice Number
E	Invoice Date
F	Product Trade Name (Original item ordered)
G	UNSPSC Code (or NDC of pharmaceutical Product)
H	Pack Size
I	Dose (Required for pharmaceutical Products).
J	Strength (Required for pharmaceutical Products).
K	Unit Price (99999.9999)
L	Quantity Ordered (not Vendor repackaged or re-bundled quantity)(99999.9999)
M	Quantity Shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)
N	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999.9999)
O	Type of transaction (MMCAP Infuse Product, Core, Non-core) 1= Core/MMCAP Infuse Product, 2=Non-Core, 3=Non-admin fees sales
P	Product Trade Name (Replacement Item)
Q	UNSPSC Code (NDC of pharmaceutical Product)
R	Pack Size
S	Dose (Required for pharmaceutical Products).
T	Strength (Required for pharmaceutical Products).
U	Unit Price (99999.9999)
V	Quantity Ordered (not Vendor repackaged or re-bundled quantity)(99999.9999)
W	Quantity Shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)
X	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999.9999)
Y	Type of transaction (MMCAP Infuse Product, Core, Non-core) 1=MMCAP Infuse Product, 2=Core, 3=Non-Core
Z	Reason for Replacement

Table 3: Punch-out User Reports (Paragraph 3.18)

Punch Out User Reports
MMCAP ID (if none, please indicate)
Punch-Out system utilized (i.e., State and Agency that owns system)
Punch-Out system Account Number
Vendor Account Number
Purchaser's Name
Purchaser's Address
Invoice Number
Invoice Date
Invoice Amount

Accurate as of Mar. 29, 2023

Current version can be accessed here:

<https://members.infusemngov/pac/login>
Table 4. MMCAP Infuse Upload Template (Paragraph 2.2(A))

*Actual template will be provided to Vendor; required fields are outlined below

Excel Column	Required Data Field Full Name	How to complete
A	Item Number	
B	Description	
C	Quantity	Leave as 1.0
D	Unit Cost	
E	Unit of Measure	Leave as "See_PKG"
F	Class Code	NIGP Class
G	Class Item Code	NIGP Item
H	Commodity Code	Blank
I	Discount Percent	Leave as 0.0
J	Discount Amount	Leave as 0.0
K	Tax rate Code	Blank
L	Freight Amount	Leave as 0.0
M	Manufacturer	
N	Make	Manufacturer SKU
O	Brand	Blank
P	Packaging	Product Packaging Size (i.e., CS)
Q	Model #	Model Number
R	Minimum Quantity	Leave as 0.0
S	Max Quantity	Leave as 0.0
T	UPC/ISBN	
U	SKU	
V	Tags	Product Category (i.e., gloves)
W	URL	Blank
X	Product Length	Quantity (i.e., 50)
Y	Product Width	Product Packaging (i.e., CS)
Z - AV	Various	Blank
AW	P Admin Fee	Admin Fee amount for Item
AX	P Sales Type	Core or Non-Core
AY	UNSPSC	

Product Compliance and Replacement Report (Paragraph 1.6). Vendor agrees to report Product compliance using MMCAP Infuse's preferred calculations as follows:

1. Compliance Formula:

$$\frac{\text{Core} + \text{MMCAP Infuse Products Sales}}{\text{Total Sales}}$$

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Current version can be accessed here:

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ATTACHMENT F

Minnesota Statutory Procurement Language

1. **Government Data Practices.** Parties to this Agreement must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (Data Practices Act), as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Vendor or MMCAP Infuse.
 - A. Notification. If the Vendor receives a request to release the data referred to in statute, the Vendor must immediately notify and consult with MMCAP Infuse as to how the Vendor should respond to the request.
 - B. Indemnification. Vendor agrees to indemnify, save, and hold Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to the Vendor's violation of any provision of the Data Practices Act.
 - C. Release of MMCAP Infuse Data. Except as may be required by Data Practices Act, Vendor will not release to any third party any MMCAP Infuse customer data, sales transaction data, DEA/HIN information, pricing, EDI transaction data, reverse distribution data, or payment data.
2. **Data Disclosure.** Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Vendor consents to disclosure of its social security number, federal employer tax identification number, and Minnesota tax identification number, already provided to the MMCAP Infuse, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.
3. **Non-discrimination.** The Vendor will comply with the provisions of Minn. Stat. § 181.59.
4. **Affirmative Action Requirements.**
 - A. Covered contracts and vendors. If the Agreement exceeds \$100,000 and the Vendor employed more than forty (40) full-time employees on a single working day during the previous twelve (12) months in Minnesota or in the state where it has its principal place of business, then the Vendor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.
 - B. Minn. R. 5000.3400-5000.3600.
 - i. General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
 - ii. Disabled Workers. The Vendor must comply with the following affirmative action requirements for disabled workers.
 - a. The Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - b. The Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - c. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - d. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

Accurate as of Mar. 29, 2023

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- iii. **Consequences.** The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or Minnesota.
 - iv. **Certification.** The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075).** For services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.
 6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
 7. **Contingency Fees Prohibited.** Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
 8. **Diverse Spend Reporting.** If the total value of this Agreement may exceed \$500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.
 9. **Payment to Subcontractors.** To the extent applicable, the Vendor must pay all subcontractors in accordance with Minn. Stat. § 16A.1245. Vendor does not consider national third party carriers subcontractors for the purposes of this Agreement.

Accurate as of Mar. 29, 2023
Current version can be accessed here:
<https://members.infuse-rn.com.gov/user/login>

ATTACHMENT C
Return Goods Policy

Subject to applicable law, Vendor will process returns in accordance with its Return Goods Policy currently in effect, or as otherwise agreed to by Vendor and Customer. Vendor's current Return Good Policy is as follows:

- All requests for credits for Products must have a return authorization number issued by Vendor's customer service department or Vendor's automated customer service platform (e.g., McKesson SupplyManagerSM).
- Vendor will issue a full credit for any Product returned due to Vendor error (i.e., shipping error, damage in transit) or due to a recall or defective condition.
- The following Products are not eligible for a credit, unless the return is due to Vendor error, recall, or defective condition: (i) special order Products; (ii) custom Products; (iii) Products identified as non-returnable in McKesson SupplyManager; (iv) Products not available for general or unrestricted distribution; (v) refrigerated or frozen (cold chain) Products other than certain flu or core vaccines; and (vi) nonsalable Products. Nonsalable Products include, but are not limited to, Products that are open, damaged, below minimum acceptable product dating set by Vendor (available at mms.mckesson.com on the product detail page), hazmat, stickered or labeled, controlled pharmaceuticals, discontinued by the manufacturer, or that contain markings not made by Vendor; and
- Vendor will issue a credit as follows for McKesson brand products purchased directly from Vendor: if returned within 45 days of invoice date – Full amount; if returned after 45 days – No credit. Non-consumable McKesson brand products must be sent back to Vendor's distribution center to be eligible for a credit and are subject to inspection by Vendor before credit is issued to Customer. Consumable McKesson brand products should not be sent back to Vendor's distribution center. If a McKesson brand product is not purchased directly from Vendor, no return for credit will be honored.
- Vendor will issue a credit as follows for all other eligible Products:
 - Products stocked in Vendor's distribution center: if returned within 30 days of invoice date – Full amount; if returned between 30-180 days – Full amount, less a restocking fee per product; if returned after 180 days – No Credit
 - Products NOT stocked in any of Vendor's distribution centers that are less than \$100 – No Credit
 - Products NOT stocked in any of Vendor's distribution centers that are \$100 and greater: if returned within 30 days of invoice date – Full amount, less Vendor and vendor restocking fees per product; if returned after 30 days – No Credit

Products stocked in a Vendor distribution center and Products NOT stocked in a Vendor distribution center that are \$100 and greater must be sent back to Vendor to be eligible for a credit and are subject to inspection by Vendor before credit is issued to Customer. Credit for Products not stocked in Vendor's distribution center that are greater than \$500 require additional approval by Vendor. All other Products should not be sent back to Vendor's distribution center.