

Accurate as of September 15, 2022

The most current version

<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>



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

Pharmacorr, LLC

MMCAP Infuse Agreement #: MMS2200723

Prepared on September 12, 2022

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

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PREFIX A
<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>
 Definitions and Acronyms

Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** Means three percent (3%) of the Dispensing Fee.
2. **Actual Acquisition Cost (AAC):** Vendor's AAC shall be construed to be the amount invoiced to Pharmacorr immediately prior to the date on which the drug is dispensed.
3. **Average Daily Population (ADP):** ADP is calculated by calculating the sum of each day's actual census for the Member's collective Facility population over a calendar month, and then dividing the sum by the number of calendar days in the respective calendar month.
4. **Change Order:** The document that memorializes the specific additional Services a Member has arranged with the Vendor.
5. **Class of Trade:** The Vendor will only service correctional and jail Facilities under this Agreement.
6. **Contract(ed) Items:**
 - A. **Products:** Means all medication offered by the Vendor in this Agreement through its sourcing.
 - B. **Services:** Means the services that the Vendor is offering a Member as part of a Dispensing Fee or an additional elected cost in accordance to this Agreement.
7. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
8. **Dispensing Fee:** The fee the Vendor collects for the issuance and deliverance of a prescription to a Member based on the terms of this Agreement and pricing on **Attachment A-1**.
9. **Facility:** The applicable site/location/building of the Member that houses a group of patients the Vendor is serving; a Member may have multiple Facilities per arrangement.
10. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
11. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
12. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
13. **Onboarding Date:** Means the Vendor must allow new Members to access to the Agreement within seven (7) days of notice by MMCAP Infuse.
14. **Onboarding Forms:** RESERVED
15. **Order Form:** Means the document or electronic platform Member utilizes to obtain Products.
16. **Pricing:** Means the price that the Vendor has agreed to provide the Contracted Items to MMCAP Infuse and its Membership as set forth on **Attachment A** and any subsequent amendment to this Agreement.
17. **Primary Account Representative:** Mark Moyers, Senior Director of Clinical Pharmacy, mark.moyers@pharmacorr.com, 405-685-3265.
18. **Order Form:** Means the document or electronic platform Member utilizes to obtain Contracted Items.
19. **State:** Means one of the recognized fifty (50) states of the United States of America.
20. **Working Hours:** Sunday 9:30PM to Friday 8:30PM Central Time; 8:00AM to 5:00PM Central Time Saturday.
 - A. **After Hours:** All other times will be considered irregular times.
 - B. **Holidays:** Christmas Day, New Year's Day, Martin Luther King Jr, Memorial Day, Independence Day, Labor Day, and Thanksgiving Day.

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AGREEMENT FOR MMCAP INFUSE NO. MMS2200723<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

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 Pharmacorr, LLC, a limited liability company with an address of 7400 Plaza Mayor Blvd #100, Oklahoma City, OK 73149 ("**Vendor**" or "**Pharmacorr**").

Agreement Term:

1. **Effective Date:** September 15, 2022, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** August 31, 2024.
3. The Agreement Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

AGREEMENT COMPONENTS

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

1. **Prefix A:** Definitions
2. **Attachment A:** Products and Pricing
 - A. **Attachment A-1:** Dispensing Fee and Product Pricing
 - B. **Attachment A-2:** Labor Pricing
 - C. **Attachment A-3:** Support and Service Pricing
 - D. **Attachment A-4:** Equipment Pricing
3. **Attachment B:** Required Member Onboarding Forms
4. **Attachment C:** Required Reporting
5. **Attachment D:** Minnesota Statutory Procurement Language

ARTICLE I
PRICING AND CHANGES

- 1.1 **Notices.** All notices under this Article must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 1.2 **Price Changes.** Vendor must hold Pricing under this Agreement firm for at one (1) year from the Effective Date and can only be changed through an Amendment and require at least sixty (60) days' notice. Each time Pricing is changed, the Vendor must wait one (1) year from the change date to amend the Pricing again. When the Pricing does change, the new Dispensing Fee will only apply to Members onboarded by Vendor after the change date.
- 1.3 **Dispensing Fee.** Vendor will invoice the Member for pharmaceuticals for patient specific medications and bulk orders at AAC plus a per-prescription dispensing fee based on ADP.
 - A. **Exceptions:** Any 340B arrangements will have a separately-negotiated Dispensing Fee from that established in **Attachment A-1**.
- 1.4 **Taxes.** Members are responsible for all applicable sales, use, lease, ad valorem, and any other tax that may be levied or assessed by reason of this transaction, unless the Facility provides a tax exemption certificate (blanket or transaction specific) to Vendor before the transaction occurs.
- 1.5 **Labor Rates and Travel.** Labor rates and travel expenses are outlined on **Attachment A-2**. There may be additional costs and Dispensing Fees as stated within this Agreement.
- 1.6 **Software/Hardware Data System Pricing.** Software, data support, and further technical support may be available through the Vendor. Costs will be provided by the Vendor on a per-project basis and quotes will be provided to the Member before any project starts. Vendor and Member will memorialize the project in a Change Order.
- 1.7 **Alternative Pricing and Contracted Items.** If the Vendor does want to provide more advantageous or alternative terms to a Member, before implementing, the Vendor must submit the terms to MMCAP Infuse for review to determine if those terms should be incorporated into this Agreement for the entire Membership. MMCAP Infuse will review and make a determination if (A) it should become part of this Agreement through an amendment; or (B) the Vendor and Member can individually reflect the changes through a Change Order.
- 1.8 **Targeted Groups.** Some Members require the use of M/W/DBE (minority/women/disadvantaged business entity) subcontractors; the pricing and costs will be negotiated between the member and Vendor and reflected in a Change Order.
- 1.9 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Pricing; those 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.

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<http://www.mmd.admin.state.tx.us/mmd/CAP/Contracts/Default.aspx>**ARTICLE II
SERVICE OFFERINGS**

- 2.1 **Service Area.** Vendor will provide Services and Products to Members located in all States except for: California, Hawaii, and Alaska.
- 2.2 **Hours of Operation.** The Vendor will provide Services at the standard rate during Working Hours; for After Hours and Holidays, the Vendor may charge the applicable rates. Vendor can receive orders 24 hours a day, 365 days a year. Vendor's pharmacists can be reached 24 hours per day, 365 day a year by calling 1-888-321-7774 or faxing 1-888-200-7774. The staff can assist with answering questions, medication orders, and after-hour dispensing. The Vendor will provide Members and MMCAP Infuse at least fifteen (15) days' notice of any changes to Working Hours, After Hours, and/or Holidays.
- 2.3 **Individual Member Selection and Order of Services.** Due to the individuality and customization each Member requires for its Facilities, the Vendor and Member will document the selection of Contracted Items and the Pricing through a Change Order (Vendor's and Member's mutual selection). Pricing and Contracted Items that are outside the scope of this Agreement must go through MMCAP Infuse's review and receive written approval (*Paragraph 1.7*). The final agreed upon costs and Service will be reported to MMCAP Infuse as outlined in **Attachment A**. If the Vendor (or its Subcontractors) need to perform work outside the agreed upon parameters in the Change 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 Change Order.
- 2.4 **Vendor's Staff or Agents.** Regardless of any vacancy in its staffing the Vendor is required to provide adequate coverage for all Services a Member selects. For all staff the Vendor (or subcontractors – and will apply throughout the Paragraph) provides for Services, the Member will have the opportunity to review the credentials. The Member reserves the right to negate a hire or remove a staff member if it is found to have less than the necessary credentials and/or experience to perform the functions of the Services the Member elects. Each of the Vendor's pharmacy professionals shall provide proof of licensure or certifications to the Member before any Services are performed. The staff of the Vendor will:
- A. maintain licensure or certification; and
 - B. maintain professional malpractice liability insurance.
- The Vendor will maintain and make available for review by the Member credentialing information that includes, at a minimum for pharmacists:
- A. Signed application and required background check;
 - B. Verification of education, training, and work history;
 - C. Professional references;
 - D. Vendor Malpractice claims history; and
 - E. Current license to practice.
- 2.5 **Orientation and Transition of Service.** Vendor will also provide appropriate transition service from the Member's current pharmacy provider to the Vendor. As part of any transition or onboarding, Vendor will collaborate with Member to provide orientation for Member's staff and contract management personnel. Vendor will provide services within a thirty to forty-five (30--45) day transition period (which shall include orientation) and will include post-implementation follow-up.
- 2.6 **Inspection Support and Operational Reviews.** At the request of the Member, the Vendor will perform an on-site quality assurance review. Inspections shall include but are not limited to reviews of therapies and medication usage; controlled substance records; refrigerated units; expiration dates; documentation and charting of medications; reconciliations; emergency kits and stock medication; security storage; and additional procedures as requested by the Member. Inspections will be based on National Commission Correctional Health Care (NCCHC) and American Correctional Association (ACA) standards.
- 2.7 **Formulary Development and Maintenance.** As part of the Dispensing Fee, the Vendor will provide the following services:
- A. **Formulary Development and Non-Formulary Reviews:** If Member prefers to utilize its own existing or modified formulary, Vendor will work with Member's Pharmacy and Therapeutics (**P&T**) Committee to provide continued formulary maintenance. Vendor will provide an initial review of Member's non-formulary utilization, if provided, at no cost. The formulary that is selected by the Member will be loaded into the Vendor's data entry processing system. This places system blocks so that only approved non-formulary orders are processed for effective formulary control.
 - B. **Formulary Maintenance:** The formulary will be continually assessed for improvements by the Vendor. The Vendor's clinical pharmacists review all non-formulary orders retrospectively in the Vendor's "**Clinical Pharmacy Intervention Program**." This provides an in-depth working knowledge of the formulary to assess how market changes or clinical updates may impact the formulary. Vendor will provide Member's requested level of involvement at a P&T Committee meeting. Vendor can present formulary update recommendations and assist in preparing clinically sound and cost-effective drug therapy strategies at P&T Committee meetings.

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- C. **Non-Formulary Orders:** The Vendor will automatically perform clinical review of all non-formulary orders to determine if there is a potential less expensive substitution as a part of its Clinical Pharmacy Intervention Program.
- D. **PrecisionRX:** Upon the request of the Member, the Vendor can offer an elevated and more integrated non-formulary approval process (cost on **Attachment A-3**). Within the Vendor's PrecisionRx program, clinical pharmacists will review each non-formulary request for clinical appropriateness as the first level review. Delivering prospective guidance rather than retrospective review provides a proactive and integrated approach to clinical pharmacist consultation and intervention.

2.8 Patient Management.

- A. **Clinical Pharmacy Intervention:** As part of the Dispensing Fee, non-formulary medications will undergo an additional layer of review. Non-formulary medication orders will automatically trigger clinical pharmacist review to assist Member's prescribers to maximize clinically appropriate and cost-effective therapies. Flagged major drug interactions are sent to the prescribing physician for evaluation. Those orders are held until resolution of patient safety issues.
- B. **Medication Therapy Management (MTM):** Upon the request of the Member, the Vendor will perform a MTM review on patients (cost on **Attachment A-3**). During this review, the Vendor will review the medications the patient is on and analyze the appropriateness, effectiveness, and safety of the current therapy. Subsequently, the Vendor will provide recommendations for the Member to implement.
- C. **SelectRX:** Upon the request of the Member, the Vendor will provide access to their Prior Authorization program to review specific high dollar medications and therapies (cost on **Attachment A-3**). Our established clinical criteria for select medications is designed to drive preferred drug strategies. Once approved by Member's medical leadership, the criteria will be available as a questionnaire to Member's prescribers.

2.9 Discharge/Release Medications.

At a rate of the AAC of medication plus Dispensing Fee, the Vendor will dispense patient-specific discharge/release medications to the Facility. Unless otherwise specified by Member or its representative, Vendor will provide a thirty (30) day supply of medications to the patient and the medication will be sent to the Member before the patient release. At the Member's request, a sixty (60) day supply can be requested. The Vendor will provide education material regarding the medication and a toll-free number for the patient to call regarding questions regarding the therapy. Discharge medications may be dispensed in blister cards as long as a signed patient release for non-childproof containers accompanies the order; otherwise, all discharge/release medications will be dispensed in child-proof containers.

- A. **Off-site Pharmacy:** Instead of the medication being sent to the Member, the Member can request the utilization of the Vendor's back-up pharmacy network. Any additional costs to utilize the back-up network will be a pass-through cost to the Member without a markup or fee assessed by the Vendor.

2.10 Emergency Service Offerings.

A Member can elect to have the Vendor set up a network of local pharmacies in close proximity to a Facility serviced as part of this Agreement for an alternative source for short term medication orders that are needed "stat" or after the normal hours of operation. Upon notification of a stat request, the Vendor shall make all arrangements for the order to be transmitted to the local pharmacy and make sure that there are no contraindications to the medication, as the local pharmacy will not have the patient's complete medication profile on hand to properly screen for drug interactions or other potential problems.

- A. Medication will be available within four (4) hours of the order placement.
- B. The Vendor shall not allow non-formulary medications to be ordered from the local pharmacy without a prior approval from the Member.
- C. The Vendor shall pass the cost of the Product and delivery fees through to the Member without any additional markup by the Vendor.
- D. **Pricing:** If the standard Dispensing Fee will not be utilized or there are additional costs not covered by this Agreement, the Vendor and Member will negotiate the additional costs that will apply on the Change Order.

2.11 On-Site Staffing and Telemedicine.

- A. **On-Call:** Vendor will provide access to licensed pharmacists to the Member 24/7/365 via this toll-free number: 1-888-321-7774. In the event the pharmacist cannot provide immediate answers, the Vendor will research the issue and provide a response. The costs are identified on **Attachment A-2**.
- B. **MicroMedex®:** At no cost to the Member, the Vendor will provide the Member access to MicroMedex® and Micromedex® CareNotes; providing the Member a resource to research drug IDs, interactions, pharmacokinetics, and safe dosing recommendations.

2.12 Third Party Billing.

At no costs to the Member, and as directed by the Member, Vendor will create separate invoices for individual patients that are being billed separately because they are being charged directly or being cared for by a jurisdiction other than the Member, such as patients under the control of the U.S. Bureau of Prisons (BOP), U.S. Immigration and Customs Enforcement (ICE), U.S. Marshals Service (USMS), and for counties. Vendor will bill compensation orders, medical assistance, health insurance, AIDS drug assistance programs (ADAP), or other payment sources if the patient is eligible, if permitted to bill, and if Vendor receives billing information at the time of dispensing. Vendor agrees to pursue any manufacturer discount programs, rebates, copay assistance, or similar programs available for products dispensed and pass those savings back to the Member. Medications

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invoiced to other payers will be billed at the Member's rate. If these invoices are not paid within ninety (90) days, the Member will be responsible for all charges at the agreed upon rate for that Member with no interest being charged.

- 2.13 **Backup, Overflow, or Afterhours Pharmacies.** The Vendor can be reached 24/7/365 via telephone and can provide orders via STAT or emergency basis through its network of local pharmacies as part of the prescription Dispensing Fee. All costs from the emergency will be pass through to the Member with no additional markup or fees.
- 2.14 **Human Resources Consulting.** At the request of the Member, the Vendor will provide human resource consulting for the Member at cost; hourly labor rates will not exceed the rates outlined on **Attachment A-2**. All travel and other expenses directly attributable to the consulting event will be passed through to the Member without markup or fees from the Vendor; Vendor will provide receipts for reimbursed travel and expenses before being paid.
- 2.15 **Education and Training.** At the request of the Member, the Vendor will provide training and education materials on various at issue topics for the Member at no costs unless there is travel or out-of-pocket expenses. Those expenses will be pass through to the Member without markup or fees from the Vendor.
- 2.16 **Grant Management.** At the request of the Member, the Vendor will provide grant management for the Member at the Vendor's cost; any hourly labor rates will not exceed the rates outlined on **Attachment A-2**. All travel and other expenses will be pass through to the Member without markup or fees from the Vendor. Vendor will provide receipts for reimbursed travel and expenses before being paid.
- 2.17 **Reverse Distribution and Waste Disposal.** Vendor will utilize the services of a reverse distributor who is fully HIPAA, state, federally, and state board compliant. This process allows for the return of patient-specific prescriptions from Members that can be destroyed while maintaining data integrity. The Vendor will provide Members access to MMCAP Infuse's contracted vendor(s) in addition to any reverse distribution and waste disposal services the Vendor can provide through its arrangements.
- 2.18 **Equipment Leasing and Maintenance.** Vendor will provide medication carts and barcode scanners to Member Facilities at no charge based on Facility size and capacity. If new medication carts, upgrades to carts or repairs are required by Member, Vendor will pass such charges through to Member Facility. If new/additional bar code scanner or repairs are required, Vendor will pass such charges to the Member as outlined on **Attachment A-4**.
- 2.19 **Reporting.** At no additional costs to the Member, the Vendor will provide online reporting through an online Tableau-based system; CSV; XLS; XLS; and/or PDF formatting is available.
- A. Ad Hoc: Upon request by the Member, within two (2) business days, the Vendor can provide custom reports to the Member.
- 2.20 **Failure to Provide Service.** If Vendor fails to provide the Services as set forth in this Agreement, Member may obtain the same or equivalent Service through an alternative MMCAP Infuse vendor. If MMCAP Infuse vendor cannot provide Member the Services required, the Member may obtain the Service on the open market, including retail, for the period in which the Vendor is unable to provide the Service. The Vendor will reimburse for any additional costs (including shipping and third-party fees) over the Pricing of this Agreement sustained by Member via a credit within thirty (30) days of receipt of the claim.

ARTICLE III

PRODUCT DISPENSING AND ORDERING

- 3.1 **Ordering Products.** Vendor or Member may use their own agreed upon Order Forms; to the extent that the terms of any Order Form(s) conflict with the terms of this Agreement, the terms of this Agreement supersede.
- A. The use of obtaining a Contracted Item from the Order Form constitutes a binding contract. All Products furnished will be subject to inspection and acceptance by the ordering entity after delivery. No substitutions or cancellations are permitted without written approval of the Member. Back orders, failure to meet delivery requirements, or failures to meet specifications in the Order Form and/or the Agreement authorizes the ordering entity to cancel the order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the Vendor.
- B. Cut-off Times. Orders must be made in accordance with the chart below for next business day delivery. All orders made on Saturday will be delivered on Monday.

Order Type	Order Cutoff Times	
	Monday – Friday	
New Orders	Eastern Time Zones	3 PM CT
	Central Time Zone	4 PM CT
	Mountain Time Zone	5 PM CT
	Pacific Time Zone	5 PM CT
Refill/Clinic Stock	All Time Zones	12 PM CT
Saturday		

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New Orders	All Time Zones	12 PM CT
Refill/Clinic Stock	All Time Zones	12 PM CT

Business days shall include every day, Monday through Saturday, but shall exclude Saturdays at those Facilities where deliveries via Vendor's primary courier are unavailable and/or shipments cannot be received, Sundays and all shipping holidays recognized by Vendor's courier.

- C. Order Minimums. Vendor does not require an order minimum.
- D. Shipping Costs. Vendor shipping costs are included in the Dispensing Fee.
- E. Rush Orders. No additional charges.
- F. Generics. Vendor will dispense medications as generics unless there is no approved generic substitute, or the Member has requested "no substitute" in accordance with applicable state laws. For continuity of clinical services, Vendor may provide branded products, after confirming with Member's medical staff, when the generic equivalent is commercially unavailable from the manufacturer, on quantity allocation from the manufacturer, is in limited supply or subject to a nationwide shortage. Vendor may also utilize branded products when such products are obtained at a better price than the generic equivalent.
- G. Dates. All Products supplied to Members must have an expiration date of at least twelve (12) months from the date of manufacture and have a least a three (3) month shelf life from the date of acceptance of the Product by the Member.

3.2 **Product Labeling Requirements.** Unit-dose blister cards will have the blister card labeled with the medication's name and strength, lot number, NDC, manufacturer's name, and expiration date. Prescription labels will be barcoded to allow for inventory management as well as quality assurance during med pass. Part of the medication label will be a thermal barcode label with a peel-off refill tab, printed in clear, large type. The tabbed refill labels will be supplied on every labeled medication order. Each refill tab will contain the patient's name and number, medication name, quantity, number of refills, prescriber, prescription number and unique card identification.

- A. Manifests. Every Product shipment will contain a detailed computerized delivery manifest containing Vendor's name, patient name and identification number, prescription number, medication name and strength, quantity dispensed and date dispensed. If a Member needs additional information on the delivery manifest, Vendor will make every effort to accommodate the request.

3.3 **Packaging Requirements.** If packaging other than blister cards are required, the alternative packaging surcharge is identified on **Attachment A-1**.

- A. Over-the-Counter (OTC). Vendor will distribute OTC commissary items, if requested by Member, in original manufacturer packaging. Each package is labeled with medication directions, side effects, ingredients, and all required information that are to be contained on OTC packaging.
- B. Prescriptions. Prescriptions are packaged in thirty (30) dose tamper resistant blister cards or the manufacturer's original container per request.
- C. Tablet Splitting. Vendor follows FDA guidelines regarding tablet splitting. If specified by a prescription order and allowed by FDA guidelines, Vendor will split tablets to achieve appropriate dosing of medication; split tablets are not eligible for return, credit, and/or reuse.
- D. Infusion Therapy. IV mixtures will be dispensed compounded, labeled, and ready to administer or will be dispensed in MiniBag Plus or similar packaging for easy self-mixing on site, upon request by the Member.
- E. Temperature Control. Vendor's packaging will maintain Products at the manufacturers' recommended specifications. All Products that require refrigeration will be shipped in containers to ensure proper temperatures controls; outer boxes containing refrigerated items are labeled with a fluorescent orange sticker that states, "Refrigerated Items Enclosed." Refrigerated items will not be shipped for weekend delivery unless requested.
- F. Controlled Substances. Patient-specific controlled substances will be packaged in red blister cards for easy identification, will be marked with a large red letter "C" if in Schedules III-V (**C3-5**) and with two red letter "C"s if Schedule II (**C-2**), allowing Member staff to differentiate the schedules. Stock controlled substances will be packaged in manufacturer packaging. Controlled substance medications will be packaged in a separate bag containing its own delivery manifest. Patient specific prescriptions for C-2 agents must be ordered by an authorized prescriber of the Facility with a written prescription and stock C-2 orders must be properly executed on a DEA 222 form. Both should be sent to the Vendor for overnight shipment. Patient -specific and stock orders for C3-5 prescriptions can be sent via fax on an Order Form; prescriptions will be issued to properly licensed Facilities outlined by the DEA and applicable Boards of Pharmacy. Vendor is also compliant with DEA's EPCS (Electronic Prescriptions for Controlled Substances) requirements.
- G. Absent Products. If an ordered item is not part of the current shipment, the item and the reason for its absence (i.e., ordered too soon to fill, ordered past cut date, non-formulary medication, etc.) will be clearly indicated on the exception report section of the manifest.

3.4 **Shipping.** Vendor must distribute and deliver the Contracted Items covered under this Agreement to all Members, excluding the states of California, Alaska and Hawaii. If the Member account is in good standing, the Vendor will at

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no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination unless otherwise agreed to by Vendor and Member. Vendor will not add any fuel surcharges to the purchase under this Agreement. Notwithstanding the foregoing, emergency orders, rush orders, and products dropped shipped from Vendor's contracted supplier, are subject to an added shipping and handling charge determined by Vendor and disclosed in writing to Member before a purchase is made.

- A. **Damaged Products.** All damaged Products will be reported to Vendor's customer service department and applicable credits will be issued within ten (10) days from date of notification of the damaged item.

3.5 **Order Tracking Requirements.** All orders will be tracked to ensure the timeliness and accuracy of deliveries. Vendor's shipping software will track packages at every destination point. The software will provide estimates and confirmations of scheduled and actual delivery times as well as the names and signatures of delivery recipients. Upon request, Vendor will automatically provide the Member the courier tracking information, including the tracking number and a link to the shipping company's website. If an order is not delivered by its guaranteed delivery time, Vendor's shipping department will begin the process of tracking the shipment. If Vendor determines the package is lost in shipment, Vendor will immediately contact the Member and provide a copy of the missing delivery manifest, so each item can be reviewed, and it can be determined if Vendor needs to supply the medication(s) using local backup sources or immediate overnight shipment. The Vendor will recover those costs from the courier rather than the Member.

3.6 **Emergency Orders (non-prearranged Service).** For Members that are not utilizing the Vendor's emergency services under Article II, emergency orders can be submitted directly to Vendor. The Vendor will either deliver the Products directly to the Member by courier or arrange access to a local pharmacy. Costs for both will be passed through at Vendor's cost, without any margin or markup. Detailed line-item reports of all emergency prescriptions will be provided with Vendor's invoice each month. Charges may include expedited courier charges, the local pharmacy's fees and price differentials, on-call charges, etc.

3.7 **Termination of Individual Orders.** Members may terminate, immediately or as identified by Member, individual Order Forms, in whole or in part, upon written notice to Vendor upon the occurrence of any of the following events:

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

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

3.8 **Product Outages.** It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Members. It is expected that the Vendor will be able to fulfill the higher of the following: (A) 150% of the Members' previous quarter's purchase volume; or (B) if applicable, the agreed upon volumes as described in the formulary management between Member and Vendor. If Vendor cannot fulfill orders made by Members directly to the Vendor, it will be considered a failure to perform by the Vendor. The Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.

- A. **Immediate Notification.** Vendor's ordering system will provide notice within one (1) business day to MMCAP Infuse and its Members of any Products covered by this Agreement that the Vendor has placed on backorder. Vendor's backorder notification will include:
- the Products placed on backorder status;
 - the expected timeline of the backorder;
 - the reason for the stock outage was caused; and
 - how the Vendor intends to resolve the backorder situation
- B. **Alternative Sourcing.** If the Vendor does find an alternative source for the Products, the Vendor may, at its discretion, substitute the alternative product and pricing consistent with the reimbursement terms of the Agreement.
- C. **Substitution.** If Member consents, Vendor may offer like-kind Products at the same or lower price as the out-of-stock product. If no acceptable substitution can be offered: (i.) the Member may purchase the same or equivalent Product from an alternative source or open market; or (ii.) the Vendor may source the Product through other mechanisms.
- It is expected that the Vendor will be sourcing Products at the best value for the Member, and Vendor will make every effort to ensure products at the best value price to the Member. If a Product that a Member acquires from the Vendor exceeds fifteen percent (15%) over the average price that the Member was invoiced at from the past six (6) months, the Vendor will notify Member of the anticipated duration of the pricing increase and recommend alternative products, where applicable. If notice is not made to the Member of the price increase event, a claim may be submitted from Member to Vendor for fifty percent (50%) of the cost differential over the 6-month average price.

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- ii. 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.
- iii. Backup Services elected. This Paragraph will not apply if Member and Vendor has agreed upon alternative arrangements for out-of-stock Products in the scope of services for backup or emergency pharmacy services through a Change Order.

- 3.9 **Jurisdiction and Venue of Orders.** Upon completion of the Dispute Resolution process outlined in this Agreement, and solely with the prior written consent of MMCAP Infuse and the State of Minnesota Attorney General's Office, the Member may bring a claim, action, suit, or proceeding against Vendor. The Member's request to MMCAP Infuse to bring the claim, action, suit, or proceeding must identify the desired jurisdiction, venue, and governing law. As it applies to purchases made by a Member, nothing in the Agreement will be construed to deprive the Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Agreement or afforded by the Member's law.
- 3.10 **Returns.** Once a month, Vendor will provide shipping for returned medications and will provide the Member with a prepaid, preaddressed return label. Vendor will provide credit on unused oral solid medications that are unadulterated and acceptable for re-dispensing, where permitted by State Board(s) of Pharmacy law or regulation in both the sending and receiving states. Vendor will provide credit on both full and partial blister cards of Products consistent with said State Board of Pharmacy laws and regulations as well as the Vendor's internal quality standards. Credit is offered at 100% of the actual medication acquisition cost billed at the time of the initial dispensing event to a Member. Returns received by Vendor by the 15th day of each calendar month will be credited on the next invoice for that calendar month.
- A. Oral solid medications returned in a sealed manufacturer's bottles will be eligible for credit.
 - B. Credit is issued on medications based upon the professional judgment of a Vendor pharmacist.
 - C. Credit will not exceed the current market value per dose of medication eligible for return.
 - D. The following will not be eligible for credit: controlled substances, opened partial stock medications, liquids, injectables, topicals, medications dispensed in vials or strip packaging, and inhalers.
 - E. Blister cards that are dispensed with half tablets or with more than one single unit per individual bubble of the blister card are not eligible for return.
 - F. The medication has not been out of the custody of Member's health care personnel once received at the Member Facility.
 - G. Medications ineligible for credit will not be returned to the Member, but a report to the Member of returned medications will indicate the medication returned and reason for credit ineligibility.
 - H. Vendor will credit noncontrolled Products returned from a Member so long as the Member and Vendor's jurisdictions permit such practice, the medication was originally dispensed by Vendor, and the manner in which the medication is returned complies with state and federal law.
 - I. Vendor may consider exceptions to this policy, however any exceptions must not violate any State or Federal law or regulation and will be documented in a Change Order.
- 3.11 **Recalls.** Vendor will employ dedicated staff pharmacists to address manufacturer recalls, shortages, and medication backorders. When Vendor is notified of recalls, the team will immediately review Vendor's current inventory and remove items identified in the recall. Vendor will provide reports to each affected Member, identifying the patients who received recalled medications. Vendor will notify all relevant prescribers and other personnel according to pre-established protocols and procedures. Members will not incur costs for Product returns related to recalls Vendor will issue credit for recalled Product.

ARTICLE IV

INVOICING AND PAYMENT

- 4.1 **Member Responsibility:** Each Member will be responsible for payment for Contracted Items to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Member. Vendor agrees to invoice the Members as established in this Agreement.
- 4.2 **Conditions of Payment.** All Contract Items provided by the Vendor under this Agreement must be performed to the satisfaction of MMCAP Infuse and the Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for work found by MMCAP Infuse to be unsatisfactory or performed in violation of federal, state, or local law.
- 4.3 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), or P-Card as a payment method and Member will initiate this process with its financial institution. Any fees associated with Member payment method will be the responsibility of the Member and will be a separate line item on the invoice issued by the Vendor.
- 4.4 **Federal Funds.** Payments under this Agreement may be made from federal funds. The Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with federal requirements.
- 4.5 **Payment Terms.** The Member will pay all undisputed invoices to the Vendor within thirty (30) days of receipt.
- 4.6 **Invoicing.** Vendor will submit an invoice with each order.

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- 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;
 - prescription number, patient name and identification number, medication name and strength, quantity dispensed, price, NDC number, date the prescription was dispensed, prescriber name
 - Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), value of Dispensing Fees assessed, number of Dispensing Fees, total Dispensing Fee price, and total invoice price; and
 - If applicable, charges related to elected Services along with description of service provided.
- B. **Invoice Rounding:** Vendor agrees to round down if the third digit after the decimal is four (4) or less. Vendor agrees that any rounding will occur at the Member invoice unit price.
- C. **Invoice Disputes:** Member will notify Vendor of any known dispute with an invoice within fifteen (15) days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the Member appropriately, and provide a corrected invoice. Where the above is prohibited by a Member state's applicable law(s), the Vendor shall comply with requirements of that state's law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Agreement pricing within thirty (30) days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.

- In the event that applicable state law mandates set-off by a Member, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.

4.7 **Credits and Rebills.** Vendor will process credits and rebills as notifications are received from a Member. In the case of an invoice dispute, Vendor will promptly issue credits/rebills, after the Dispute Resolution process set forth in this Agreement.

- Vendor credits are valid until they are refunded or the account has used payment.
- 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).
- If directed by a Member, a credit can be transferred from one account to another account.
- 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.
- Vendor's credit memo will contain, but is not limited to the following information:
 - original order number and invoice number;
 - itemized listing of the Contract Items affected;
 - any new invoices associated with the credit; and
 - Net credit amount available to the Member.

4.8 **Price Audits and Corrections.** In the event of a Pricing error that is attributable to the Vendor, Vendor agrees to process credit/rebills for the past six (6) calendar months for any billings that were in error. When a Member or MMCAP Infuse discovers an error in pricing, they will notify Vendor.

ARTICLE V

TERMINATION, CANCELLATION, AND REMEDIES

- 5.1 **Cancellation.** MMCAP Infuse or Vendor may cancel this Agreement any time, without cause, upon thirty (30) days' written notice to each other.
- 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, if 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.

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- A. For orders made by a Member, Vendor agrees to the applicable statutory terms of the applicable Member if the Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Contracted Items.

5.4 **Force Majeure.** A party will not be considered in default in the performance of its obligations in the Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.

5.5 **Breach.** In the event of a breach of this Agreement, MMCAP Infuse and Members reserve the right to pursue any other remedy available by law. Vendors may be removed from Minnesota's vendor list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.

5.6 **Failure to Perform.** Upon failure to perform the following items in the time and manner as set forth herein, the following fees shall be paid by Vendor:

- A. Reports. In the event that any report and/or data provided by the Vendor, pursuant to the terms of this Agreement, is not received according to schedule, contains incorrect data, incomplete data, or no data, or is more than a minor defect or causes harm to MMCAP Infuse's ability to conduct business or its governmental purpose, Vendor will pay the following to MMCAP Infuse: \$500/day, until resolved.
- B. Late Administrative Fee Payments. As provided for in statute for late payments to the State of Minnesota.
- C. Notices and Signatures. If the Vendor fails to provide notice or signature as provided for in this Agreement, the Vendor will pay the following to MMCAP Infuse: \$200/day, until resolved.
- D. Class of Trade. In connection with this Agreement, if the Vendor denies pricing to any class of trade that has not been pre-approved by MMCAP Infuse, Vendor will pay MMCAP Infuse \$200/per violation.
- E. Adding and Removing Members. Every time the Vendor fails to meet the timeline requirements in the Change Order to add or remove a Member's eligibility to purchase Contracted Items, Vendor will pay MMCAP Infuse \$1,500/per violation.
- F. Application of Fees. The application of the amounts herein shall not excuse Vendor's performance obligations as set forth in this Agreement, nor will it waive any rights of MMCAP Infuse or Members to seek any and all available legal and equitable remedies. Vendor acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP Infuse and Members whole for any failure of performance by the Vendor, as based upon good faith estimates as agreed to by the parties.

5.7 **Dispute Resolution.** Vendor and MMCAP Infuse will handle dispute resolution for unresolved issues using the following procedure:

- A. Notification. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within thirty (30) days.
- B. Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP Infuse or Vendor may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action.
- C. Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.
- D. No Waiver. This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE VI MEMBERSHIP

6.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Contracted Items, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition.

- A. Orientation. When Vendor begins servicing a new Member, it will implement a competency-based training schedule and orientation program for Vendor's Pharmacists as well as any other Vendor personnel that will be involved with Member's contract management and Facility management. Prior to implementation, Vendor will have internal staff meetings to fully review Member's requirements and how they best apply to the Facility's specific needs. Virtual Orientation will be provided for free to the Member, if an on-site orientation is required, those will be provided according to terms agreed upon in **Attachment A-2**.

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- B. **Transition of Service.** Vendor will work with the Member to design and implement a smooth transition from the Member's current pharmacy provider to the Vendor's services. An individualized transition plan will include the following elements:
- Establishing required interfaces with Member and contracted IT vendors
 - Obtaining medication utilization from Member's current vendor, where possible
 - Establish or extend agreements to support the Member (backup pharmacies, specialty pharmacies, IV compounding pharmacies and reverse distributor)
 - Ensure appropriate licenses are in place for Member
 - Train Facilities with Vendor's processes, policies and procedures
 - Provide on-site personnel during go-live dates

6.2 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Agreement Term.

- New Members.** The Vendor must allow new Members to access the Agreement by the Onboarding Date. MMCAP Infuse will provide Vendor with online access to its Membership list, which is updated daily. MMCAP Infuse will send Vendor a monthly e-mail with instructions on how to obtain the Membership list.
- Removing Members.** Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member. If MMCAP Infuse does not receive notification that a Member has been removed from Pricing, Vendor will honor Pricing for the Member for thirty (30) days after MMCAP Infuse receives the written notice.

6.3 **Membership Eligibility.** Upon request, Vendor will send an electronic eligibility list identifying which Members are receiving the Vendor's services to: MMCAP_Infuse.Contracts@state.mn.us.

6.4 **Member Attachment.** Vendor will ensure Members are attached to the Agreement for all Contracted Item purchases made by Member. Upon request of MMCAP Infuse, Vendor must verify only the Membership has access to the Pricing and Contracted Items. Failure to do may result in immediate termination.

6.5 **Non-Solicitation.** During the term of this Agreement, Vendor will not solicit any Members or prospective 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.

6.6 **DEA License/HIN.** Unless the Member purchases a controlled substance, the Vendor may not require that a Member have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from Member, which MMCAP Infuse will work with the Member to obtain.

6.7 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

6.8 **MPA.** In order to use this Agreement, some States will require jurisdiction-specific paperwork or contract language to establish a statewide contract for Members. These are separate from Change Orders; these are addendum to this Agreement to provide for laws specific to a State jurisdiction. If these circumstances exist, the Vendor will work with MMCAP Infuse and applicable State to prepare an MPA to set forth the additional or altered terms and conditions. An MPA must clearly apply only to the requesting State and will not affect the rights of the other States and its Members, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein, except in regard to the applicable named State and Members located in its jurisdiction. When the specific terms are agreeable to the Vendor and the State, the MPA will be presented by MMCAP Infuse to each party for execution. No other mechanism of modifying or "attaching to" the Agreement is authorized. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that State/Member. No verbal or written instructions from State/Members, or any of their staff or officials, to change any provision of this Agreement will be accepted by Vendor without the prior written approval of MMCAP Infuse.

ARTICLE VII AGREEMENT MANAGEMENT

7.1 **Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. In the event that the Primary Account Representative is unresponsive or does not meet MMCAP Infuse's needs, the Vendor will assign another Primary Account Representative upon MMCAP Infuse's request. The Primary Account Representative will be responsible for:

- Proper maintenance and management of the Agreement, including timely execution of all amendments.
- Timely response to all MMCAP Infuse inquiries.
- Performance of the business review as described in Paragraph 7.2.
- Personnel Changes.** Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request

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from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.

- 7.2 **Business Reviews.** Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to Members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

ARTICLE VIII WARRANTS, COVENANTS, AND DUTIES OF VENDOR

- 8.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.
- 8.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse. Vendor must possess all necessary legal and regulatory qualifications, certifications, permits, and licenses when providing the services described in this Agreement. Vendor must comply at all times with all applicable laws and applicable agency, regulatory and certification requirements, including but not limited to HIPAA and state privacy laws which govern the Vendor's operations. Vendor must notify Member immediately if it is in receipt of notice of noncompliance with any such requirements, conditions, and standards, or if Vendor has notice or reason to believe that its status as to the foregoing will change or has changed in any respect. Member will make a good faith effort to provide assistance to the Vendor upon request, however all expenses will be borne by the Vendor, which may include reimbursement to the Member. Additionally, the Vendor:
- A. Will be licensed and in good standing with all applicable State Boards of Pharmacy;
 - B. Must maintain its registration with the U.S. Drug Enforcement Administration to dispense controlled substances in Schedules II–V;
 - C. Maintain its status as a licensed pharmacy and will provide repackaged stock medications in accordance with the applicable laws and regulations of the Board(s) of Pharmacy within its service areas and jurisdictions;
 - D. Will ensure that its wholly-owned wholesaler, Endeavor Distribution, LLC, maintains its Drug Distributor Accreditation (formerly known as a Verified-Accredited Wholesale Distributor (VAWD)) by the National Association of Boards of Pharmacy (NABP);
 - E. Will comply with current Health Insurance Portability and Accountability Act (HIPAA) and all applicable regulations promulgated thereunder. In accordance with HIPAA, Vendor will keep secure and private all information that may be considered Individually Identifiable Health Information (IHI).
- 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.** Vendor certifies that it is in compliance with the United States Food, Drug, and Cosmetic Act as it relates to the practice of pharmacy. Vendor is not subject to manufacturing guidelines in the practice of pharmacy and makes no such certifications regarding the FDA cGMP guidelines as they are not applicable in this context.
- 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 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 **Debarment.** Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide immediate written notice to MMCAP Infuse if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion: Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.

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- 8.7 **Indemnification.** Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Except for causes due to MMCAP Infuse's or Members' sole negligence, Vendor will defend and hold harmless MMCAP Infuse, including MMCAP Infuse's, Members, agents, directors, employees, attorneys, and other representatives during and after this Agreement from and against all actual and potential claims relating to loss, liability, damage, costs and expenses (including attorneys' fees and legal costs), causes of action, regulatory proceedings, suits, demands, or judgements relating to Vendor's:
- Intentional, willful, or negligent acts or omissions;
 - Fraud and or deceit;
 - Actions that give rise to strict liability;
 - Breach of contract;
 - Breach of warranty;
 - Violations of federal, state, or local laws, orders, and/or policies;
 - Employees or subcontractors' criminal and civil claims; and/or
 - Failure to pay fees, charges, expenses, taxes, or other debts to third parties.
- 8.8 **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.
- 8.9 **Product Warranty.** Vendor warrants that all materials, supplies, services and/or equipment provided under this Agreement is fit for the purposes for which intended and conform to the requirements and specifications herein. The Vendor will provide a factory and/or manufacturer's warranty that will cover 100% of parts, labor, material, and transportation for a Contracted Item for two (2) years from the invoice date.

ARTICLE XI

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

Financial Management & Reporting – MMCAP Infuse
50 Sherburne Avenue, Suite 309
St. Paul, MN 55155
 - Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.
- 9.2 **Reporting.** The Vendor must submit a monthly (1) administrative fee data report and (2) sales data report.
- Administrative Fee Data Report. The monthly administrative fee data report must contain the fields detailed below and the sales data report requirements can be found on **Attachment C**. All administrative fee data reports must be sent to: mmcap.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The Vendor will provide a dedicated person for contact related to these.
 - Administrative Fee Data Report fields.
 - MMCAP Infuse Assigned Authorized Wholesaler Number — If not applicable, leave blank
 - MMCAP Infuse Assigned Vendor Number (Pharmacorr=20244)
 - Direct or Indirect Purchase Indicator (I=Indirect [Emergency or back-up pharmacy services], D=Direct [Provided direct from Vendor to Member])
 - Invoice Date (Point of Sale Date)
 - Invoice Number
 - Member MMCAP ID Number (can be obtained from MMCAP Infuse Member Listing)
 - MMCAP Infuse Member Name
 - Vendor's Account Number for the MMCAP Infuse Member
 - MMCAP Infuse Member DEA Number, if applicable
 - MMCAP Infuse Member HIN Number, if applicable
 - MMCAP Infuse Member Address
 - MMCAP Infuse Member City
 - MMCAP Infuse Member State
 - Product's NDC (Use all 11 digits (00076888888)) — If not applicable, leave blank
 - Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%, or description of contracted service)

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- xvi. Credit Indicator (C = credit)
 - xvii. Contracted Units (The number of units or services purchased on contract.)
 - xviii. MMCAP Infuse Contracted Unit Price (Dispensing Fee amount)
 - xix. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number or contracted service. Report as a decimal (e.g. 0.030))
 - xx. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
 - xxi. Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)
- C. Sales Data Usage Reports. Vendor will supply to MMCAP Infuse monthly sales data on or before the tenth (10th) day of the subsequent calendar month. The report must include Contracted Item dollar spend amount sorted in descending order and grouped by the Contracted Item category. Also, the report MUST include the information set forth on **Attachment C**.

ARTICLE X

INTELLECTUAL PROPERTY

- 10.1 **MMCAP Infuse Ownership.** MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IQVIA and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP Infuse or a Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.
- 10.2 **Vendor Ownership.** Vendor owns all rights, title, and interest to any aggregated data not identifiable as arising from this Agreement and any other intellectual property created for or presented to MMCAP Infuse. Vendor grants to MMCAP Infuse an unlimited, non-revocable, non-transferable, fully paid, perpetual license, to use all intellectual property created for or presented to MMCAP Infuse under this Agreement.
- 10.3 **Pre-Existing Intellectual Property.** MMCAP Infuse and Vendor will each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. The Vendor grants Minnesota a perpetual, irrevocable, non-exclusive, royalty free license for Vendor's pre-existing intellectual property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Agreement. The aforementioned license is solely for use by Members, and their agents related to an internal business or governmental purposes.
- 10.4 **Vendor Obligations.** The Vendor must perform all acts, and take all steps necessary to ensure that all intellectual property rights created for MMCAP Infuse or Member are the sole property of MMCAP Infuse or Member, and that neither Vendor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Vendor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities.
- 10.5 **Intellectual Property Indemnification.** The Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless MMCAP Infuse, at the Vendor's expense, from any action or claim brought against MMCAP Infuse to the extent that it is based on a claim of an infringement upon the intellectual property rights of others. The Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Vendor's or MMCAP Infuse's opinion is likely to arise, the Vendor must, at MMCAP Infuse's discretion, either procure for MMCAP Infuse the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of MMCAP Infuse will be in addition to and not exclusive of other remedies provided by law.
- 10.6 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.

Accurate as of September 15, 2022

The most current version

<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

- A. Marketing. Any direct advertising, marketing, or direct offers with Members must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.
- B. Endorsement. The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

ARTICLE XI

INSURANCE

11.1 **Notice.** The Vendor is required to submit Certificates of Insurance acceptable to MMCAP Infuse as evidence of insurance coverage requirements prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below and MMCAP Infuse has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP Infuse and copies of policies must be submitted to MMCAP Infuse. The Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

11.2 **Additional Insurance Conditions.**

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

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

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

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

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

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

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

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<http://www.mmc-admin.state.mn.us/MMCAP/Contracts/Default.aspx>

- c. Blanket Contractual Liability
 - d. Products and Completed Operations Liability
 - e. MMCAP Infuse named as an Additional Insured, to the extent permitted by law
- C. Network Security and Privacy Liability Insurance, Including Ransomware (or equivalent): Vendor will maintain insurance to cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
- i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate
- D. Professional/ Technical, Errors and Omissions, and or Miscellaneous Liability Insurance: This policy will provide coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Vendor's services required under the Agreement. Insurance minimum limits are as follows:
- i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate

ARTICLE XII

GENERAL TERMS

- 12.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.
- 12.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales 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.** The Vendor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP Infuse and a fully executed assignment agreement.
- 12.4 **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 Forms, website use of terms, offer letters, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. For the Member and Vendor, a Change Order may supersede this Agreement if documents and specified in the Change Order. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this Paragraph, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.
- 12.6 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.
- 12.7 **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.

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The most current version

<http://www.mnd.admin.state.mn.us/MMCAP/Contacts/Default.aspx>

- 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 federal court with competent jurisdiction in Minnesota.

VENDOR: Pharmacorr, 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: DocuSigned by: Peter Lee
Signature: Peter Lee
Title: B44D89E3D1A1416... President
Date: 9/12/2022

STATE OF MINNESOTA FOR MMCAP INFUSE

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

Name: DocuSigned by: Krista McQuaid
Signature: Krista McQuaid
Date: 9AE8C2F9FB9A452... 9/12/2022

COMMISSIONER OF ADMINISTRATION

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

Name: DocuSigned by: Michelle Korpela
Signature: Michelle Korpela
Date: 450F253EFE4D41F... 9/14/2022

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The most current version

<http://www.mmd.admin.state.mn.us/mmd/AP/Contracts/Default.aspx>
ATTACHMENT A-1
Dispensing Fee and Product Pricing

1. **Dispensing Fee:** Vendor does not require minimum order quantities and Dispensing Fee is calculated based on the ADP for each Member's system. If a Member has more than one Facility, the collective ADP of all Facilities will be the measurement for the applicable Dispensing Fee. The ADP of each Facility is calculated upon initiated of service and evaluated quarterly and upon request by Vendor or Member.

Dispensing Fees based on ADP	
Member System's Average Daily Population (ADP)	Dispensing Fee per Prescription Per ORDER Not By Stock Piece*
1 - 500	\$4.25
501 - 2,500	\$3.25
2,501 - 10,000	\$3.00
10,001 - 20,000	\$2.80
20,000+	\$2.60

*For example, only one Dispensing Fee will be charged for each patient-specific prescription or stock order filled, regardless of days' supply or quantity filled/dispensed. Vendor will only charge Dispensing Fee per dispensing event.

- A. **340B:** For each 340B covered Facility, there will be an added surcharge that will not exceed: \$15.00. The Vendor and Member will negotiate the specific surcharge for each applicable Facility.
2. **Specialty Pharmaceuticals:** All medications that are ordered through specialty pharmacy will be invoiced at the Vendor's AAC, with no additional markup.
3. **IV Medication:** IV medications provided by a secondary parenteral pharmacy are invoiced as a pass-through at the Vendor's AAC, with no additional markup.
4. **Total Parental Nutrition (TPN):** TPN products provided by a secondary parenteral pharmacy are invoiced at the Vendor's AAC, with no additional markup.
5. **Compound Medications:** Compound medications prepared by a secondary, licensed compounding pharmacy are invoiced at the Vendor's AAC, with no additional markup.
6. **Medical Supplies:** Vendor's AAC plus sixteen percent (16%).

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ATTACHMENT A-2
Labor Pricing

<http://www.mmd.admin.state.mn.us/mmd/AP/Contracts/Default.aspx>

1. **Vendor's Employees:** The following labor rates will apply when a Vendor's employee is utilized. The Vendor will provide an estimated costs and scope of the project before the engagement. Final agreement will be formalized on the Change Order.
 - A. **Consulting/Project Management:** Hourly rate plus expenses (salary + vendor issued employment benefits + travel/lodging costs)
 - B. **In-person training, presentations, and other meetings:** Hourly rate plus expenses (salary + vendor issued employment benefits + travel/lodging costs)
 - C. **Virtual trainings and P&T Committee Meetings:** No cost
 - D. **Human Resources Consulting:** Hourly rate plus expenses (salary + vendor issued employment benefits + travel/lodging costs)
 - E. Hourly rates will be tracked and invoiced at a quarter of an hour (15-minute increments).
2. **Member required Employee:** If a Member requires the Vendor to hire specific staff for a Member and/or its Facility as a Vendor employee, the Vendor will invoice the Member for each individual at: Cost of employee (salary, benefits, paid time off, overtime, holiday hours, processing fees, etc.) plus five percent (5%).
3. **IT Related Projects:** Electronic Data Systems Set-up, Integration, and Maintenance (eMAR, EHR, etc.) and other information technology (IT) charges incurred for eMAR/EHR setup, integration, and maintenance will be a pass-through charge. An estimate will be provided to the Member before incurring any charges. Final agreement will be formalized on the Change Order
4. **Telemedicine Cost:** If there is any need for telemedicine support by the Member, Vendor will provide any incurred cost directly attributable to the telemedicine project at a pass-through cost. The Vendor and Member will agree on an estimated cost through a Change Order before incurring any charges.

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The most current version

<http://www.mmd.admin.state.md.us/MMDSP/Contracts/Default.aspx>
ATTACHMENT A-3
Support and Service Pricing

1. **Clinical Programs**
 - A. Clinical Pharmacy Intervention Program - No Charge
 - B. PrecisionRx - No Charge
 - C. SelectRx - No Charge
 - D. Medication Therapy Management Program - No Charge
 - E. Drug Information Center – No Charge
2. **Pharmacy Management**: For emergency and back-up pharmacy services, all costs such as delivery charge, taxi charges and/or courier charges will be passed through at the amount of the cost charged to the Vendor with no additional markup or Dispensing Fee
 - A. Emergency Kits: No additional charge; costs will be the Dispensing Fee + AAC.
3. **Facility or Member**: Any fee for additional required unique or specific facility licensing that the Vendor has to obtain will be invoiced as a pass-through cost to the Member.
4. **Reference Materials**: Member will have access to for Micromedex and Vendor's Drug Information Center at no charge. The costs for all other required reference materials by Member will be passed through to the Member at cost with no additional markup.
5. **Return of Outdated and Unusable Pharmaceuticals**: Vendor will provide the return of outdated and/or unusable pharmaceuticals and destroy such pharmaceuticals in accordance with applicable laws at no charge to the Member.

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The most current version

<http://www.mmd.admin.site/mn/us/mmc/AP/Contracts/Default.aspx>**ATTACHMENT A-4
Equipment Pricing**

1. **Storage Carts and Cabinets:** Transportable Medication carts will be provided for loan based on size and capacity of the Facility at the beginning of the relationship.
 - A. Replacement carts will be billed as a pass-through charge to the Member
 - B. Fixed storage cabinets that require installation in Facility may be procured through Vendor. The Vendor will provide a quote to the Member on the cost of the cabinet and installation costs. Those costs will be agreed upon on a change order.
2. **Fax Machine and Scanner:** Vendor will provide fax machine and scanners at no cost to the Facilities until the end of the term. The fax toners will be provided at pass through cost with dispensing fee. Any replacement or the cost to service the equipment will be billed as a pass-through to the Member.

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<http://www.mmd.admin.state.mn.us/MMDAP/Contracts/Default.aspx>
ATTACHMENT B
Required Member Onboarding

[RESERVED]

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<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>**ATTACHMENT C****Reporting Requirements**

EXCEL COLUMN	COLUMN HEADER	EXTENDED DATA FIELD NAME	HOW APPLIED TO MMS2200723
A	MMCAP_ID	MMCAP Infuse-assigned Member ID	Member ID number which MMCAP Infuse assigns the bill-to facility. If the ship-to location is not on the roster, MMCAP will assist in finding an appropriate entry.
B	MMCAP_Name	MMCAP Infuse Member Name	Name of facility to whom product is sent (vendor-defined).
C	DistributionCenter	Vendor Distribution Center Code	Vendor's code for the location where the product is loaded for shipment (e.g. 001 - Vendor's Primary Location, 002 - Backup Pharmacy, etc.)
D	VendAccountNo	Vendor-assigned Account Number for MMCAP Infuse Member	Vendor's account number for ship-to facility.
E	InvoiceNumber	Invoice Number	Vendor's invoice number to member.
F	InvoiceLineNo	Invoice Line Number	Unique identifier for each item billed.
G	poNumber	Purchase Order Number	A unique number that is generated when a order is placed (prescription number).
H	InvoiceDate	Invoice Date (MM/DD/YYYY)	The sales date on which product was invoiced (dispensed).
I	BuyerName	Buyer Name/ Buyer ID	If available, include the name/buyer id of the person submitting the invoice (may be left blank).
J	SKU	SKU/ Item Number	Vendor code used for item inventory (Rx, Specialty, or other identifier to designate the fee structure applicable).
K	NDC	NDC	NDC or NDC-like substitute of purchased product as stored in First DataBank, Inc (11-digits with leading zeros).
L	LabelName	Label Name/ Product Description	The name or product description of item.
M	UD	Unit Dose	The amount of medication administered for a dose (may be left blank for non-pharma lines).
N	Pack_Size	Pack Size	Package quantity per unit sold.
O	Unit	Unit	Package unit such as EA (each), CS (case), etc.
P	Case_Size	Case Size	Packaging of the item in a case.
Q	D	Dose	If applicable, but required for pharmaceutical products. Ex: tablets/ capsule/ vial/ liquid
R	STR	Strength	If applicable, but required for pharmaceutical products. Ex: Adult aspirin may be 325MG, but children's aspirin may be 81MG.
S	RT	Route	If applicable, but required for pharmaceutical products. Ex: Oral/ Injection
T	UnitPrice	Unit Price (99999.9999)	Per tablet/ml price (4 decimal places) of just the medication component.
U	QuantityOrdered	Quantity Ordered (99999.9999)	Amount of product purchased. This amount will likely match the shipped quantity; Number of dispensing fees assessed
V	QuantityShipped	Quantity Shipped (99999.9999)	Amount of product sent.
W	ExtendedPrice	Extended Price (99999.9999)	The total cost of the sales transaction. Usually Unit Price multiplied by Quantity Shipped plus the Service fee (dispensing fee).
X	SaleType	Type of Transaction	Indicator of whether a purchased item is on contract: 1= Contract item 2= Other contract (340B, PHS) 3= Not on contract (not likely to be used)
Y	BillToAddress1	Bill to Address 1	Street address where the sales bill was sent.

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Z	BillToCity	Bill to City	City where the sales bill was sent.
AA	BillToState	Bill to State	Use the 2 alpha postal code of the state where the sales bill was sent.
AB	BillToZip	Bill to Zip	Use the standard 5-4 format, no dash necessary for the zip code to where the sales bill was sent.
AC	ShipToAddress1	Ship to Address 1	Street address where the purchased item was sent.
AD	ShipToCity	Ship to City	City where the purchased item was sent.
AE	ShipToState	Ship to State	Use the 2 alpha postal code of the state where the purchased item was sent.
AF	ShipToZip	Ship to Zip	Use the standard 5-4 format, no dash necessary for the zip code to where the purchased item was sent.
AG	ServiceFee	Service Fee	Amount of dispensing fee charged on the script. Report zero values as zero and not blank.
AH	ContractNumber	MMCAP Infuse Contract Number	The contract under which the sales transaction was conducted. (Hardcode to MMS2200723)
AI	AdminFee	Admin Fee	Fee charge to pay MMCAP Infuse as contracted items are sold. Calculated field: Service Fee * 3%. Report as zero for lines that do not have an Admin fee associated.
AJ	CreditIndicator	Credit Indicator	Indicator of a refund item: C= Credit [columns U, V and W would also have negative values]
AK	WholeCode	MMCAP Infuse Assigned Wholesaler Code	Use assigned vendor code 22044
AL	MfgName	Manufacture Name	Name of company who made the item.
AM	ClassOfTrade	Class of Trade	May leave blank
AN	OriginalOrderDate	Original Order Date(MM/DD/YYYY)	Date order was placed or transmitted to Vendor.
AO	340b	340B Purchase	Indicator of purchase under the federal 340B Drug Pricing Program, which provides access to reduced price prescription drugs to healthcare facilities certified by the US Department of Health and Human Services 1 = Yes 0 = No
AP	Category	Category	A group description to categorize products. Ex: oral supplements, thickeners, pediatric nutritionals
AQ	MfgPartNum	Manufacture Part Number	The item number used by manufacturer for inventory management.
AR	ListPrice	List Price	The catalog price of the product.
AS	UNSPSC	UNSPSC Code	The United Nations Standard Products and Services Code (UNSPSC) is a 8-digit alpha numeric code standard for classifying goods and services without referring to any suppliers codes and descriptions.
AT	UNSPSCDesc	UNSPSC Description	Description of the product group base on the UNSPSC Code.
AU	GLN	GLN	A unique number to identify the physical and functional location of a company.
AV	GTIN	GTIN	A unique and internationally recognized product identifier.

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ATTACHMENT D

<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>
Minnesota Statutory Procurement Language

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

Accurate as of September 15, 2022

The most current version

<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx> to take affirmative action to employ and advance in employment physically and mentally disabled persons.

- iii. **Consequences.** The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or Minnesota.
 - iv. **Certification.** The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075).** For services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.
 6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
 7. **Contingency Fees Prohibited.** Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
 8. **Diverse Spend Reporting.** If the total value of this Agreement may exceed \$500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.
 9. **Retainage for Minnesota Government Units.** Under Minn. Stat. § 16C.08, subd. 2 (10), no more than ninety percent (90%) of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by a Minnesota agency head. The balance due will be paid when the Minnesota agency head determines that the Vendor has satisfactorily fulfilled all the terms of this Agreement.
 10. **Payment to Subcontractors.** To the extent applicable, the Vendor must pay all subcontractors in accordance with Minn. Stat. § 16A.1245.