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NEW

State of Maine



Master Agreement

Effective Date: 06/17/24

Expiration Date: 06/30/25

Master Agreement Description: Condoms - MMCAP Contract #MMS2200721

Buyer Information

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

Sheila Krouse 207-287-3747 ext. SHEILA.KROUSE@maine.gov

Requestor Information

Sheila Krouse 207-287-3747 ext. SHEILA.KROUSE@maine.gov

Agreement Reporting Categories

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VS0000021804

Vendor Name

Lifestyles US Opco, Inc.

Alias/DBA

SXWELL USA LLC

Vendor Address Information

66 Hudson Blvd E. - 24th Floor

New York, NY 10001

US

Vendor Contact Information

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:
David Morris 6/17/2024
2A644AF5684F482

Signature Date

David Morris, Acting Chief Procurement Officer

Vendor

DocuSigned by:
Liz Kramer 6/18/2024
6122F50020F04F4

Signature Date

Liz Kramer SPECIALIST, SALES OPS & ANALYTICS

Print Representative Name and Title

RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Rider A – Scope of Work and/or Specifications
<input type="checkbox"/>	Rider B – Terms and Conditions
<input type="checkbox"/>	Rider C - Exceptions
<input type="checkbox"/>	Bid Cover Page and Debarment Form
<input checked="" type="checkbox"/>	Debarment, Performance, and Non-Collusion Certification
<input checked="" type="checkbox"/>	Price sheet (attach excel spreadsheet to post on website)
<input type="checkbox"/>	Other – Included at Department's Discretion

RIDER A
Scope of Work and/or Specifications

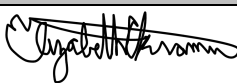
The purpose of this master agreement is to order condoms from Lifestyles on an as needed basis. State of Maine facilities authorized by MMCAP Infuse may utilize this master agreement to submit delivery orders for all catalog items. The roster of State of Maine's authorized facilities includes the following: Riverview Psychiatric Center, Dorothea Dix Psychiatric Center, Department of Health and Human Services, and Downeast Correctional Facility. This master agreement and all delivery orders are subject to MMCAP Infuse contract #MMS2200721, which is attached and hereby incorporated into this contract.

Debarment, Performance, and Non-Collusion Certification

By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
 - b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
 - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
 - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
 - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
 - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
 - c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*
- Failure to provide this certification may result in the disqualification of the Bidder's proposal, at the discretion of the Department.**

To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name: ELIZABETH KRAMER	Title: SR. SPECIALIST, CUSTOMER DEVELOPMENT
Authorized Signature: 	Date: 7/25/2023



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

Lifestyles US Opco dba SXWELL USA, LLC

MMS2200721

Prepared on May 23, 2022

Accurate as of May, 3 2023

The most current version

PREFIX A
<https://members.infuse-min.gov/contract-documents>
Definitions and Acronyms

Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** Means three percent (3%).
2. **Class of Trade:** All Members are eligible for contract pricing.
3. **Contract Pricing:** Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership as set forth on **Attachment A** and any subsequent amendment to this Agreement.
 - A. **Fixed Pricing:** Means Vendor cannot increase the Contract Pricing for the Products identified on **Attachment A** or any subsequent amendment to this Agreement during the Agreement Term.
4. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
5. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
6. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
7. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
8. **Onboarding Date:** Means the Vendor must allow new Members to access to the Agreement within seven (7) days of notice by MMCAP Infuse.
9. **Order Form:** Means the document or electronic platform Member utilizes to obtain Products.
10. **Products:** Means all products offered by the Vendor in this Agreement, which is identified in **Attachment A**
11. **Special Orders:** Orders made that are atypical for the normal course of business for a Vendor and/or Member; typically, these will be a bulk order or a single order with numerous ship-to locations.
12. **State:** Means one of the recognized fifty (50) states of the United States of America.

Accurate as of May, 3 2023

The most current version

AGREEMENT FOR MMCAP INFUSE NO. MMS2200721<https://members.infuse-mn.gov/contract-documents>

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 Lifestyles US Opco dba SXWELL USA, LLC, a limited liability company with an address of 111 Wood Avenue South, Suite 210, Iselin, New Jersey 08830 (“**Vendor**”).

Agreement Term:

1. **Effective Date:** July 1, 2023, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** June 30, 2025.
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
3. **Attachment B:** Further Discounts
4. **Attachment C:** Required Member Onboarding Forms
5. **Attachment D:** Required Reporting
6. **Attachment E:** MN Statutory Language

ARTICLE I
PRICING AND CHANGES

- 1.1 **Notices.** All notices under this Article must be sent to: mmcap_infuse.hpscontracts@state.mn.us.
- 1.2 **Fixed Pricing.** Vendor must hold pricing for Products firm for at one (1) year from the Effective Date. Each time pricing is changed, the Vendor must wait one (1) year from the change date to amend the pricing again.
 - A. **Price Reductions.** After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must notify MMCAP Infuse before they can take effect.
 - B. **Price Increases.** Price increases will only be accepted with (i) at least ninety (90) days’ written notice; (ii) a force majeure condition can be established; (iii) and is approved by MMCAP Infuse. Except as provided for in this Agreement, no fee, percentage, or other cost may be added to the products purchased under this Agreement unless the fee, percentage, or cost is defined and approved in writing by MMCAP Infuse.
- 1.3 **Notice to MMCAP Infuse.** Vendor must provide justification for all price increases. In the event Vendor does not notify MMCAP Infuse of a price increase, Vendor must honor wholesalers’ chargebacks for the most recent previous Contract price until such time as MMCAP Infuse receives notice of and approves the price increase.
- 1.4 **Competitive Pricing.** If MMCAP Infuse is made aware and determines during the Agreement Term Vendor is offering better Contract Pricing and/or Products to another group purchasing organization or Government Unit, Vendor will have ten (10) days to work with MMCAP Infuse to amend this Agreement to provide MMCAP Infuse the same Contract Pricing and/or Products.
- 1.5 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Contract Pricing; those fee, assessment, and/or additional costs must be added on top of the Contract 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 Contract 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.
- 1.6 **Value-Added Programs.** Members must be offered any programs normally offered to the Vendor’s general customer base (e.g., rebates, tiered pricing, continuing education courses, marketing information, etc.) at the same or lower cost as that offered to the general customer base.

ARTICLE II
SUPPLYING AND AVAILABILITY

- 2.1 **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, whether it is direct sales to the Members. It is expected that the Vendor will be able to fulfill a combined direct and/or wholesaler purchase volume of 150% of the Members’ previous quarter’s volume; if Vendor cannot fulfill orders made by Members directly to the Vendor and/or a wholesaler Vendor stock outage 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.

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<https://members.infuse.mn.gov/contract-documents>

- A. **Immediate Notification:** Vendor's ordering system will provide notice within twenty-four (24) hours to the MMCAP Infuse and its Members of any Products covered by this Agreement that the Vendor has placed on backorder. Vendor's backorder notification will include:
- the Products placed on backorder status;
 - the expected timeline of the backorder;
 - the reason for the stock outage was caused; and
 - how the Vendor intends to resolve the backorder situation.
- B. **Substitution:** If Members consents, Vendor may offer like-kind Products at the same or lower price as the out of stock product. If no acceptable substitution can be offered, the Member may purchase the same or equivalent Product from an alternative MMCAP Infuse vendor, or if unavailable through an alternative MMCAP Infuse vendor, Member may purchase an alternative equivalent Product on the open market, including retail, for the period in which the Vendor is unable to provide the Products. The Vendor will reimburse for any excess costs (including shipping and third party fees) over the Contract Pricing of this Agreement sustained by Member via a credit within thirty (30) days of receipt of the claim.
- Vendor must pay claims directly to the Member's 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.
 - Force Majeure:** Any instances of Force Majeure, as identified in Paragraph 4.4, will exempt Vendor from providing a credit to Member.
- C. Vendor will be responsible for all product outage claims for 180-calendar days unless the Vendor has provided MMCAP Infuse with at least 180 calendar days' advanced written notice of the intent to remove a Product from production and discontinue distribution in the market. Vendor will remain responsible for all claims during the 180-day notice period.
- 2.2 **Product Dating.** All Products supplied to Members must have an expiration date of at least eighteen (18) months from the date of manufacture and have a least a six (6) month shelf life from the date of acceptance of the Product by the Member. For Products that have an expiration dates less than six (6) months, Vendor will (A) discount the Product no less than twenty percent (20%); (B) Member must be notified and provided written consent before delivery; and (C) Products must be usable for at least fifteen (15) days on the date received by Member.
- 2.3 **Product Discontinuation.** If the Vendor assigns, discontinues, or deletes a Product during the Agreement, Vendor must provide written notice to MMCAP Infuse at least sixty (60) days prior. If inventory is depleted prior to the end of the sixty (60) day period, Paragraph 2.1 will apply.
- 2.4 **Products Returned to the Vendor.** Vendor will accept returns in accordance with applicable laws, regulations, and normal business practices.
- 2.5 **Product Recalls.** If any Product covered by this Agreement requires modification, is removed, or recalled by the Vendor, then Vendor will promptly notify MMCAP Infuse and the affected Members within three (3) days. Vendor agrees to comply with any process mandated by the FDA, or any other regulatory body if applicable, and will address the recall with each Member. Members will not incur costs for Product returns related to recalls Vendor will issue credit for recalled Product.
- 2.6 **Backorders.** Vendor must provide written notice of all Product backorders expected to last longer than thirty (30) calendar days and/or inability to supply situations to MMCAP Infuse within twenty-four (24) hours of the knowledge of the situation. Notices must include the reason(s) for and the expected duration of the issue. Notices must be sent to: mmcap_infuse.hpscontracts@state.mn.us.

ARTICLE III

PAYMENT, ORDERS, AND DELIVERY

- 3.1 **Conditions of Payment.** All Products 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.
- 3.2 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), credit card, or P-Card as a payment method and Member will initiate this process with its financial institution.
- 3.3 **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.
- 3.4 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Members in good standing with MMCAP Infuse. Vendor may use their own 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. Each Member will be responsible for payment for Products 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.

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- A. The use of obtaining a Product 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.
- 3.5 **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:
- The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Products to be purchased under the Order Form;
 - Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Products under the Order Form are prohibited, or the Member is prohibited from paying for the Products from the planned funding source; or
 - 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.
- 3.6 **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.
- 3.7 **Shipment for Products.** Vendor must distribute and deliver the Products covered under this Agreement to all Members, including the states of Alaska and Hawaii. If the Member account is in good standing, the Vendor will at no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination unless otherwise agreed to by Vendor and Member. 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 to in writing Member before a purchase is made.
- Delivery Schedule: Upon request from Member, Vendor will work with Member to establish a routine delivery schedule. Delivery for stock items will occur within three (3) business days, from the date the Product is ordered. It is understood that deliveries to Alaska or Hawaii may take longer. All expedited deliveries will be made next day, or on the next scheduled delivery day (excluding Alaska and Hawaii), unless communicated otherwise.
 - Hazardous Materials: Vendor will only ship hazardous materials as allowed by the appropriate government regulations.
 - 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.
 - Lost Products: All lost Products will be reported to Vendor's customer service department. Vendor will issue credit within ten (10) days of notification of lost Product; alternatively re-shipment of missing Product will occur immediately after notification.
 - No Minimum Order Requirements: During the Agreement, there will be no minimum order requirements or extra charges assessed to orders, regardless of order size or payment amount.
 - Special Conditions for Products: If applicable to the Products offered under this Agreement, Vendor will maintain appropriate temperatures and environmental conditions in accordance with manufacturer requirements for delivery of the Products to the Members. All refrigerated Products will be shipped in returnable coolers or disposable coolers with appropriate packaging to maintain the required temperature range. Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the manufacturer. If Member refuses Products that have been inadequately packaged, the Member will notify Vendor's customer service department to log the complaint. Any costs associated with the return of Product due to improper packaging or transport, will be at the expense of the Vendor.
- 3.8 **Invoicing.** Vendor will submit an invoice with each order.
- 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;

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- v. Vendor's SKU item number, Product name/description and packaging as associated with NDC/UNSPSC number(if applicable to this Agreement);
 - vi. Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), and total invoice price; and
 - vii. Applicable omit codes (e.g., manufacturer backorder, manufacturer discontinued, etc.).
- 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.
- i. In the event that applicable state law mandates set-off by a Member, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.
- 3.9 **Payment Terms.** Upon receiving the invoice, the Member will pay the Vendor within thirty (30) days.
- 3.10 **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.
- A. Vendor credits are valid until they are refunded or the account has used payment.
 - B. In the event of a facility closure, or other extreme event where the Member will not be making another purchase through Vendor, the Member may cash out its credit(s).
 - C. If directed by a Member, a credit can be transferred from one account to another account.
 - D. The Vendor will take all commercially reasonable steps to ensure that credits that become available close to the end of the Member's fiscal year, are activated for use by the Member no later than five (5) days before the end of the fiscal year.
 - E. Vendor's credit memo will contain, but is not limited to the following information:
 - i. original order number and invoice number;
 - ii. itemized listing of the Contract Items affected;
 - iii. any new invoices associated with the credit; and
 - iv. Net credit amount available to the Member.
- 3.11 **Price Audits and Corrections.** In the event of a Contract Pricing error that is attributable to the Vendor, Vendor agrees to process credit/rebills for the past six (6) calendar months. When a Member or MMCAP Infuse discovers an error in pricing, they will notify Vendor.
- 3.12 **Special Orders.** Members can make a Special Order(s) request from the Vendor that do not adhere to the terms to Article Three provided the follow terms are met:
- A. The Products ordered are listed on **Attachment A**;
 - B. The Special Order offer from the Vendor to the Member must hold firm for thirty (30) days;
 - C. Both Vendor and Member agree to the terms; and
 - D. MMCAP Infuse reviews and signs off on the order.

ARTICLE IV

TERMINATION, CANCELLATION, AND REMEDIES

- 4.1 **Cancellation.** MMCAP Infuse may cancel this Agreement any time, without cause, upon thirty (30) days' written notice to the Vendor.
- 4.2 **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 thirty (30) days, the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.
- 4.3 **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 Products covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Products 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 Products 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 provide funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Products.
- 4.4 **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.
- 4.5 **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.
- 4.6 **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 this Agreement to add or remove a Member's eligibility to purchase Products, 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.
- 4.7 **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 V MEMBERSHIP

- 5.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Products, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition.
- 5.2 **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.
- A. **New Members.** The Vendor must allow new Members to access the Agreement by the Onboarding Date. MMCAP Infuse will provide Vendor with online access to its Membership list, which is updated daily. MMCAP Infuse will send Vendor a monthly e-mail with instructions on how to obtain the Membership list.
 - B. **Removing Members.** Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member. If MMCAP Infuse does not receive notification that a Member has been removed

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from Contract Pricing. Vendor will honor Contract Pricing for the Member for thirty (30) days after MMCAP Infuse receives the written notice.

- 5.3 **Membership Eligibility.** Upon request, Vendor will send an electronic eligibility list identifying which Members are eligible for contract pricing to: mmcap.infuse@state.mn.us.
- A. If the Vendor has eligibility requirements, Vendor must provide MMCAP Infuse access to Vendor's online contract and eligibility management system in addition to providing MMCAP Infuse the algorithm it uses to categorize a Member's into a class of trade.
- 5.4 **Member Attachment.** Vendor will ensure Members are attached to the Agreement for all Product purchases made by Member. Upon request of MMCAP Infuse, Vendor must verify only the Membership has access to the Contract Pricing and Products. Failure to do may result in immediate termination.
- 5.5 **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 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 covered by this Agreement.
- 5.6 **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.
- 5.7 **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.
- 5.8 **MPA.** In order to use this Agreement, some States will require jurisdiction-specific paperwork or contract language to establish a statewide contract for Members. Vendor may be required to review an MMCAP Infuse MPA, as an 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 VI AGREEMENT MANAGEMENT

- 6.1 **Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. In the event that the Primary Account Representative is unresponsive or does not meet MMCAP Infuse's needs, the Vendor will assign another Primary Account Representative upon MMCAP Infuse's request. The Primary Account Representative will be responsible for:
- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
- B. Timely response to all MMCAP Infuse inquiries
- C. Performance of the business review as described in [Paragraph 6.2](#).
- D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- 6.2 **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 VII WARRANTS, COVENANTS, AND DUTIES OF VENDOR

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

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- 7.2 **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.
- 7.3 **Health Care Product Regulations.** Vendor acknowledges that each Product has, if required by law, a United States Food and Drug Administration (FDA) approval or authorization 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.
- 7.4 **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.
- 7.5 **Indemnification.** Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Except for causes due to MMCAP Infuse's or Members' sole negligence, Vendor will defend and hold harmless MMCAP Infuse, including MMCAP Infuse's, Members, agents, directors, employees, attorneys, and other representatives during and after this Agreement from and against all actual and potential claims relating to loss, liability, damage, costs and expenses (including attorneys' fees and legal costs), causes of action, regulatory proceedings, suits, demands, or judgements relating to Vendor's:
- A. Intentional, willful, or negligent acts or omissions;
- B. Fraud and or deceit;
- C. Actions that give rise to strict liability;
- D. Breach of contract;
- E. Breach of warranty;
- F. Violations of federal, state, or local laws, orders, and/or policies;
- G. Employees or subcontractors' criminal and civil claims; and/or
- H. Failure to pay fees, charges, expenses, taxes, or other debts to third parties.
- 7.6 **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.
- 7.7 **Product Warranty.** Vendor warrants that all materials, supplies, services and/or equipment provider under this Agreement is fit for the purposes for which intended and conform to the requirements and specifications herein. The Vendor will provide a factory and/or manufacturer's warranty that will cover 100% of parts, labor, material, and transportation for a Product for two (2) years from the invoice date

ARTICLE VIII ADMINISTRATIVE FEE AND REPORTING

- 8.1 **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 Products made by Members.
- A. 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
- B. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.
- 8.2 **Reporting.** The Vendor must submit a monthly (1) administrative fee data report and (2) sales data report that includes both direct (sales made direct from Vendor to Member).

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- A. **Administrative Fee Data Report.** The monthly administrative fee data report must contain the fields detailed below and the sales data report requirements can be found on **Attachment D**. All administrative fee data reports must be sent to: mmcap.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The Vendor will provide a dedicated person.
- i. **Administrative Fee Data Report fields:**
 - a. MMCAP Infuse Assigned Manufacturer Number
 - b. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
 - c. Invoice Date (Point of Sale Date)
 - d. Invoice Number
 - e. MMCAP Infuse Member
 - f. Vendor's Account Number for the MMCAP Infuse Member
 - g. MMCAP Infuse Member DEA Number, if applicable
 - h. MMCAP Infuse Member HIN Number, if applicable
 - i. MMCAP Infuse Member Address
 - j. MMCAP Infuse Member City
 - k. MMCAP Infuse Member State
 - l. Product's NDC (Use all 11 digits (00076888888))
 - m. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
 - n. Credit Indicator (C = credit)
 - o. Contracted Units (The number of units purchased on contract.)
 - p. MMCAP Infuse Contracted Unit Price
 - q. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
 - r. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars) Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor contracted sales. Report in dollars)
 - ii. **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 Product dollar spend amount sorted in descending order and grouped by the Product category. Also, the report MUST include the information set forth on **Attachment D**.

ARTICLE IX

INTELLECTUAL PROPERTY

- 9.1 **MMCAP Infuse Ownership.** MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IQVIA and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13. 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.
- 9.2 **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.
- 9.3 **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.
- 9.4 **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.

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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.

- 9.5 **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.
- 9.6 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.
- A. **Marketing.** Any direct advertising, marketing, or direct offers with Members must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.
- B. **Endorsement.** The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

ARTICLE X INSURANCE

- 10.1 **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.
- 10.2 **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.
- 10.3 **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

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- iii. \$100,000 – Bodily Injury by Accident
If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements. If during the course of the Agreement the Vendor becomes eligible for Workers' Compensation statutory requirements, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.
- B. Commercial General Liability Insurance: Vendor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Agreement. Insurance minimum limits are as follows:
- i. \$5,000,000 – per occurrence
 - ii. \$5,000,000 – annual aggregate
 - iii. \$5,000,000 – annual aggregate – Products/Completed Operations
 - iv. The following coverages shall be included:
 - a. Premises and Operations Bodily Injury and Property Damage
 - b. Personal and Advertising Injury
 - c. Blanket Contractual Liability
 - d. Products and Completed Operations Liability
 - e. MMCAP Infuse named as an Additional Insured, to the extent permitted by law
- C. Network Security and Privacy Liability Insurance, Including Ransomware (or equivalent): Vendor will maintain insurance to cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
- i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate
- D. Professional/ Technical, Errors and Omissions, and or Miscellaneous Liability Insurance: This policy will provide coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Vendor's services required under the Agreement. Insurance minimum limits are as follows:
- i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate

ARTICLE XI GENERAL TERMS

- 11.1 **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.
- 11.2 **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 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.
- 11.3 **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.
- 11.4 **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.
- 11.5 **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. 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

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this section, 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.


- 11.6 **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.
- 11.7 **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.
- 11.8 **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.
- 11.9 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

VENDOR: Lifestyles US Opco dba SXWELL USA, LLC

STATE OF MINNESOTA FOR MMCAP INFUSE

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

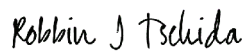
The Vendor certified that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required and by applicable articles, bylaws, resolutions, or ordinances.

Name: Elizabeth Kramer
 Signature: 
 Title: Specialist, Sales Operations and Analytics
 Date: 9/2/2022

Name: James Babbitt
 Signature: 
 Date: 9/6/2022
DocuSigned by: James Babbitt
DDE5B1490A484FC...

COMMISSIONER OF ADMINISTRATION

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

Name: Robbin J Tschida
 Signature: 
 Date: 9/7/2022
DocuSigned by: Robbin J Tschida
C081B5019F8B4F8...

ATTACHMENT A
Products and Pricing

Description	Model	Packaging	Item Count	Purchase Price	Cost per Item	UPC/ISBN	SKU
Snuggler Fit Latex Condom	Fitted	Case	1008	\$46.00	\$0.05	30070907052007	170191
LifeStyles NON-Latex Condom	Non-Latex	Case	1008	\$262.50	\$0.26	30070907073002	170201
SKYN Elite NON-Latex Condom	Non-Latex	Case	1008	\$275.00	\$0.27	30070907000626	210151
LifeStyles Ribbed Latex Condom	Ribbed	Case	1008	\$46.00	\$0.05	30070907056005	170195
LifeStyles Non-Lubricated Latex Condom	Non-Lubricated	Case	1008	\$46.00	\$0.05	30070907057002	170196
LifeStyles Ultra-Thin Latex Condom	Ultra Thin	Case	1008	\$46.00	\$0.05	30070907064000	170200
LifeStyles Lubricated Latex Condom	Ultra Lubricated	Case	1008	\$46.00	\$0.05	30070907058009	170197
LifeStyles Extra Strength Latex Condom	Extra Strength	Case	1008	\$46.00	\$0.05	30070907059006	170198
LifeStyles Rough Rider Latex Condom	Textured	Case	1008	\$46.00	\$0.05	30070907045412	832152
LifeStyles Ultra-Sensitive Latex Condom	Ultra Sensitive Thin	Case	1008	\$46.00	\$0.05	30070907054001	170174
LifeStyles KYNG GOLD Large Latex Condom	Large Latex	Case	1008	\$48.50	\$0.05	30070907098005	170203
SKYN ELITE Large NON-Latex Condom	Large Non-Latex	Case	1008	\$275.00	\$0.27	30070907000596	210149
LifeStyles Assorted Colors Latex Condom	Assorted Colors, Green, Red and Yellow	Case	1008	\$46.00	\$0.05	30070907053004	170192
LifeStyles Tuxedo Latex Condom	Lubricated, Midnight Shade	Case	1008	\$46.00	\$0.05	30070907062006	170199
LifeStyles Aloe & Vitamin E Personal Lubricant Sachets	Lubricant	Case	1008	\$42.00	\$0.04	30070907070001	833128
LifeStyles Assorted Flavors Latex Condom	Assorted Flavors, Tropical Banana, Wild Strawberry and Sensuous Vanilla	Case	1008	\$46.00	\$0.05	30070907068008	170202

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ATTACHMENT B
Further Discounts or Adjustments

Not Applicable

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[https://members.ihsa-inc.com/contract-documents.](https://members.ihsa-inc.com/contract-documents)
ATTACHMENT C
Required Member Onboarding

Not Applicable

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<https://members.infuse-mn.gov/contract-documents>**ATTACHMENT D****Reporting Requirements****Table 1: Required Data Field for Sales Data Report**

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

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AR	UNSPSC Code (XXXXXXXX)
AS	UNSPSC Description
AT	GLN
AU	GTIN

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ATTACHMENT E
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 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 May, 3 2023

The most current version

to take affirmative action to employ and advance in employment physically and mentally disabled persons.
<https://members.infuse-mn.gov/contract-documents>

- 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.

VENDOR CUSTOMER CODE	SUPPLIER PART NUMBER	SUPPLIER NAME	MANUFACTURER NAME	MANUFACTURER PART NUMBER	COMMODITY CODE	ITEM DESCRIPTION	EXTENDED DESCRIPTION	UNIT OF MEASURE	LIST PRICE	DELIVERY DAYS
VS0000021804	170191	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES SNUGGER FIT SMALLER SIZE LUBRICATED CONDOM, MEASURING 49MM IN WIDTH WHEN LAID FLAT. ANATOMICALLY SHAPED FOR A CLOSER FIT. SKU: 170191	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170201	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES NON-LATEX CONDOM THIS CONDOM IS MADE FROM A REVOLUTIONARY NONLATEX MATERIAL CALLED POLYISOPRENE. DELIVERS THE STRENGTH OF PREMIUM LATEX, WITH THE SENSITIVITY OF AN ULTRA-THIN CONDOM. FLEXIBLE MATERIAL MEANS EXTRA COMFORT. SKU: 170201	1,008 condoms / Case Replacing LifeStyles Non Latex Large Condom	Case	\$262.50	7
VS0000021804	210151	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE SKYN ELITE NON-LATEX CONDOM SKYN ELITE NON-LATEX CONDOM THIS CONDOM IS MADE FROM A REVOLUTIONARY NON-LATEX MATERIAL CALLED POLYISOPRENE. 15% THINNER THAN LIFESTYLES AND SKYN STANDARD NON-LATEX CONDOMS FOR AN EVEN CLOSER FEEL. DELIVERS THE STRENGTH OF PREMIUM LATEX, WITH THE SENSITIVITY OF AN ULTRA-THIN CONDOM. FLEXIBLE MATERIAL MEANS EXTRA COMFORT. MEASURES 53 MM IN WIDTH. SKU: 210151 SKU: 210151	1,008 condoms / Case	Case	\$275.00	7
VS0000021804	170195	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES RIBBED LATEX CONDOM LUBRICATED AND DESIGNED WITH A SPECIALLY RIBBED SURFACE TO ENHANCE SENSATION. SKU: 170195	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170196	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES NON LUBRICATED LATEX CONDOM DRY CONDOM WITH A SOFT AND PLEASANT FINISH. SKU: 170196	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170200	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES ULTRA THIN LATEX CONDOM LUBRICATED CONDOM; 21% THINNER THAN THE STANDARD CONDOM. SKU: 170200	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170197	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES LUBRICATED LATEX CONDOM ORIGINAL LUBRICATED CONDOM SILKY SMOOTH LUBRICATION FOR A NATURAL FEELING. SKU: 170197	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170198	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES EXTRA STRENGTH LATEX CONDOM SKU: 170198	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	832152	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES ROUGH RIDER LATEX CONDOM TEXTURED, LUBRICATED CONDOM FOR HEIGHTENED SENSATION. SKU: 832152	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170174	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES ULTRA SENSITIVE LATEX CONDOM THIN LUBRICATED SKU: 170174	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170203	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES KYNG GOLD AN EXTRA LARGE LUBRICATED CONDOM SPECIFICALLY DESIGNED FOR THOSE WHO PREFER A MORE RELAXED FIT. MEASURES 56 MM IN WIDTH. SKU: 170203	1,008 condoms / Case Previously named: Extra Strength	Case	\$48.50	7
VS0000021804	210149	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE SYKYN EITE LARGE NON-LATEX CONDOM THIS CONDOM IS MADE FROM A REVOLUTIONARY NON-LATEX MATERIAL CALLED POLYISOPRENE. DELIVERS THE STRENGTH OF PREMIUM LATEX, WITH THE SENSITIVITY OF AN ULTRA-THIN CONDOM. FLEXIBLE MATERIAL MEANS EXTRA COMFORT. SPECIFICALLY DESIGNED FOR THOSE WHO PREFER A MORE RELAXED FIT. MEASURES 56 MM IN WIDTH. SKU: 210149	1,008 condoms / Case Previously named: Extra Strength Previously named: KYNG	Case	\$275.00	7
VS0000021804	170192	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES ASSORTED COLORS LATEX CONDOM PRODUCED IN 3 COLORS: GREEN, RED & YELLOW. PIGMENTS ARE IN LATEX ITSELF AND WILL NOT RUB OFF. THEY ARE LUBRICATED, NON-IRRITANT AND HARMLESS TO THE LATES AND USE. SKU: 170192	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	170199	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES TUXEDO LATEX CONDOM LUBRICATED MIDNIGHT SHADE SKU: 170199	1,008 condoms / Case	Case	\$46.00	7
VS0000021804	833128	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	LUBRICANT LIFESTYLES ALOE AND VITAMIN E PERSONAL LUBRICANT SACHETS FORMULATED WITH ALOE VERA & VITAMIN E (PARABEN FREE). SAFE TO USE WITH LATEX CONDOMS. SMOOTH & SILKY. EACH SACHET IS 4.5 GRAMS (0.158 OZ) SKU: 833128	1,008 condoms / Case	Case	\$42.00	7
VS0000021804	170202	Lifestyles US Opco, Inc	SXWELL USA LLC		26932	CONDOMS MALE LIFESTYLES ASSORTED FLAVORS LATEX CONDOM A LUBRICATED FLAVORED CONDOM IN 3 FLAVORS: TROPICAL BANANA, WILD STRAWBERRY AND SENUOUS VANILLA SKU: 170202	1,008 sachets / Case	Case	\$46.00	7