



Minnesota Department of Administration
Office of State Procurement
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Henry Schein, Inc.
MMS2200734
Prepared on August 3, 2023

PREFIX A
Definitions and Acronyms
Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** As defined in Paragraph 9.1, "Administrative Fee."
2. **Contract(ed) Items (collectively Products and Services):**
 - A. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in the collective **Attachment A's**.
 - i. **Core:** Means the group of products offered by the Vendor identified in **Attachment A-1**.
 - ii. **Non-Core:** Means all other products (not otherwise excluded under this Agreement) offered by Vendor.
 - iii. **MMCAP Infuse Products:** Means the product categories and/or products offered by the MMCAP Infuse Manufacturers.
3. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
4. **Drop Shipment(s):** means Products ordered by Member through Vendor and shipped directly to the Member from the Manufacturer.
5. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
6. **Holidays:** No Day shall be considered a holiday unless it is listed here: Christmas, New Year's Eve, 4th of July, Labor Day, Memorial Day, Thanksgiving Day and the day after Thanksgiving.
7. **Manufacturer:** Means any supplier or entity that develops and/or manufactures any Product.
8. **Mark-Up:** Means the agreed upon percentage to be added to MMCAP Infuse Products in accordance with **Attachment A-3** above the MMCAP Infuse Base Price, as defined in Paragraph 2.4.
9. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
10. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **MMCAP Infuse Manufacturer:** Means Manufacturers, identified on **Attachment A-3**, who have a separate arrangement with MMCAP Infuse for specific Products at arranged MMCAP Infuse Base Price ("Covered Contract").
12. **Net Purchase:** All purchases of Products (excluding returns, credits, Member rebates, late charges, and similar fees) made through Vendor by any MMCAP Infuse Member, including Drop Shipments.
13. **Onboarding Forms:** Means all forms the Member is required to complete before purchasing from the Vendor.
14. **Order(ing) System:** Means the Vendor document or electronic platform Member utilizes to obtain Contracted Items.
15. **Price/Pricing:** Means the price (as determined in accordance with the Mark-Up, where applicable) that the Vendor has agreed to provide the Products to Members as set forth on **Attachment A's** and any subsequent amendment to this Agreement.
16. **Purchase Order:** Means any document formalizing the selection of and scope of Services selected by a Member. Additionally, this means any form submitted by the Vendor for a Bulk Order (see Paragraph 3.8).
17. **State:** Means one of the recognized fifty (50) states of the United States of America.
18. **Wholesale Acquisition Cost (WAC) Minus:** Means a percentage or dollar amount off of WAC.

AGREEMENT FOR MMCAP INFUSE NO. MMS2200734

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 Henry Schein, Inc., a corporation with an address of 135 Duryea Rd., Melville, NY 11747 ("Vendor").

Agreement Term:

1. **Effective Date:** November 1, 2023, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** May 1, 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. **Terms and Conditions:** Articles I through XII
3. **Attachment A: Products and Pricing**
 - **A-1:** Core
 - **A-2:** Discounts and other Cost Saving Opportunities
 - **A-3:** MMCAP Infuse Loaded Product Categories and Mark-Ups
 - **A-4:** Vendor Exclusive Brands
 - **A-5:** Additional Exceptions to Prohibited Products
4. **Attachment B:** Alternative Product Categories
5. **Attachment C:** Services and Pricing
6. **Attachment D:** Member Onboarding Forms
7. **Attachment E:** Reporting Requirements
8. **Attachment F:** MN Statutory Language
9. **Attachment G:** Vendor Return Policy
10. **Attachment H:** Vendor Recall Policy
11. **Attachment I:** Terms of Sale

ARTICLE I PRODUCTS

- 1.1 **Product Categories.** The four to eight (4-8) digit United Nations Standard Products and Services Code (UNSPSC) for a Product will establish the default classifications. The parties may establish alternative classifications or provide clarifications in **Attachment B**.
- 1.2 **Core.** These are Products that are specifically identified on a "line-item" basis on **Attachment A-1**. The Vendor may add Products to this at any time, however, removals can only occur on an annual basis, except to the extent a Manufacturer discontinues a Product. Once a change has occurred, the Vendor must wait one (1) year from each change date to make further adjustments, except to the extent a Manufacturer discontinues a Product.
 - A. **Package Size:** All package size offerings for that Product will be considered part of the Core list.
 - B. **"Annual Refresh":** Annually, at a minimum, it is expected that the top fifty percent (50%) (in both unit and dollar volume) of collective Core and Non-Core Products from the previous year will be classified as Core for the applicable upcoming year. MMCAP Infuse will provide Vendor a proposed Core list sixty (60) days in advance. The Vendor may review and appeal items on the list, however the Vendor must provide (i) written justification and supporting evidence; and (ii) alternative product to replace the item on the Core list. MMCAP Infuse will then review and consider the appeal. A final Core list must be approved by both parties within the sixty (60) days, otherwise the previous year's Core list will automatically renew for another year or until the parties agree to an updated Core list.
 - i. **Historical Sale History.** If the Vendor has a historical sale history with MMCAP Infuse and/or the Membership, that will be used to create the initial Core list.
 - C. **Off-cycle Product Additions:** The Vendor may add Products to the Core list at any time with three (3) days' written notice to MMCAP Infuse.
 - D. **MMCAP Infuse Products:** The Vendor will be prohibited from selling MMCAP Infuse Products and competing equivalent items under the Core category.
 - E. **Vendor Exclusive Brands:** The Vendor understands that a key aspect of their award were the exclusive brands listed in their response. Thus, the Vendor will be required to include all available product from those brands on the Core list. Subject to any Manufacturer discontinuations and availability, failure to do so or the

sale of those brands under non-core will be considered a violation of this Agreement. A list is located on **Attachment A-4**.

- 1.3 **Non-Core.** These are all other *approved* Products in the Vendor's catalog sold to the Membership. These offerings will receive a discount off the disclosed catalog price at the time of the Member's purchase in accordance with **Attachment A-2**. The Vendor may fluctuate the Pricing and Product offerings as displayed in the Vendor's catalog without notice to MMCAP Infuse.
- A. **MMCAP Infuse Products:** The Vendor may compete with the MMCAP Infuse Products by offering competing items (made by a MMCAP Infuse Manufacturer or competitor) under Non-Core but must still make MMCAP Infuse Products visible with the lowest cost item being listed first in the catalog. If the Products are linked as interchangeable in the ordering platform, the Vendor's ordering system must make them interchangeable both ways.
 - B. **Over the Counter Pharmaceuticals:** With MMCAP Infuse's prior review and approval of each Product, the Vendor may sell over-the-counter pharmaceuticals to the Membership under this category. A list can be found on **Attachment A-5**. If any Product is subject to a Covered Contract, Vendor will, subject to the MMCAP Infuse Manufacturer allowing it, honor the terms of the Covered Contract. The Vendor may be required to remove Product from Non-Core or the catalog entirely if the Vendor cannot follow the requirements for MMCAP Infuse Products.
 - C. **Drug and Alcohol Testing Products:** With MMCAP Infuse's prior review and approval of each Product, the Vendor may sell drug and alcohol testing items to the Membership under this category. If any Product is subject to a Covered Contract, Vendor will, subject to the MMCAP Infuse Manufacturer allowing it, will honor the terms of the Covered Contract. The Vendor may be required to remove from Non-Core or the catalog entirely if the Vendor cannot follow the requirements for MMCAP Infuse Products.
 - D. **Prohibited Products (see Paragraph 1.5):** Unless stated otherwise, the Vendor cannot sell any Prohibited Products under Non-Core offerings under this Agreement.
- 1.4 **MMCAP Infuse Products.** MMCAP Infuse and/or MMCAP Infuse Manufacturer will provide a Product listing (and applicable MMCAP Infuse Base Price, defined in **Paragraph 2.4**) to the Vendor. The Vendor must be listed as an authorized distributor in the MMCAP Infuse Manufacturer agreement in order to have Products added to the MMCAP Infuse Product listing to ensure the Vendor will be able to honor chargebacks. The Vendor will be required to load the Covered Contract in Vendor's system within five (5) business days of Vendor receiving notice from the applicable MMCAP Infuse Manufacturer for existing Covered Contracts or within fifteen (15) business days of Vendor receiving notice from the applicable MMCAP Infuse Manufacturer for any new Covered Contracts. Subject to approval, availability from and Vendor's ability to meet any compliance requirements of each applicable MMCAP Infuse Manufacturer, the Vendor will have thirty (30) days to obtain the inventory before **Paragraph 4.1** will be applied. Subject to approval, availability from and Vendor's ability to meet any compliance requirements of each applicable MMCAP Infuse Manufacturer, the Vendor agrees to carry enough inventory of Products to support the Member orders. Vendor will be required to make all MMCAP Infuse Products searchable within the Vendor's online Ordering System; however, **Paragraph 4.1** will not apply. If the Vendor cannot sell the MMCAP Infuse Products, the Vendor must provide written notice and the reason why.
- A. **Eligibility Requirements:** If a MMCAP Infuse Manufacturer requires a form to be signed by a Member for certain specialty pricing eligibility based on the MMCAP Infuse Manufacturer guidelines, the Vendor will obtain the document from the Member and submit it to the MMCAP Infuse Manufacturer before providing the applicable specialty pricing to the Member.
 - i. **Sublocade:** For the Sublocade set forth in **Attachment A-4**, it is understood and agreed that only Members which are approved by the Manufacturer ("Designated MMCAP Members") are eligible to receive the pricing set forth herein. However, the Manufacturer may expand the eligibility of Designated MMCAP Members with written notice to both MMCAP Infuse and Vendor, upon which the Vendor may honor the changes so long as such changes do not conflict with any applicable law or Vendor's direct agreements with Manufacturers. MMCAP further understands and agrees that Vendor restricts the sale or transfer of medications to prisons/correctional facilities for use in lethal injections in accordance with Vendor's direct agreement with Manufacturers. Any Sublocade purchased by Designated MMCAP Members under this Agreement are intended to be used for their label-approved purposes or applicable standards of care, which do not include human lethal injection.
 - B. **MMCAP Infuse Manufacturer Special Pricing:** Vendor will ensure only eligible Members see MMCAP Infuse Manufacturer driven special pricing in the Vendor's ordering platform and only eligible Members will have access to that special pricing. It is the responsibility for the Vendor to bill Members at the correct tier by working with the MMCAP Infuse Manufacturer.
 - C. **Changes:** Subject to the details set forth in **Paragraph 1.4**, MMCAP Infuse Products, above, MMCAP Infuse reserves the right to modify the MMCAP Infuse Products at any time during the Agreement Term and the Vendor will have five (5) business days to adjust their catalog.
 - D. **Monitoring:** Upon written request, and subject to manufacturer approval and Vendor's system capabilities, the Vendor will provide an inventory forecasting report to MMCAP Infuse.

- E. Chargeback Denials: Vendor will use reasonable efforts to notify MMCAP Infuse within thirty (30) days of when it receives notice of a chargeback denials received from an MMCAP Infuse Manufacturer for MMCAP Infuse Products, provided MMCAP Infuse has not already notified Vendor of the issue.
 - F. Contract File: Vendor will provide an accurate monthly file of the MMCAP Infuse Products loaded before the first day of the week. The file may be zipped and should be submitted in a form agreeable to all parties. To MMCAP_infuse.hpscontracts@state.mn.us.
- 1.5 **Prohibitions**. Unless otherwise stated under this Agreement (*Attachment A-2* through *Attachment A-5*) or if MMCAP Infuse provides written approval by an amendment to this Agreement, the Vendor will be prohibited from selling the following Product categories to the Membership ("**Prohibited Products**") under this Agreement. MMCAP Infuse may amend this list with thirty (30) days' notice; the Vendor will be required to remove affected Products from the Agreement and catalog offerings under this Agreement. The following categories are prohibited under this Agreement:
- A. All influenza and general vaccines: None; MMCAP Infuse has awarded separate agreements through a different request for proposal. (Generally, UNSPSC 512016)
 - B. Pharmaceuticals: Except for those authorized under MMCAP Infuse Products and Non-Core. (Generally, UNSPSC 5110-5125).
 - C. Diabetic supplies: Except for those authorized under MMCAP Infuse Products (Varies but can fall under the following UNSPSC: 421425; 421426; 4222; 411220)
 - D. Incontinence: Except for those authorized under MMCAP Infuse Products and Non-Core. (Generally, UNSPSC 42142700; 42443800; 42143900).
 - E. Nutritionals: Except for those authorized under MMCAP Infuse Products. (Generally, UNSPSC 422318; 5119; 8515)
 - F. Drug and alcohol testing: Can be sold under Non-Core. (Generally, UNSPSC 8512810)
 - G. Condoms: Except for those authorized under MMCAP Infuse Products. (Generally, UNSPSC 53131622)
 - H. Dental Supplies: None; MMCAP Infuse has awarded separate agreements through a different request for proposal. (Generally, UNSPSC 4215)
- 1.6 **Product Preference**. Vendor can sell to Members all Products requested by Member. On a quarterly basis or as reasonably requested by MMCAP Infuse, the Vendor will provide contract compliance reports to monitor purchases of Non-Core products compared to their MMCAP Infuse and Core Products equivalents in the Product category. It is the intent of MMCAP Infuse that at no point should the Non-Core Products exceed fifty percent (50%) of a purchase makeup for Product category for any three (3) month period when there are MMCAP Infuse Product and Core Product equivalents; however, both parties understand that purchasing decisions are at the discretion of the Member. If during the Term of this Agreement the percentage makeup for a Product category where there are MMCAP Infuse Product and Core Product equivalents is not meeting MMCAP's intended purchase makeup, and such purchase makeup is due to reasons other than lack of availability and Member purchasing decisions, MMCAP Infuse and Vendor will meet and confer in good faith to review the Core Products. To the extent necessary to address the purchase makeup, and upon mutual consent, the Core Products may be adjusted. The compliance formula is found on *Attachment E* and data received from the Vendor via **Table 1, Sales Data Report** will be used to review compliance.
- 1.7 **Product Dating**. Unless agreed upon in writing by the Member in advance, all Products will have a shelf life of at least six (6) months.

ARTICLE II

PRICING AND CHANGES

- 2.1 **Notices**. All notices under this Article must be sent to: MMCAP_infuse.hpscontracts@state.mn.us.
- 2.2 **Core Pricing Structure**. Pricing for Core Products are listed on *Attachment A*. Vendor must hold pricing for Core Products firm for at least six (6) months from the Effective Date. Each time pricing is changed, the Vendor must wait six (6) months from each effective change date to amend the pricing again.
- A. Required Format: All changes must be done in MMCAP Infuse's required format; an example can be found on *Attachment E, Table 4*.
 - B. Package Variations: Per *Paragraph 1.2(A)*, all package sizes for applicable manufacturer and/or Vendor part number will be under the terms of Core Pricing. The Vendor can sell the package sizes at different Pricing, however "per item" basis must remain consistent.
 - C. Price Reductions: After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must provide at least three (3) days' notice to MMCAP Infuse before they can take effect.
 - D. Annual Refresh: During the Annual Refresh (see *Paragraph 1.2(B)*), Vendor may propose price increases for products remaining on Core or being added to Core. The Vendor must provide at least ninety (90) days' written notice for any change to take effect.
 - E. Price Increases: Notwithstanding anything to the contrary herein contained, to the extent Vendor receives an increase greater than ten percent (10%) for any Core Products, Vendor shall have the right to increase the purchase price of such Core Products. Additionally, Vendor will have the right to increase the price if the purchase price drops below Vendor's cost. Vendor will provide evidence of said occurrence to MMCAP

Infuse; provided however, that Vendor shall not be required to disclose any information subject to confidentiality with a third party. Vendor shall provide MMCAP Infuse with thirty (30) days prior written notice of any such price increase. Except as provided for in this Agreement, no fee, percentage, or other cost may be added to the Products purchased under this Agreement unless it has been approved in writing by MMCAP Infuse. In the event Vendor does not notify MMCAP Infuse of an increase, Vendor must honor chargebacks for the most recent previous Price until such time as MMCAP Infuse receives notice of and approves the increase.

- 2.3 **Non-Core Pricing.** Pricing for Non-Core Products will be fluid at Vendor's discretion. However, all Members (at no cost to Member) will be able to view the current Non-Core Product prices and catalog/list price in Vendor's electronic catalog in order to easily calculate if the Non-Core Product discount and price adjustments are being applied properly. If the Vendor is unable to display the full list price in the Vendor's electronic catalog, the Vendor will provide the Member with a non-ordering full list price account upon request for auditing purposes. Once Member makes a purchase of the Non-Core Product, Vendor will create an invoice disclosing the price to Member and the Non-Core Product discount applied (more invoice requirements are found in **Article III**).
- 2.4 **MMCAP Infuse Pricing.** MMCAP Infuse has provided (or will provide) Vendor a list of MMCAP Infuse Products and Pricing ("**MMCAP Infuse Base Price**"). MMCAP Infuse and the Vendor have agreed to Mark-Up, which will be added to the MMCAP Infuse Base Price for each applicable Product; the sum of the MMCAP Infuse Base Price and Mark-Up will be the Price the Vendor discloses to the Member.
- A. **Price Loading.** Vendor will be responsible for processing the MMCAP Infuse Products and Pricing sent to them by the MMCAP Infuse Manufacturer within five (5) days of receipt from such MMCAP Infuse Manufacturer. If a Member decides to purchase a different case/package size than what MMCAP Infuse negotiated with an applicable MMCAP Infuse Manufacturer, the Vendor will notify MMCAP Infuse. MMCAP Infuse will either (i) work with the Manufacturer to add that size to the Covered Contract; or (ii) the Vendor, and Member will work in good faith to come to a fair and reasonable price, using the Pricing for Non-Core Products as guidance.
- i. **Manufacturer Verification (if applicable).** If a manufacturer requires verification or provides data that is inconsistent with MMCAP Infuse, the Vendor will notify MMCAP Infuse in writing within twenty-four (24) hours of the impasse occurring.
- ii. **Notice.** If a Vendor receives a notice of a change from a MMCAP Infuse Manufacturer but did not receive the same notice from MMCAP Infuse, the Vendor will forward the information to MMCAP Infuse within three (3) days.
- iii. **Disagreements.** Subject to compliance with applicable laws, the Vendor agrees to review and process credits/rebills as notifications are received at no charge and, in the event actually owed and due, correct pricing in the event that MMCAP Infuse and the MMCAP Infuse Manufacturers have a disagreement regarding a Product or Pricing.
- iv. **Failure to Negotiate.** The Vendor agrees to use commercially reasonable efforts to notify MMCAP Infuse promptly (to the extent it is able to do so) of any issues with MMCAP Infuse Manufacturers that could affect the Vendor's ability to stock, sell, or perform chargebacks on these Products. Notices must be sent to: mmcap_infuse.hpscontracts@state.mn.us.
- B. **Auditing.** Vendor will perform Pricing audits, matching pricing information provided by MMCAP Infuse against the MMCAP Infuse Base Price provided by MMCAP Infuse Manufacturers. If Vendor discovers discrepancies, the Vendor will notify the MMCAP Infuse Manufacturer and MMCAP Infuse of the discrepancy in order to reach resolution. Upon resolution, Vendor will correct the errors, will create a sales history report, and enter credit(s)/rebill(s) for each Member connected to the contracts within ten (10) business days of resolution. Vendor is expected to continue to provide the process, which was the outcome of the collaboration between the Vendor and MMCAP Infuse, to deliver comprehensive and efficient means to provide continuous Price audit data.
- 2.5 **Service Pricing.** Reserved.
- 2.6 **Competitive Pricing.** During the Term of this Agreement, if MMCAP Infuse receives information from any source that the terms or pricing offered under this Agreement are not market competitive, Vendor and MMCAP Infuse will meet and confer in good faith to determine the ongoing competitiveness of the terms and pricing under this Agreement. Vendor reserves the right, when comparing market competitiveness, to use the following in its evaluation (A) Member's class of trade; (B) Member's volume of Products; (C) Member's payment terms; (D) Member's number of deliveries; and (E) Member's number of delivery locations. To the extent necessary to address market-competitive conditions, and upon mutual consent between MMCAP Infuse and Vendor, and such consent is not to be unreasonably withheld by Vendor, applicable terms or prices may be adjusted.
- 2.7 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Pricing; the fee, assessment, and/or additional costs must be added on top of the Pricing and/or an adjustment to the discounts must be made so Vendor does not absorb the fee. Vendor must not pay a Member levied fee without first collecting the fee through increased Pricing for the applicable Member. The fees will be set aside and paid to the Member as detailed in a form provided and approved by MMCAP Infuse.

ARTICLE III
ORDERS, DELIVERY, AND PAYMENT; SELECTION OF SERVICES

- 3.1 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Members in good standing with MMCAP Infuse. Vendor may use their own Ordering Systems and Purchase Order Forms. Except to the extent otherwise negotiated for Services and Bulk Orders (see Paragraph 3.8), to the extent that any terms conflict with the terms of this Agreement, the terms of this Agreement supersede. Each Member will be responsible for payment for Contracted Items to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Member. Vendor agrees to invoice the Members as established in this Agreement.
- A. The use of obtaining a Contracted Item from the Ordering System or Purchase Order constitutes a binding contract. All Products furnished will be subject to inspection and acceptance by the ordering entity after delivery in accordance with Vendor's Return Policy (**Attachment G**). Back orders, failure to meet delivery requirements, or failures to meet specifications in the Ordering System, Purchase Order, and/or the Agreement authorizes the ordering entity to cancel the order, or any portion of it. If Vendor fails to provide the Contracted Items as set forth in this Agreement, Member may obtain the same or equivalent Product through an alternative vendor. This may be subject to Paragraph 4.1.
- B. Order System minimum requirements. At a minimum, the Order System must (i) have the outlined capability and (ii) display the following for each Product in the catalog offerings to the Membership.
- i. Capability:
- a. Secure login/user name and payment processing;
- b. Provide a PDF invoice to the Member within twenty-four (24) hours of a confirmed order;
- c. Product substitution search option;
- d. Product inquiry search option;
- e. Auto-backordering; and
- f. Show cost-saving opportunities/alternatives.
- ii. Display:
- a. Product name and picture;
- b. Manufacturer product number;
- c. UNSPSC;
- d. Product description;
- e. NDC/UPC;
- f. Manufacturer name;
- g. Packaging size;
- h. Price for package/dose size and per item basis; and
- i. If only available by "drop-shipment" (if applicable).
- C. Vendor will provide MMCAP Infuse with at least one login and password to access and view Vendor's Ordering System and/or online catalog it displays to the Membership. During the Agreement, if MMCAP Infuse requests the Vendor to provide live catalog Pricing electronically to MMCAP Infuse's technology infrastructure, Vendor will do so without any cost assessed to MMCAP Infuse.
- 3.2 **Product Substitution.** In the event the Products covered by this Agreement are not available at the time of order placement, Product substitution will only be permitted upon the written consent of the Member. In the notification, the Vendor will inform the Member the reason the requested Product is not available and suggest possible substitutes. Vendor may suggest any self-manufactured or its private label Products and at least one brand label Product.
- A. Reporting: The Vendor will provide a monthly report to MMCAP Infuse covering all orders that had an item replaced or not fulfilled during a shortage, in a form similar to the reporting requirements listed on **Attachment E, Table 2** (subject to Vendor system capabilities) and must be delivered to: mmcap_infuse.hpscontracts@state.mn.us.
- 3.3 **Termination of Individual Orders.** Members may terminate, immediately or as identified by Member, individual orders in whole or in part, upon written notice to Vendor upon the occurrence of any of the following events:
- A. The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contracted Items to be purchased;
- B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Contract Items are prohibited, or the Member is prohibited from paying for the Contracted Items from the planned funding source; or
- C. Vendor commits any material breach of this Agreement.
- Upon receipt of written notice of termination, Vendor will stop performance under the Agreement as directed by the Member. If a standing order is terminated, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.
- 3.4 **Jurisdiction and Venue of Orders.** As it applies to purchases made by a Member, nothing in the Agreement will be construed to deprive the Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Agreement or afforded by the Member's law.

- 3.5 **Shipment for Products.** Vendor must distribute and deliver the Products covered under this Agreement to all Members, including the states of Alaska and Hawaii. If the Member account is in good standing, the Vendor will at no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse except based on payment failure. Delivery for Products under this Agreement shall be FOB Destination unless otherwise agreed to by Vendor and Member in a Purchase Order. Unless otherwise stated within this Agreement, Vendor will not add any fuel, shipping, or handling 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 to Member before a purchase is made.
- A. **Fees:** All Members are eligible to receive deliveries during normal workdays five (5) business days (Monday – Friday) with no ordering minimums.
 - B. **Delivery Schedule:** Upon request from Member, Vendor will work with Member to establish a routine delivery schedule. Delivery for stock items will occur within three (3) business days, from the date the Product is ordered; this includes the Vendor's processing window. It is understood that deliveries to Alaska or Hawaii may take longer. All expedited deliveries will be made next business day, or on the next scheduled business delivery day (excluding Alaska and Hawaii), unless communicated otherwise. If there is a Holiday during the ordering process, the Vendor shall have one additional day per Holiday day.
 - i. **Cut-off Time.** Vendor's daily order cut off time will be 4:00PM CST local time to the Member.
 - C. **Damaged Products:** All damaged Products will be reported to Vendor's customer service department pursuant to Vendor's returns policy on **Attachment G** and applicable credits will be issued pursuant to such policy.
 - D. **Lost Products:** All lost Products will be reported to Vendor's customer service department pursuant to Vendor's returns policy on **Attachment G** and applicable credits will be issued pursuant to such policy.
 - E. **Special Conditions for Products:** If applicable to the Products offered under this Agreement, Vendor will maintain appropriate temperatures and environmental conditions in accordance with Manufacturer requirements for delivery of the Products to the Members. All refrigerated Products will be shipped in returnable coolers or disposable coolers with appropriate packaging to maintain the required temperature range. Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the Manufacturer. If Member refuses Products that have been inadequately packaged, the Member will notify Vendor's customer service department to log the complaint. Any costs associated with the return of Product due to improper packaging or transport, will be pursuant to Vendor's return policy on **Attachment G**.
 - F. **Vendor's Standard Terms of Sale.** Vendor's standard terms of sale are attached hereto as **Attachment I** and incorporated herein by this reference and shall apply to each sale hereunder. Vendor may modify its standard terms of sale from time to time, wherein such modifications shall be incorporated herein by this reference. The Terms and Conditions will take precedence over **Attachment I**. If the provisions of the Terms and Conditions are inconsistent with **Attachment I**, the Terms and Conditions will supersede and govern.
- 3.6 **Emergency Orders. Reserved.**
- 3.7 **Drop Shipment.** The Vendor will act as a conduit to expedite and simplify the ordering and payment of drop shipped Products directly from a Manufacturer. All fees associated with drop shipments are in accordance with Paragraph 3.5, Shipment for Products. Prohibited Products (Paragraph 1.5) cannot be drop shipped under this Agreement without MMCAP Infuse's prior written approval.
- 3.8 **Bulk Orders/Price Inquiries.** A "Bulk Order" is an order that substantially exceeds a typical order size from a Member for a particular Product. It is expected that the Vendor will provide a "volume" discount on Bulk Orders; however, the Vendor may negotiate with each Member any discount, a reasonable shipping fee and shelf life as part of the proposal, which may be documented with a Purchase Order. Vendor will provide MMCAP Infuse with a report summarizing Bulk Orders. The format and cadence is to be mutually agreed. Once a Bulk Order request is submitted to the Vendor, the Vendor must respond with a proposal within a reasonable amount of time.
- A. The proposal from the Vendor will hold firm for thirty (30) days.
 - B. A Member will be required to provide the Vendor its MMCAP Infuse ID and billing address for the Vendor to process the request.
- 3.9 **Invoicing.** Vendor will submit an invoice with each order.
- A. **Invoice Fields:** At a minimum, Vendor's invoice will contain the following fields:
 - i. Member name and Vendor-assigned account number for the Member;
 - ii. Invoice line number and Member's order number (Member must provide an order number at the time of order for this to appear on Vendor's invoice);
 - iii. Bill to and ship to address;
 - iv. Invoice date;
 - v. Vendor's SKU item number, Contracted Item 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: All Pricing should be to the second decimal spot.
 - 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.
- 3.10 **Payment Terms**. Members will pay the Vendor within thirty (30) days of the date of the invoice, provided it is sent electronically to the Member within five (5) days of the Member receiving the purchase. If not, payment will be due within thirty (30) days of the Member receiving the invoice.
- 3.11 **Conditions of Payment**. Members may withhold payment for Product purchases found to be in violation of federal, state or local laws to the extent such violation of laws was caused by Vendor.
- 3.12 **Payment Method**. Vendor will accept check, Automatic Clearing House (ACH), Electronic Funds Transfer (EFT), credit card, or P-Card as a payment method and Member will start this process with its financial institution.
- 3.13 **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.
- 3.14 **Credits and Rebills**. Vendor will process credits and rebills as notifications are received from a Member and after Vendor conducts a review and determines the notification is accurate; the Vendor will use commercially reasonable efforts to ensure the review shall take no longer than forty-five (45) days.
 - 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. The Vendor will take all commercially reasonable steps to ensure that credits are applied on a timely basis.
 - D. 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.
 - E. Vendor's rebill memo will contain, but not limited to the following information:
 - i. Original purchase order
 - ii. Original Vendor invoice number
 - iii. Itemized listing of the Product(s) affected
 - iv. Credit memo associated with the rebill
 - v. Reason(s) for the rebill (e.g., manufacturer chargeback denial, pricing error, etc.)
- 3.15 **Price Audits and Corrections**. In the event of a Pricing error that is attributable to the Vendor, Vendor agrees to process credit/rebills for the past twelve (12) calendar months in the Member's favor. After the review of any such error and it is found that a correction needs to take place, Vendor will have ten (10) business days to process credit/rebills that would result in the Member paying more than originally charged. When a Member or MMCAP Infuse discovers an error in pricing, they will notify Vendor. Vendor will research all Members affected by the error and will process credit/rebills to the affected Members for the time period of the error until it is resolved.
- 3.16 **Shareback Credits**. Vendor will manage, at no additional cost to MMCAP Infuse or Members, the MMCAP Infuse disbursement of shareback credits, according to the process below:
 - A. MMCAP Infuse will provide Vendor with: (i) an accurate list of Members receiving a credit; (ii) the MMCAP Infuse ID numbers, facility names, facility addresses, facility's city, facility's state, and the credit amount for each facility; and (iii) a check for the total amount of all credits to be provided;
 - B. Vendor must apply the credit to all listed Members within fifteen (15) days of the receipt of the funds;
 - C. Within thirty (30) days of the receipt of the funds, Vendor must provide to MMCAP Infuse, an Excel Spreadsheet detailing the credit memo information. This Excel listing must include the following fields: distribution center, account number, Member ID, name, address, city, state, DEA (if applicable), HIN (if applicable), date of credit memo, credit memo number, and credit memo amount.
 - D. Within sixty (60) days of the receipt of the funds, Vendor will refund to MMCAP Infuse, any remaining dollars for which it was unable to issue credit; this may be for any Member determined to no longer be valid Member, or that were not able to be located for any variety of reasons. Vendor will work with MMCAP Infuse, in order to identify all Members to the best of its ability, in an effort to issue all necessary credits, before refunding dollars back to MMCAP Infuse. Upon initiating the refund to MMCAP Infuse, Vendor will provide a copy of the original shareback credit spreadsheet, detailing the credit information (received from MMCAP Infuse), the reason for non-application of funds, and the dollar amount of the funds being returned

to MMCAP Infuse.

- 3.17 **Member Punchout Systems.** Members may submit a request to a Vendor to connect their ordering system through an electronic data interchange, also referred to as a "Punch-out System." The Vendor may consider connecting to said system and load information related to this Agreement. However, all costs associated with setting up the system will be paid by the requesting Member(s). The Vendor will not pass along any direct or indirect costs relating to the system directly or indirectly (i.e., reflected in increased Pricing) by the rest of the Membership. Prohibited Items may not be loaded into the system without MMCAP Infuse's prior written approval.
- A. **Attachment:** By the tenth (10) day of the month, both the Vendor and Member will send reports to MMCAP Infuse regarding the usage of the Punch Out System for Member's attached to this Agreement. The reporting requirements are on **Attachment E, Table 3**. If through those reports, it is found that a user has not completed an MMCAP Infuse Membership Agreement and does not have an MMCAP Infuse ID, both the Member and Vendor will assist MMCAP Infuse in completing the registration process. If the user fails to complete the registration process with MMCAP Infuse within thirty (30) days, the Member and Vendor will cut off the user from receiving the MMCAP Infuse benefits received under this Agreement, such as Pricing and access to Contracted Items.
- B. **Shareback:** The State and/or Member owner understands that until an end user of the Punch-Out System is attached to MMCAP Infuse, there will not be any credit attributed for those purchases with respect to the annual shareback calculations.
- 3.18 **Individual Member Selection of Services.** Reserved.

ARTICLE IV SUPPLYING AND AVAILABILITY

- 4.1 **Product Outages.** For Core and MMCAP Infuse Products, it is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Members. It is expected that the Vendor will be able to fulfill purchase volume of 98% of a Members' previous quarter's volume (the "Fill Rate"); provided, however, the Fill Rate will be subject to the exclusions listed in Paragraph 4.1(C). If Vendor does not meet the Fill Rate three (3) times or more in the calendar month due to a Vendor-created stock outage, it will be considered a failure to perform by the Vendor. The Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.
- A. **Immediate Notification.** Vendor's Ordering System will provide notice within twenty-four (24) hours to 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; and
 - how the Vendor intends to resolve the backorder situation.
- B. **Substitution.** If Members consents, Vendor may offer like-kind Products. In the event of a backorder situation for Core and MMCAP Infuse Products due to a Vendor-created stock outage, if no acceptable substitution can be offered, the Member may purchase the same or equivalent Product from an alternative MMCAP Infuse vendor; 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 up to 150% of excess costs (including shipping and third-party fees) over the Pricing of this Agreement sustained by Member should Member be required to purchase on the open market via a credit within thirty (30) days of receipt of the claim. 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.
- C. **Exclusions.** The following exclusions apply to this Paragraph 4.1 and Vendor will be exempt from this Paragraph 4.1 if any are applicable. For the avoidance of doubt, stock outages due to any reason listed herein will not be considered a Vendor-created stock outage.
- Force Majeure:** Force Majeure, as identified in Paragraph 5.4;
 - Manufacturer created shortages and delays, such as discontinuances and backorders;
 - Custom or specialty product orders;
 - Drop Shipments;
 - Products not stocked by the Vendor;
 - Orders exceeding 120% of a Member's Average Monthly quantity purchased; and
 - Products where supply is controlled government entity.
- D. Vendor will be responsible for all vendor-created stock outage claims for 90-calendar days unless the Vendor has provided MMCAP Infuse with at least 90-calendar days' advanced written notice of the intent to remove a Contracted Item from production and discontinue distribution in the market. Vendor will remain responsible for all claims during the 90-calendar day notice period.

- 4.2 **Product Discontinuation.** If the Vendor unilaterally assigns, discontinues, or deletes a Core or MMCAP Infuse Product during the Agreement, Vendor will use commercially reasonable efforts to provide written notice to MMCAP Infuse at least sixty (60) days prior. If the Vendor removes the item, the Vendor will honor Pricing until the inventories are depleted or an agreed upon removal date. If inventory is depleted prior to the end of the ninety (90) day period, Paragraph 4.1 will apply. The same exclusions listed in Paragraph 4.1(C) will apply to this Paragraph.
- 4.3 **Products Returned to the Vendor.** Vendor will accept returns in accordance with its policy (**Attachment G**). If any law, regulation, or the language in this Agreement conflict with the policy, then the policy is subordinate.
- 4.4 **Product Recalls.** If any Product covered by this Agreement requires modification, is removed, or recalled by the Vendor and/or an applicable Manufacturer or government entity, then Vendor shall comply with its recall policy on **Attachment H**. Vendor will use commercially reasonable efforts to notify MMCAP Infuse within three (3) business days of any recall impacting Members. Vendor agrees to follow 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, the Vendor will issue credit for recalled Product.
- 4.5 **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.
- 4.6 **Failure to Provide Service.** Reserved.

ARTICLE V

TERMINATION, CANCELLATION, AND REMEDIES

- 5.1 **Cancellation.** Either party may cancel this Agreement any time for convenience, without cause, upon thirty (30) days' written notice to the other party. In the event of such a cancellation, the Vendor will be entitled to payment by the Membership, determined on a pro rata basis, for Contracted Items satisfactorily delivered or performed.
- 5.2 **Termination for Cause.** Except to the extent that the breach is subject to Paragraph 5.6, Failure to Perform, either party may terminate this Agreement at any time on the basis the other party breached this Agreement. For breaches not subject to Paragraph 5.6, Failure to Perform, the moving party must provide written notice to the other party, which upon the receiving, the other party has sixty (60) days to cure the defects. Upon the sixty (60) 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.
- 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.** Except in the case of Force Majeure or unless earlier terminated or cancelled, in the event that MMCAP Infuse believes that there is a violation under one of the categories in this Paragraph, MMCAP Infuse will provide an initial notice to the Vendor ("Initial Notice"). Upon receipt of an Initial Notice, the parties agree to discuss the alleged violation. If following such discussion, MMCAP still in good faith believes that there is a violation, MMCAP will provide a follow-on notice of the violation with sufficient detail as to the alleged violation and date of occurrence such that Vendor can cure the alleged violation ("Second Notice"). Upon receipt of a Second Notice, Vendor will have thirty (30) days to rectify the issue (the "Cure Period"). In the event Vendor does not cure the violation within the Cure period, MMCAP will provide notice of its intent to exercise its right to charge the following fees, the date it intends to start, and the reason why (the "Third Notice"), and the Vendor will pay the following fees moving forward from the day the Cure Period started (subject to the Failure to Perform Cap) upon receipt of an invoice from MMCAP Infuse:
 - A. Reporting Requirements or failure to implement shareback. In the event that the Reporting Requirements (see Article IX and **Attachment E**) or Shareback (Paragraph 3.16) contains incorrect data, missing data that should be included or is required or no data where necessary and applicable, and such is material 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, and such failure materially impacts MMCAP Infuse's ability to conduct business or its governmental purpose, the Vendor will pay the following to MMCAP Infuse: \$20/day.
 - D. Failing to implement MMCAP Infuse Products and Pricing (or not honoring). When the Vendor fails to load MMCAP Infuse Products or Pricing in the timelines prescribed within this Agreement; or when the Vendor fails to sell all the MMCAP Infuse Products as required in this Agreement, or honor the Pricing: \$50/day, until resolved.
 - E. Selling Prohibited Products or mis-selling brands. When the Vendor sells Products in violation of this Agreement to the Membership, vendor will pay MMCAP Infuse five percent (5%) (of the total gross sales relating to the violation).
 - F. Excess Non-Core sales. If Non-Core sales make up over seventy-five percent (75%) of a Product category when there are available MMCAP Infuse and Core Products: \$10,000/per Product category violation for each time period.
 - G. Adding and Removing Members (Attachment). Every time the Vendor fails to meet the timeline requirements in this Agreement to add or remove a Member's eligibility to purchase Contracted Items, Vendor will pay: \$500/per violation.
 - H. Numerous instances of failure to provide Service, Product outages, late deliveries. Anytime MMCAP Infuse has to notify and question a Vendor regarding instances of them violating Paragraphs 3.5, 4.1, and 4.6, more than three (3) times during a rolling twelve (12) month period, the Vendor will pay: \$1,000 per each subsequent violation.
 - I. 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.
 - J. Failure to Perform Cap. The total aggregate fees that may be due and payable by Vendor to MMCAP Infuse, each month, shall not exceed \$10,000 per Failure to Perform, and not exceeding \$25,000 in the aggregate of subparagraphs; neither limit applies to Paragraph 5.6(E), Selling Prohibited Products or mis-selling brands.
 - K. Return of Fees and Termination for Convenience. If it is determined by a court of competent jurisdiction that MMCAP Infuse's alleged violation was in error or not the fault of Vendor, MMCAP Infuse will promptly return any fees paid by Vendor and any resulting termination will be considered a termination for convenience.

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.
- 6.2 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership which the Vendor is expected to actively utilize to verify Member status. 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 within seven (7) days of notice by the applicable Member and/or the completion of the required paperwork on **Attachment D** by such applicable Member. 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 shall have the right to remove any Member that notifies Vendor it no longer wishes to participate under the terms of this Agreement. However, if the Member is purchasing through a Government Unit operated Punch-Out System or an MPA, the Vendor will provide written notice to MMCAP Infuse. The Vendor will not remove that Member for at least five (5) business days while MMCAP Infuse determines if the requesting Member has authority to remove itself from MMCAP Infuse. Vendor will provide MMCAP Infuse a disconnect report for all Member's that are removed.
- 6.3 **Membership Eligibility.** Upon request, Vendor will send an electronic eligibility list identifying which Members are eligible for pricing to MMCAP Infuse.
 - A. In order for a Member to be considered eligible, Member must notify Vendor in writing of their desire to participate in this Agreement.
- 6.4 **Member Attachment.** Vendor will ensure Members, who wish to access this Agreement, 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. If a Member selects a different group purchasing organization/collective or decides not to participate in the Membership of MMCAP Infuse, the Vendor will immediately suspend access to the MMCAP Infuse's catalog to that Member and notify MMCAP Infuse within five (5) days.

- A. When Vendor notifies MMCAP in accordance with Paragraph 6.4, Vendor will provide the following:
- i. Customer Name
 - ii. MMCAP Infuse ID
 - iii. Vendor ID (if applicable)
 - iv. Date attached or detached from MMCAP Infuse
 - v. Address
 - vi. City
 - vii. State
 - viii. Phone Number
- 6.5 **Non-Solicitation.** During the term of this Agreement, Vendor will not solicit any Members to enter into or negotiate a separate contract or agreement for the same or substantially equivalent products and services offered in this Agreement without MMCAP Infuse's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and Services covered by this Agreement and entering into separate contracts relating thereto. However, if the Vendor uses MMCAP Infuse and/or this Agreement as a vehicle to those responses, those sales will still be considered sales under this Agreement and reported and paid an Administrative Fee as outlined in **Article IX**.
- 6.6 **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 statutory language to establish a statewide contract for Members. These are separate from Purchase orders; these are addendum to this Agreement to provide for laws specific to a State jurisdiction. If these circumstances exist, the Vendor will work with MMCAP Infuse and applicable State to prepare an MPA to set forth the additional or altered terms and conditions. An MPA must clearly apply only to the requesting State and will not affect the rights of MMCAP Infuse, other States, and/or their Members, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein. When the specific terms are agreeable to the Vendor and the State, the MPA will be presented by MMCAP Infuse to each party for execution. No other mechanism of modifying or "attaching to" the Agreement is authorized. Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that State/Member. No verbal or written instructions from State/Members to change any provision of this Agreement will be accepted by Vendor without the prior approval of MMCAP Infuse.
- A. Services and Purchase Orders. If a Member is electing to utilize a Service from the Vendor, the Member and Vendor can utilize a Purchase Order to write specific unique details regarding the scope of Service being provided; MMCAP Infuse does not have to be involved with that process, however a final draft should be provided to MMCAP Infuse before execution. However, the Member will not attempt include any boiler plate terms that modify items covered under this Agreement or try to add any additional fees/costs that the Vendor would be required to pay with the Purchase Order.

ARTICLE VII AGREEMENT MANAGEMENT

- 7.1 **Required Vendor Personnel.** Vendor must maintain sufficient personnel who can provide comprehensive and timely customer service to the Membership and MMCAP Infuse. Vendor's personnel must have professional qualifications, training and experience, to provide support related to the Contracted Items. In addition, Vendor represents and warrants that its personnel have all the required licenses and certifications in accordance with all applicable law and regulatory agencies. To manage this Agreement, at a minimum, the Vendor must have the following point of contact to support this Agreement. The Vendor will provide a list of all personnel and contact information to MMCAP Infuse on the Effective Date. At a minimum, the Vendor will provide an updated list every six (6) months or when there is a change, whichever occurs first.
- A. Account representative and an alternate for MMCAP Infuse and eligible Members;
 - B. Customer service;
 - C. Distribution center representative(s);
 - D. Product training and education specialist in the form of facilitating such training and education with the applicable Manufacturer;
 - E. Supply chain improvement specialist;
 - F. Product ordering system technical support and training specialists;

- G. Membership/customer attachment specialist;
 - H. Accounting specialists, capable of addressing and timely solving invoice/credit re bill inquiries and shareback; and
 - I. Reporting specialist.
- 7.2 **MMCAP Infuse Account Representative.** Vendor will assign an account representative to MMCAP Infuse for this Agreement and will provide prompt notice, as soon as reasonably practicable, if that person is reassigned. In the event that the account representative is unresponsive (does not respond to inquiries within a reasonable time frame but not to exceed forty-eight (48) hours) or does not meet MMCAP Infuse's reasonable needs, the Vendor will work with MMCAP Infuse to find a mutually agreeable resolution. The account representative will be responsible for:
- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
 - B. Timely response to all MMCAP Infuse inquiries.
 - C. Performance of the business review as described in Paragraph 7.3.
 - D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the account representative.
 - E. Member Dedicated Representative. For any Member whose purchase volume exceeds five-hundred thousand dollars (\$500,000) annually, they may be eligible for a dedicated account representative as agreed to by Vendor and Member. If the Member and Vendor agree to this option, Member will provide written notice to the Vendor. Vendor will provide a dedicated account representative to the Member within thirty (30) days of such agreement, unless otherwise agreed to by Member and Vendor. This account representative will be the sole point of contact for the Member regarding any issues or inquiries.
- 7.3 **Reviews.** Quarterly, the Vendor will provide a list of Members who have a member-dedicated representative per Paragraph 7.2(E) and who their dedicated account representative is. Additionally, Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information. If the Member is eligible for an account representative, the Vendor must provide at least one in-person review.
- 7.4 **Customer Service Department.** Vendor must maintain a toll-free customer service center (1-800-472-4346 or custserv@henryschein.com) 8:00AM to 8:00PM locally and have a system to respond to emergency calls during its non-operational hours. The center must be capable of responding to telephone or electronic message inquiries (email, or text inquiries, from hand-held messaging devices). Additionally, any customer service representative must have the corporate authority, experience, and training to respond to any inquiry related to the Agreement. If a Member has an account representative, the requirements in this paragraph can be met by them.

ARTICLE VIII **WARRANTS, COVENANTS, AND DUTIES OF VENDOR**

- 8.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.
- 8.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse.
- 8.3 **FDA-Certified Drug Application.** Reserved.
- 8.4 **cGMP.** With regard to Vendor's private-labeled products, and solely to the extent required by applicable law as it pertains to a distributor of products, Vendor certifies that it is in compliance with the applicable requirements of the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) and the current United States Food, Drug, and Cosmetic Act.
- 8.5 **Health Care Product Regulations.** With regard to Vendor's private-labeled products, and solely to the extent required by applicable law as it pertains to a distributor of products, 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 standards set by ISO or UL. With regard to Vendor's private-labeled products, and solely to the extent required by applicable law as it pertains to a distributor of products, 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 **DSCSA.** As applicable, the Vendor will retain and provided access to 3T Data per the requirements specified by the DSCSA, at no charge, for all Members, as the case may be, purchasing Pharmaceuticals. If this cannot be done or during the term of the Agreement, or if Vendor is unable to provide, Vendor will provide prompt notice to MMCAP Infuse.
- 8.7 **Debarment.** Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide 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.

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- A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion. Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.
- 8.8 **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. Violations of federal, state, or local laws, orders, and/or policies;
 - E. Employees or subcontractors' criminal and civil claims; and/or
 - F. Failure to pay fees, charges, expenses, taxes, or other debts to third parties.
- 8.9 **Antitrust.** The Vendor agrees to, if requested, assign to the State of Minnesota any and all rights, titles, and interest to all causes of actions to MMCAP Infuse arising from 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. Vendor will be entitled to receive reimbursement for actual costs it incurred in assisting in or assigning the claim.
- 8.10 **Warranties.** Vendor will pass through to Member, at the time of sale, any transferable product warranties, indemnities and remedies provided to Vendor by the applicable manufacturer. EXCEPT AS OTHERWISE PROVIDED HEREIN, TO THE EXTENT PERMITTED BY LAW, VENDOR PROVIDES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND MEMBER AND MMCAP, AS APPLICABLE, SHALL LOOK TO THE MANUFACTURER OF THE PRODUCT FOR ANY WARRANTY THEREON.

ARTICLE IX **ADMINISTRATIVE FEE AND REPORTING**

- 9.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on all purchases of Products purchased by Members under this Agreement.
- A. The Administrative Fee amount will be as follows:
 - i. Three percent (3%) for all Net Purchases covered under this Agreement excluding Sublocade Products; and
 - ii. A quarter percent (.25%) on all Designated MMCAP Members Sublocade Products Net Purchases.
 - B. The payment of the Administrative Fees is intended to be in compliance with the Medicare and Medicaid Patient Protection Act of 1987 (Anti-Kickback Statute) and 42 U.S.C. §1320a-7b(b)(3)(A) and the "Safe Harbor" regulations regarding discounts or other reductions in price set forth at 42 C.F.R. §1001.952(h) and GPOs set forth at 42 C.F.R. §1001.952(j). Vendor will not pay an Administrative Fee on the same purchase to more than one GPO, nor will Vendor split an Administrative Fee on any item between such groups
 - C. 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
 - D. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment, or applicable freight charges.
 - E. Vendor will not pay an Administrative Fee on Purchases of Products ordered prior to the date an entity becomes a Member, as defined in this Agreement.
- 9.2 **Administrative Fee and Sales Reporting.** The Vendor must submit a monthly (1) administrative fee data report and (2) sales data report.
- A. **Administrative Fee Data Report.** Subject to Vendor's system limitations, the monthly administrative fee data report must contain the fields detailed below. All administrative fee data reports must be sent to: MMCAP.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The Vendor will provide a dedicated person.
 - i. Administrative Fee Data Report fields:
 - a. MMCAP Infuse Assigned Authorized Wholesaler Number

- b. MMCAP Infuse Assigned Manufacturer Number (for MMCAP Infuse Products)
 - c. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
 - d. Invoice Date (Point of Sale Date)
 - e. Invoice Number
 - f. MMCAP Infuse Member
 - g. Vendor's Account Number for the MMCAP Infuse Member
 - h. MMCAP Infuse Member DEA Number, if applicable
 - i. MMCAP Infuse Member HIN Number, if applicable
 - j. MMCAP Infuse Member Address
 - k. MMCAP Infuse Member City
 - l. MMCAP Infuse Member State
 - m. Product's NDC (Use all 11 digits (000768888888))
 - n. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
 - o. Credit Indicator (C = credit)
 - p. Contracted Units (The number of units purchased on contract.)
 - q. MMCAP Infuse Contracted Unit Price
 - r. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
 - s. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)
- B. Sales Data Usage Reports. Vendor will supply to MMCAP Infuse monthly sales data on or before the tenth (10th) day of the subsequent calendar month. The report must include Contracted Item dollar spend amount sorted in descending order and grouped by the Contracted Item category. Also, the report MUST include the information set forth on Attachment E, Table 1.
- 9.3 **Reporting Tools.** For no additional charge or subscription fee, the Vendor agrees to provide online electronic access to all purchasing data history to MMCAP Infuse and purchasing Members. The data provided by the Vendor must be manipulatable by MMCAP Infuse and the Members; it also must be able to download manipulate the data in a "XLSX" format.
- A. Customized Member Requests. A Member may request additional reporting from the Vendor, however any additional costs associated with those requested reports will be borne by the requesting Member and the Vendor may not pass on those costs directly or indirectly to the rest of the Membership and/or MMCAP Infuse.

ARTICLE X

INTELLECTUAL PROPERTY

- 10.1 **MMCAP Infuse Ownership.** MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IQVIA and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP Infuse or a Member request 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 and 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, non-transferable license to use and modify any pre-existing Vendor intellectual property, including marketing materials and materials contained in solicitation responses provided by Vendor to MMCAP Infuse or a Member. The aforementioned license is solely for use by Members, and their agents related to an internal business or governmental purposes.

- 10.4 Private Label Products Intellectual Property Indemnification.** In the event Vendor manufactures any product branded using a trademark or trade name owned by Vendor ("**Private Label Products**") for sale and distribution through this Agreement, Vendor will defend, indemnify and hold the Member(s) harmless from any action or other proceeding brought against a Member(s) by a third party to the extent that it is based on a claim that Vendor's trademarks used in connection with such Private Label Products delivered under this Agreement infringes any U.S. trademark. Vendor will pay costs and damages finally awarded by a court of competent jurisdiction after exhaustion of all appeals against a Member(s) as a result thereof; provided, that a Member(s): (i) notifies Vendor of the claim within ten (10) business days, (ii) provides Vendor with all reasonably requested cooperation, information and assistance, and (iii) gives Vendor sole authority to defend and settle the claim subject to applicable state law.
- A. **Exclusions.** Vendor will have no obligations under this Paragraph 10.4 with respect to claims arising from: (i) modifications to Private Label Products that were not performed by Vendor; (ii) misuse of the Private Label Products or Vendor's trademarks; (iii) compliance with specifications provided by a Member(s); or (iv) the use or integration of Private Label Products delivered under this Agreement in combination with other Products or other technologies not provided by Vendor, if the claim would not have arisen but for the particular combination. THE FOREGOING ARE VENDOR'S SOLE AND EXCLUSIVE OBLIGATIONS, AND MEMBER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO OR ARISING OUT OF THE INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO PRIVATE LABEL PRODUCTS.
- B. **Injunctions.** If a Member's use of any Private Label Products delivered under this Agreement is, or in Vendor's opinion is likely to be, enjoined due to a claim of infringement or misappropriation as specified in this Paragraph 10.4 above then Vendor may, at its sole option and expense: (i) obtain for a Member the right to continue using such Private Label Products under this Agreement; (ii) replace or modify such Private Label Products to avoid such a claim, provided that the replaced or modified Private Label Products is substantially equivalent in function to the affected Private Label Products; or (iii) if options (i) and (ii) above are not practical in Vendor's reasonable opinion, then Vendor may take possession of the affected Private Label Products and terminate a Member's rights and Vendor's obligations under this Contract in respect of such Private Label Products, and upon any such termination Vendor will refund to a Member the purchase price of the affected Private Label Product net any discounts, rebates or other adjustments.
- 10.5 Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.
- A. **Marketing.** Any direct advertising, marketing, or direct offers with Members must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.
- B. **Endorsement.** The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

ARTICLE XI **INSURANCE**

- 11.1 Notice.** The Vendor is required to submit Certificates of Insurance acceptable to MMCAP Infuse as evidence of insurance coverage requirements prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below and MMCAP Infuse has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP Infuse and copies of policies must be submitted to MMCAP Infuse. The Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 11.2 Additional Insurance Conditions.**
- A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP Infuse with respect to any claim arising out of Vendor's performance under this Agreement;
- B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify MMCAP Infuse within fifteen (15) business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP Infuse;
- C. Vendor is responsible for payment of Agreement related insurance premiums and deductibles;

- D. If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
 - E. Vendor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
 - F. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.
- 11.3 **Coverage.** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:
- A. Workers' Compensation Insurance. Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
 - i. \$100,000 – Bodily Injury by Disease per employee
 - ii. \$500,000 – Bodily Injury by Disease aggregate
 - iii. \$100,000 – Bodily Injury by AccidentIf 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. \$1,000,000 – 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

ARTICLE XII GENERAL TERMS

- 12.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email. Either party must notify the other of a change in address for notification purposes.
- 12.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales to a Member.
 - A. Invoice and Pricing Audit. MMCAP Infuse and Members served by this Agreement may periodically audit validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
 - B. Costs. Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 12.3 **Assignment.** 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.

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Henry Schein

- 12.4 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 12.5 **Order of Precedence.** Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, Order System, Purchase Orders, website use of terms, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this Paragraph, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.
- A.tt Purchase Orders and MPA. In respect to the relationship between the Vendor and Member, a Purchaset Order and/or MPA may override certain aspects of this Agreement under narrow circumstances outlinedtt and specified in the aforementioned documents.tt
- B.tt Terms of Sale (Attachment I). If there is a conflict between the Terms of Sale and this Agreement or MPA,tt this Agreement supersedes. The following parts of the Terms of Sale will be unenforceable against MMCAPI Infuse or the Members:tt
- i.tt Finance Charge
- ii.tt Arbitrationtt
- iii.tt Limitation of Liability is updated as follows: HENRY SCHEIN SHALL NOT BE LIABLE FORTT INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOSS OF GOODWILL, ARISING FROM ORTT RELATING TO ANY BREACH TO THIS AGREEMENT (OR ANY DUTY OF COMMON LAW, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.tt
- 12.6 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.
- 12.7 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP Infuse and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding and will be fully performed.
- 12.8 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 12.9 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

VENDOR: Henry Schein, Inc.

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

Name: Jeff Klingler

Signature:  Jeff Klingler

Title: VP & GM, U.S. Specialty Distribution Group

Date: August 29, 2023

STATE OF MINNESOTA FOR MMCAP

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

Name: DocuSigned by: James Babbitt

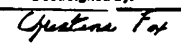
Signature: 

Date: 8/30/2023

COMMISSIONER OF ADMINISTRATION

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

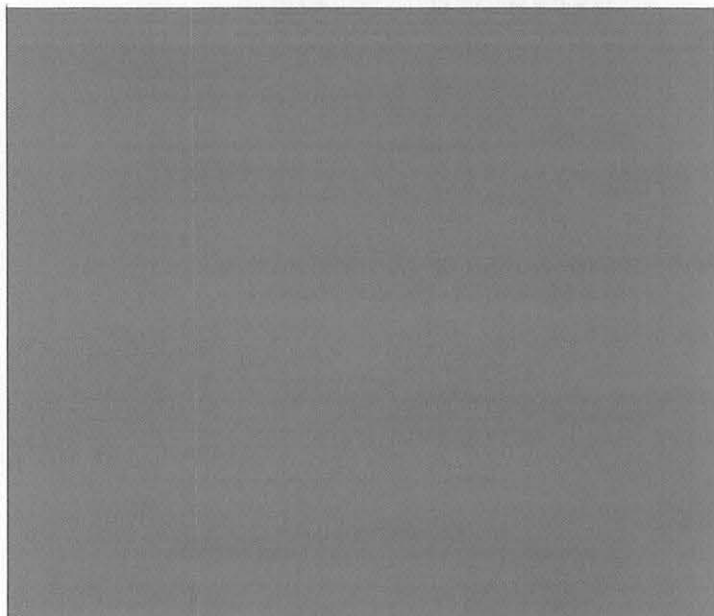
Name: DocuSigned by: Christina Fox

Signature: 

Date: 8/31/2023

ATTACHMENT A-3
MMCAP Infuse Loaded Product Categories and Mark-Ups

Categories	Mark-Up % (Not to Exceed)	UNSPSC Codes
Incontinence		42142700; 42443800; 42143900
Attends Healthcare Products, Inc.		
Essity HMS North America, Inc.		
First Quality Products, Inc.		
Medline Industries, Inc.		
Nutritionals		422318; 5119; 8515
Abbott Laboratories, Inc.		
Ajinomoto Cambrooke, Inc.		
Gerber Products Company		
GVM Associates, Inc.		
Mead Johnson and Company, LLC		
Nestle Healthcare Nutrition, Inc.		
Nutricia North America, Inc.		
Diabetic Products; Needles and Syringes		421425; 421426; 4222; 411220
Abbott Diabetes Sales Corporation		
Agamatrix, Inc.		
Lifescan, Inc.		
Owen Mumford USA, Inc.		
Retractable Technologies, Inc.		
Roche Diagnostic Corp.		
Trividia Health, Inc.		
Pharmaceuticals		
HR Pharmaceuticals, Inc.		
Unifirst-First Aid Corporation DBA Medique Products		
Containers and Vials		411041; 422217
Berry Global, Inc.		
Centor, Inc.		
Condoms		53131622
B Holding Group, LLC		
Global Protection Corp.		
SXWELL USA, LLC		



ATTACHMENT A-4
Vendor Exclusive Brands

Indivior, Inc. (Sublocade):

Manufacturer	NDC	Description	Packaging	Quantity	Pricing (WAC :-)	Class of Trade
Indivior, Inc.	12496010001	Sublocade 100mg/0.5ml Syringe	1 Syringe	1		Corrections
Indivior, Inc.	12496030001	Sublocade 300mg/1.5ml Syringe	1 Syringe	1		Corrections
Indivior, Inc.	12496010001	Sublocade 100mg/0.5ml Syringe	1 Syringe	1		All (Except Corrections)
Indivior, Inc.	12496030001	Sublocade 300mg/1.5ml Syringe	1 Syringe	1		All (Except Corrections)

ATTACHMENT A-5
Additional Exceptions to Prohibited Products

1. **Specific Pharmaceutical Over the Counter Treatments (OTC):** The Vendor can sell the following OTC Products under the Non-Core category:
 - A. Cold/Cough Remedies
 - B. Vitamins
 - C. Supplements
 - D. Pain relievers
 - E. Irrigation Solutions
 - F. Topical Pain Relief
 - G. Antifungals
 - H. Antiseptics
 - I. Allergy Relief
 - J. Digestive Medication
2. **Vendor private label Nutritional, Incontinence, and Diabetic Supply Products**
3. **Lancets**
4. **Fentanyl Test Strips that do not require special licenses and are rapid (does not need to be processed by a lab and does not have a service component).**

ATTACHMENT E
Reporting Requirements

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

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

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

Table 2: Substitution Report (Paragraph 3.2)

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

Table 3: Punch-out User Reports (Paragraph 3.17)

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

Table 4: ePro/Buyspeed Upload Template (Paragraph 2.2(A))

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

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

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

1.rr Compliance Formula:

Core + MMCAP Infuse Products Sales

Total Sales

e Re I c

HENRY SCHEIN®

RETURNS:

WE CANNOT ACCEPT ANY RETURNS WITHOUT PRIOR AUTHORIZATION. To arrange for a return, simply call our Customer Service department or contact your Sales Consultant. The following conditions must be complied with:

- All returns must be accompanied by a copy of your invoice and a reason for the return.
- Merchandise must be returned in its original unopened container, unmarked, and properly packaged.
- Returned products must have been purchased within the previous thirty (30) days. Any returns past thirty (30) days are subject to a restocking fee.
- Shortages or errors in shipments must be reported within seven (7) days of invoice date to issue credit (if applicable).
- Shipping charges will apply on all returns.

[Click here to download the Medical Returns Form PDF](#)

To view PDF files, you need to have Adobe Acrobat Reader®. [Click here for a free download.](#)

Exceptions:

The following special, customized, or government-regulated items are not returnable:

- Immune globulin products
- Special order items (products that we do not ordinarily stock)
- Personalized and imprinted items
- Opened computer hardware and software
- Hazardous/flammable materials
- Expired products
- Items that cannot be returned to the manufacturer
- Any item marked nonreturnable
- Items required to be shipped and stored frozen
- Any drop-shipped products
- In vitro diagnostics products

Equipment:

Opened and used equipment may not be returned for credit. Before opening equipment, we suggest that you check the shipping container and packing list to ensure that you are getting exactly what you ordered. Equipment must be returned in the original unopened packaging, unmarked and properly packaged. Special order equipment is not returnable.

All equipment returns are subject to a restocking fee. Equipment is backed by the manufacturer's repair or replacement warranty. Please read and return all warranty information required immediately upon taking delivery of your new equipment. Open or defective equipment is subject to the manufacturer's warranty.

Prescription Drug Returns:

Please note that, in order to comply with Federal and State traceability requirements, prescription drugs may be returned providing that the following key elements are met:

1. Returns of prescription drugs will only be accepted if Henry Schein is notified within 30 calendar days of shipment date and valid return authorization is issued by Henry Schein.
2. The Prescription Drug Marketing Act requires any customer returning prescription drugs to complete and return a Prescription Drug Return Authorization form. Federal law requires that the healthcare entity returning prescription drugs document that the product was kept under proper storage and handling conditions while in their possession and during the return of the product. To get a copy of the form and proper return authorization, please contact Customer Service or access our online [Prescription Drug Return Policy and Return Form](#).
3. In addition, traceability regulations require that the healthcare entity returning prescription drugs certifies that the product being returned is the same exact product purchased from Henry Schein.
4. Henry Schein will not issue credit for any returned prescription drugs which return was not authorized as provided herein, have been tampered with or where the labeling has been altered in any way.

This information can be found at: <https://www.henryschein.com/us-en/medical/LegalTerms.aspx>

HENRY SCHEIN RECALL POLICY:

This product recall policy shall be applicable to all recalls and withdrawals due to:

- Any action initiated at the request of the FDA or other federal, state or local lawrr enforcement or other government agency, including the Virginia Board of Pharmacy.rr
- Any voluntary action by the manufacturer to remove defective or potentially defectiverr drugs from the market.rr
- Any action undertaken to promote public health and safety by replacing existingrr merchandise with an improved product or new package design.rr

Henry Schein's Regulatory Department will be responsible for monitoring the recall activities of Henry Schein and to assure that each operation is being accomplished in a timely and efficient manner in accordance with the urgency of the recall.

Corporate Regulatory will submit reporting to manufacturers, FDA and states, as applicable.

It is Henry Schein's goal to process and distribute information pertaining to Class I product recalls within 24 hours of receipt of notification and Class II & III recalls within 72 hours from the time that Henry Schein receives notification from the manufacturer.

Henry Schein's Regulatory Department will be responsible for making any follow-up contacts for Henry Schein deemed necessary via telephone, fax or mail to ensure that all customers have received notice of the recall and will make documentation of such contacts.

Customers will respond by signing / indicating on the response form that they do / do not have product. Within 30 days of the initial notification date, additional notifications will be made as necessary.

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Terms of Sale

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THE HENRY SCHEIN PRICE POLICY: We endeavor to maintain prices for the duration of a catalog, but we reserve the right to make price adjustments in response to manufacturers' price increases or extraordinary circumstances. Prices are subject to change without notice.

Henry Schein, Inc. ("Henry Schein") and customer agree that the terms and conditions hereinafter set forth shall govern the relationship between Henry Schein and the customer to the extent that the parties do not have a written agreement in effect that conflicts with such terms and conditions. Customer acknowledges and accepts all such terms and conditions by placing an order for goods with Henry Schein, and upon Henry Schein's delivery of the order to the customer.

Choose Your Payment Method

Reduce the cost and administration of paying Henry Schein- Pay electronically (ACH Debit) or set up AutoPay. Please call Customer Service for details.

For your convenience, we provide several payment alternatives. Orders billed to your account may be paid by ACH Debit, Check by Phone, or Check. If you prefer, you may use your Henry Schein Credit Card, American Express, Visa, MasterCard or Discover Card when placing your order. All sales are subject to our normal terms and conditions. Unless otherwise instructed, check payments must be mailed to: Henry Schein, Inc./ Dept. CH 10241 • Palatine, IL 60055-0241

All sales are subject to credit approval. Invoices are payable within agreed terms of sale. Henry Schein and its affiliates reserve the right to offer a dual pricing system for payment by check, Henry Schein-approved ACH and/or Henry Schein-approved EFT vs. any other payment method and, to the extent permitted by law, reserves the right to surcharge for payment by credit card and/or other methods incurring a fee to Henry Schein.

Open Accounts Receivable

All unpaid accounts receivable past due are subject to a 1.5% finance charge.

DELIVERY TERMS: Delivery dates are not guaranteed. Purchase orders are subject to product availability. Customers' sole and exclusive remedy for failure to deliver shall be refund of monies paid for the products at issue. Unless otherwise agreed, freight terms are FOB Shipper's Dock ("Ex Works" outside North America). Except as noted below, title passes at the time the shipment is loaded at the shipper's dock. **California:** For all shipments of goods to customers located within California, title will pass upon receipt of goods by California customers.

Continental U.S.: All orders will be subject to a handling charge. This charge includes freight, except for additional carrier charges related to special delivery services and hazardous material shipments. Special orders are subject to additional freight charges.

Alaska, Hawaii & Pacific Protectorates: Standard shipping methods provide direct, reduced cost, expedited air delivery service to all accounts in Alaska and Hawaii. Customers in the Pacific Protectorates are offered direct surface transport, or postal services for reliable delivery. No additional surcharges apply, except when special services are requested. Low-level hazardous items (dangerous goods in accepted quantities and Consumer Commodity ID 8080) are now available via UPS 2nd-day air.

Guam, Puerto Rico, U.S. Trust Territories & Virgin Islands:

All orders will be subject to a handling charge. This charge includes freight through the United States Postal Service (USPS). Special delivery orders and hazardous material shipments can be shipped via United Parcel Services (UPS) for an additional charge. No minimum order amount or weight applies. Speak to your International Representative for details.

Outside U.S. (50 states): If your order is being shipped outside the U.S. (50 states), please refer to the International Terms & Conditions at henryschein.com. Unless otherwise agreed, freight terms are FOB Shipper's Dock ("Ex Works" outside North America). Title passes at the time the shipment is loaded at the shipper's dock. Customer is responsible for compliance with any applicable import requirements.

RX PRODUCTS & CONTROLLED SUBSTANCES:

Regulations require us to limit the sale of Rx and controlled substances only to registered, licensed healthcare professionals. If you are a new customer or have recently moved, please furnish us with a copy of your updated state and federal registrations verifying your shipping address. Please note that all orders for controlled substances are subject to a due diligence review process. Schedule II controlled substances can be ordered electronically or by mail. For more information on our Controlled Substance Ordering System please visit www.henryschein.com/e222; if you prefer to continue using Federal 222 Forms to order Schedule II controlled substances, mail the form to: Hen Schein, Inc. • 5315 West 74th Street • Indianapolis, IN 46265

Henry Schein restricts the sale or other transfer of medications to prisons/correctional facilities for use in lethal injections, based on our manufacturer agreements. The goods Henry Schein sells are intended to be used for their label-approved purposes or applicable standards of care, which do not include human lethal injection.

THE DRUG SUPPLY CHAIN SECURITY ACT (DSCSA):

(MNI, BII, WH, M2) The Drug Supply Chain Security Act (DSCSA) information related to prescription drug products is available on our website www.HenrySchein.com/pedigree. If you have any problems accessing our website or would like to receive a copy of DSCSA documentation via fax, mail or email, please contact our customer service department at 1-800-472-4346.

REGULATORY REQUIREMENTS: Local regulatory requirements may apply to use or installation of certain products. Be sure to understand and comply with any such requirements prior to purchase, use, or installation of products.

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To arrange for a return, simply call our Customer Service department or contact your Sales Consultant. The following conditions must be complied with:

- All returns must be accompanied by a copy of your invoice and a reason for the return.

DISCOUNTS, REBATES AND DISCLOSURES: Invoice or statement prices may reflect or be subject to a bundled discount or rebate pursuant to purchase offer, promotion or discount program. You must fully and accurately report to Medicare, Medicaid, Tricare and/or any other federal or State program, upon request by such program, the discounted price(s) or net price(s) for each invoiced item, after giving effect to any applicable discounts or rebates, which price(s) may differ from the extended prices set forth on your invoice. Accordingly, you should retain your invoice and all relevant information for your records. It is your responsibility to review any agreements or other documents, including offers or promotions, applicable to the invoiced products/prices to determine if your purchase(s) are subject to a bundled discount or rebate. Any such discounts must be calculated pursuant to the terms of the applicable purchase offer, promotion or discount program. Participation in a promotional discount program is only permissible in accordance with discount program rules. By participation in such program, you agree that, to your knowledge, your practice complies with the discount program requirements.

Henry Schein Telephone Hotlines...We're Here Ready to Help!

Henry Schein Medical
To Place An Order 1-800-772-4346 8am-8pm, etl
To Fax An Order 1-800-329-9109 24 Hours
Customer Service 1-800-472-4346 8am-8:30pm, et
Internet www.henryschein.com/medical
E-mail medinfo@henryschein.com

eCommerce Technical Support 1-800-711-6032 8am-8pm, et
PRIVILEGES
Henry Schein Financial Services 1-800-443-2756 8am-8:30pm, et
ProRepair 1-800-367-3674 8am-7pm, et
International Dept. (USA) 1-631-843-5325 or Fax 1-631-843-5676
In Canada 1-800-223-3300 8am-7pm, et

Henry Schein Medical/EMS
To Place An Order 1-800-845-3550 8:30am-5:30pm, et
To Fax An Order 1-800-633-4793 24 Hours
Customer Service 1-800-845-3550 8:30am-5:30pm, et
Internet www.henryschein.com/ems
E-mail ems@henryschein.com

340B Program
To Place An Order 1-877-344-3402 8:30am-6:30pm, et
To Fax An Order 1-888-886-2253 24 Hours
Customer Service
Internet
E-mail customer.support@henryschein.com
1-800-711-6032 8am-8pm, et

Henry Schein Athletics and Schools
To Place An Order 1-800-323-5110 8am-8pm, et
To Fax An Order 1-800-524-4989 24 Hours
Customer Service 1-800-323-5110 8am-8:30pm, et
Internet www.henryschein.com
Email athleticsandschools@henryschein.com

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CORPORATE ACCOUNTS:

Terms of Sale follow the same guidelines unless denoted differently in a contract. Some offers and promotions outlined in the catalog may not apply. Requests for bids and proposals may be sent to:

Henry Schein, Inc., Medical Bid Department (Mail Route E-270) 135 Durjoy Road, Melville, NY 11747

INTERNATIONAL AND CANADIAN ORDERS:

We proudly serve healthcare professionals, governments, and dealers throughout the world. To place orders or for inquiries on export terms and conditions please contact the International Department (USA) at phone: 1-631-843-5325, fax: 1-631-843-5676, or send us an e-mail at: export@henryschein.com.

ARBITRATION:

All Claims related to or arising under or relating to this Agreement except for Claims for non-payment of amounts due to Henry Schein for the sale of products) are to be exclusively and finally determined by binding arbitration in the state of New York, or another location mutually agreeable to the parties. Any and all Claims must be arbitrated on an individual basis, and there shall be no right or authority for any Claims or disputes to be arbitrated on a class action or collective basis. For avoidance of doubt, each party irrevocably waives any right to: (i) have any Claim resolved in connection with any class action or collective action, or (ii) recover any damages or relief directly or indirectly as part of any class action or collective action. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association, or if applicable, under its Procedures for Large, Complex Commercial Disputes. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator experienced in the disputed subject matter and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be or has been at any time employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. To the extent that any Claim or dispute is determined to not be subject to arbitration, all other Claims or disputes that would otherwise be subject to arbitration shall be arbitrated. As used in this Agreement, "Claims" shall mean any and all liabilities, disputes and expenses whatsoever including, without limitation, claims, adversary proceedings (whether before a court, administrative agency or any other tribunal), damages (whether compensatory, multiple, exemplary or punitive), judgments, awards, penalties, settlements, investigations, costs, responses to subpoenas or other governmental directives and reasonable attorneys' fees and disbursements with respect to any claims that may be sustained, suffered or incurred by a Party herein.

WARRANTIES: Henry Schein will pass through to the customer, at the time of sale, any transferable product warranties, indemnities and remedies provided to Henry Schein by the applicable manufacturer. EXCEPT AS OTHERWISE PROVIDED HEREIN, TO THE EXTENT PERMITTED BY LAW, HENRY SCHEIN PROVIDES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND THE CUSTOMER SHALL LOOK TO THE MANUFACTURER OF THE PRODUCT FOR ANY WARRANTY THEREON.

LIMITATION OF LIABILITY: The customer agrees to look solely to the manufacturer of the product for any claim arising due to loss, injury, damage or death related to the use or sale of products. HENRY SCHEIN SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND LOSS OF GOODWILL, ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT (OR ANY DUTY OF COMMON LAW, AND WHETHER OR NOT OCCASIONED BY THE NEGLIGENCE OF HENRY SCHEIN OR ITS AFFILIATES), REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.