

MA 18P 18081500000000000014
MODIFICATION

State of Maine



Master Agreement

Effective Date: 08/23/18

Expiration Date: 06/25/21

Master Agreement Description: Medical Supplies Contract, MMCAP MMS18016

Buyer Information

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

Issuer Information

Mary Brochu 207-287-3237 ext. mary.l.brochu@maine.gov

Requestor Information

Mary Brochu 207-287-3237 ext. mary.l.brochu@maine.gov

Agreement Reporting Categories

Reason For Modification: Extension to 6/25/2021.

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VC1000036215

Vendor Name

HENRY SCHEIN INC

Alias/DBA

Vendor Address Information

135 DURYEA RD E270

MELVILLE, NY 11747

US

Vendor Contact Information

Ken Wormell
207-215-9542 ext.
ken.wormell@henryschein.com

Commodity Information

Vendor Line #: 1

Vendor Name: HENRY SCHEIN INC

Commodity Line #: 1

Commodity Code: 47500

Commodity Description: Medical Supplies Contract, MMCAP MMS18016

Commodity Specifications: MMCAP Medical Supplies Contract MMS18016, as per the documents attached and made part of this MA. Pricing and contract documents too large to attach. Contact Donny Crockett for info.

Commodity Extended Description: Agency user to submit an MMCAP Application to Div of Purchases Attn: Donny Crockett prior to submitting orders. Applications are submitted once and remain on file for all MMCAP related contracts.

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
	FOB Dest, Freight Prepaid	
Contract Amount	Service Start Date	Service End Date
0.00	08/23/18	06/25/21
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Please see authorized signatures displayed on the next page

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

State of Maine - Department of Administrative and Financial Services

DocuSigned by:

Jaime Schorr

7/16/2020

6D6437754DD0459

Signature

Date

Jaime C. Schorr, Chief Procurement Officer

Vendor

Nancy A. Lanni

7/16/2020

Signature

Date

Nancy A. Lanni, VP Healthcare Services & Sales Education

Print Representative Name and Title

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KEY DEFINITIONS

Throughout this Contract, the following key terms are defined below.

Automatic Product Substitution - An order fulfillment process whereby Products that are not available at the time of order placement, may be automatically substituted with another equivalent (brand, generic or private label) Product substitute, contingent upon written consent by the ordering MMCAP Member.

Commencement Date - The date the Vendor is fully operational and ready to accept and ship orders from MMCAP Members as applicable to the service area designated in the Contract.

Confirmation Printback/Order Confirmation - An electronic confirmation report generated from the Vendor's ordering system, which is sent back electronically to the ordering facility, indicating that the requested Products are available, on Manufacturer Backorder, out of stock, or deleted, etc.

Core Products - Products determined by MMCAP that produced the highest volume in sales, and highest quantity shipped during a given one (1) calendar year period. These Products are identified in *Attachment A, Products and Services Pricing*, under the *Brand Label Core Products* and *Private Label Core Products* tabs.

Drop Shipment(s) - Products ordered by MMCAP Member through the Vendor, and shipped directly to the MMCAP Participating Facilities, from the Manufacturer. The Manufacturer notifies and bills the Vendor, who then invoices and receives payment from the MMCAP Member.

EDI (Electronic Data Interchange) - Inter-process (computer to computer application) communication of business information, in a standardized electronic form.

Effective Date - The date the Contract is fully executed.

Emergency Product Delivery - An off-schedule delivery day of the Products required by the MMCAP Participating Facilities, which may include orders of Product for patient, specific medical treatment, or to ensure the facility has sufficient Product to remain operational until the next-scheduled delivery day.

Fiscal Year - The State of Minnesota's Fiscal Year period of July 1-June 30 of each calendar year.

Manufacturer: Any supplier or entity that develops and/or manufactures any, medical Products (including Medical Equipment).

Manufacturer Backorder(s) (MBO) - An order placed by the MMCAP Member to Vendor or Vendor to a Manufacturer for such MMCAP Member, which is not shipped to the Vendor or MMCAP Member, as applicable, due to industry wide shortages or other supply issues.

Medical Equipment - Medical devices that have been cleared by the FDA, that are intended to be used for diagnostic, therapeutic, or monitoring care, provided to a patient by a health care organization.

NOTE 11 - Medical equipment includes devices such as monitoring equipment, life support equipment, imaging equipment, laboratory equipment, mechanical equipment, transport equipment, as well as any other equipment supporting the care of a patient, whether or not it is in the immediate vicinity of a patient. In addition, this equipment category includes other devices, such as computers, that support the care of a patient

1 Reference: The Association for the Advancement of Medical Instrumentation (AAMI).

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when in a health care organization, but are generally not specifically manufactured for use in a health care organization. As used in this standard, the term “equipment” refers to medical equipment.

NOTE 22 - Embedded software is covered by the medical device manufacturer; standalone software is covered by ANSI/AAMI/IEC 80001-1:2010, *Application of risk management for IT networks incorporating medical devices—Part 1: Roles, responsibilities, and activities*.

MMCAP Contract/Agreement - Also referred to as the “Contract”, is the agreement including any attachments, addenda and exhibits and is executed by the Vendor and MMCAP, for the distribution and sale of medical Products, Services, Medical Equipment, and select pharmacy Products as agreed to in writing by MMCAP and Vendor.

MMCAP Contract Pricing - The applicable MMCAP Contract Product price agreed upon by the Vendor and MMCAP, and if applicable to this Contract, the Product cost agreed upon by the MMCAP Contracted Manufacturer and MMCAP, provided Vendor shall have the right to determine the final Product price for such Product.

MMCAP Member States – States with whom the State of Minnesota has executed a Joint Powers Agreement (as such term is defined or understood under applicable Minnesota law), and through which they have joined MMCAP.

MMCAP Members - These are eligible purchasers that are deemed by the MMCAP Office, to have completed, and met the requirements of the membership application process.

MMCAP Participating Facility(ies) - Consist of facilities that are MMCAP Members (eligible purchasers as set forth in *Section 6 of Article 4, “Eligible Purchasers,”* of this Contract), and facilities recognized by the MMCAP Members, as facilities eligible to receive the delivery of Products and Services.

MMCAP Contract Products - Refers to all Products, covered in *Attachment A: Products and Services Pricing*. These products cover the entire Product catalog of the awarded Vendor and are identified in *Attachment A*, under the following tabs: the *Brand Label Core Products* tab, the *Private Label Core Products* tab, the *Non-Core Products 3* tab, and the *Equipment Schedule* tab.

MMCAP State Contacts - Purchasing and pharmacy professionals designated by MMCAP Member States, who serve as liaisons between the MMCAP Office and the MMCAP Participating Facilities in each State. A list of MMCAP State Contacts is available at:

http://www.mmd.admin.state.mn.us/MMCAP/background/New_Current_States.aspx.

Net Purchase - All purchases of Products (excluding returns, credits, rebates, late charges and similar fees) made through Vendor by any MMCAP Member, including Drop Shipments, in the normal course of business.

Non-Core Products - Refers to Products not specifically covered in the *Brand Label Core Products* tab, the *Private Label Core Products* tab, and the *Equipment Schedule* tab. Through the categories listed in the *Non-Core Products* tab, the awarded Vendor will offer the rest of the Products available in its catalog, which are not featured in the remaining tabs in *Attachment A: Products and Pricing*. Vendor, in agreement with MMCAP, may amend the *Non-Core Product* categories, as new additions or deletions take place, in the Vendor’s catalog.

² Reference: *The Association for the Advancement of Medical Instrumentation (AAMI)*.

³ The listed categories in the *Non-Core Products* tab, are intended to cover the Vendor’s most current, published catalog of Products, which are not listed in the remaining tabs.

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Order - Means, any purchase order used to order Products or Services under this Contract. An Order amended, consistent with the requirements of any MMCAP Participating Facility, and accepted by the Vendor, shall be governed by the terms and conditions of the original Order, except as amended.

Order Originator - The MMCAP Member, who places the order with the Vendor.

Product(s) - Products and Medical Equipment offered by the Vendor and awarded by MMCAP, which are listed in *Attachment A: Products and Services Pricing*.

Product Backorder - A Product order that is not fulfilled in the time frame set forth in this Contract, due to Product unavailability, resulting from the Vendor's or the Manufacturer's inability to supply the Product.

Private Label Products - any product that is branded using a trademark or trade name owned by Vendor.

Product Substitutes - Equivalent (brand, generic or private label) Products that the ordering MMCAP Member consented to in writing to accept as a substitute for the ordered MMCAP Contract Products.

Replacement Products - In the event a Product covered under this Contract is removed by the Vendor, or recalled by a Manufacturer, the Vendor will use commercially reasonable efforts to replace the Product with an acceptable Product substitute. In the event the Vendor cannot obtain a suitable Product substitute, then the affected MMCAP Member may purchase the Product from a non-contract source.

Services - Any related offering provided by the Vendor related to the Products covered by this Contract, and which can be provided by the Vendor for a fee or at no cost to MMCAP Members. Services may include but are not limited to: customer service, Product ordering systems, clinical education, Product training, and Product marketing, among others. Services may, or may not, incur cost. Vendor is also providing additional Services as set forth in *Attachment N Additional Value Offerings*.

Special Products - If applicable to this Contract, includes all MMCAP Contract Products that require special temperatures and environmental conditions, in accordance with Manufacturer requirements for delivery to the MMCAP Participating Facilities. Special Products requiring refrigeration will be clearly marked as such.

Stocking Requirements - The standard minimum purchase requirement of two (2) selling units per month for each distribution center operated by Vendor at the Manufacturer's standard unit of measure.

Vendor - MMCAP's contracted Vendor that distributes Products and provides Services, related to the Products for the MMCAP Membership, pursuant to the terms of this Contract.

Vendor Contract Performance Report - A written report prepared by the MMCAP Office, detailing the proficiency of the Vendor. Repeated low ratings in the report might be conducive to penalties, including termination, as well as the inability of the Vendor to respond to future solicitations published by MMCAP.

Vendor's Contracted Supplier - Any supplier, Manufacturer, or distributor of Medical Equipment, medical supplies and other non-pharmacy Products that supplies and has a contract to supply Vendor with Products purchased under this Contract.

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

This contract is between the State of Minnesota, acting through its Commissioner of Administration on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy (“MMCAP”) and Henry Schein Medical a division of Henry Schein, Inc., located at 135 Duryea Road, Melville, NY, 11747 (collectively, “Vendor” or “Contractor”).

ARTICLE 1: RECITALS

1. Under Minn. Stat. § 16C.03, the Commissioner of Administration, on behalf of MMCAP, is empowered to engage such assistance as deemed necessary.
2. MMCAP is a group purchasing organization of government owned and/or operated health care facilities which contracts for healthcare Products and Services for its members’ use. Participation in MMCAP is limited to facilities within member states that are specifically permitted by the member state’s statutes to purchase goods from the member state’s contracts. Participation is generally available to facilities run by state agencies, counties, cities, townships, and school districts.
3. The Vendor wishes to contract with MMCAP to supply Medical Products and Services to the national MMCAP Participating Facilities.

ARTICLE 2: INCORPORATION

1. The parties agree that the recitals are true and correct, and are hereby incorporated into this Contract.

2. Attachments, Exhibits, and Order of Precedent

2.1. The following attachments and Exhibits are attached and incorporated into this Contract. In the event of conflict, the following order of precedence applies.

- *Attachment A: Products and Services Pricing*
- *Attachment B: Statement of Work*
- *Attachment C: MMCAP Member Participation Agreements*
- *Attachment D: Service Area*
- *Attachment E: Vendor’s Contract Implementation and Transition Plan*
- *Attachment F: MMCAP Contracted Manufacturer List*
- *Attachment G: Vendor’s Shipping Policy*
- *Attachment H: Vendor’s Stock Outage and Backorder Policy*
- *Attachment I: Vendor’s Product Return Policy*
- *Attachment J: Vendor’s Product Recall Policies/Procedures*
- *Attachment K: Vendor’s Business Interruption Plan*
- *Attachment L: Vendor’ Escalation Procedure*
- *Attachment M: Vendor’s Discount Structure, Intentionally Omitted*
- *Attachment N: Additional Value Offerings*

2.2. Member Participation Agreements (MPAs)

In order to access this Contract some members require jurisdiction-specific additional paperwork or contract language. Vendor must not sign any member documents without prior MMCAP review and approval. If needed, MMCAP will issue a Member requested Participation Agreement (MPA) that will be amended into to this Contract. No other mechanism of modifying or “attaching to” MMCAP contracts is authorized. The MPA, which will only apply to the requesting Member and must be signed in the following order: Member, Vendor, then MMCAP. Vendor is not required to agree to any additional

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terms; however, by not agreeing to the MPA Vendor may be precluded from doing business with that Member. In the event a Member requires a fee be added to the Contract price (e.g., member levied procurement fee or system use fee), that fee must be added on top of the MMCAP-contracted pricing. Vendor may not absorb the fee. Vendor must not pay a member levied fee without first collecting the fee through increased Product costs. The fees will be set aside and paid to the member as would be detailed in an MPA.

Except as provided in a MPA approved by MMCAP and executed by an MMCAP Member, Vendor and MMCAP, all orders placed by MMCAP Members with Vendor will be priced and offered by Vendor per the terms and conditions of this Contract, and no other terms provided by the MMCAP Member will apply to such orders.

For each state requiring state specific language, a further Exhibit shall be attached to *Attachment C: MMCAP Member Participation Agreements*.

2.2.1. Should any of the terms set forth in any attachment conflict with any terms set forth in the Contract document, the terms of the Contract document shall prevail, except when such conflict arises from the state-specific terms set forth in *Attachment C: MMCAP Member Participation Agreements*, in which case the order of precedence set forth in *Article 2, Section 2.2.2*, shall apply.

2.2.2. Should any terms in the Contract document or other attachments conflict with the state-specific terms set forth in *Attachment C*, the terms set forth in *Attachment C* shall take precedence over the terms of the Contract document, but only as between the Vendor and the MMCAP Member and/or MMCAP Participating Facility bound by said state-specific terms. No other State shall be bound by the terms set forth in any other State's state specific language set forth in the Exhibit provided by an MMCAP Member State and attached to *Attachment C*.

2.2.3. MMCAP and the State of Minnesota shall not be bound by non-Minnesota state-specific terms set forth in any Exhibit included in *Attachment C* at any time, nor when bringing any enforcement action on behalf of MMCAP or the State of Minnesota.

2.2.4. During the term of this Contract other MMCAP Member States may request the MMCAP Office or the Vendor to amend this Contract to include terms and conditions specific to the requesting MMCAP Member State by attaching an Exhibit to *Attachment C* specific to that State. If a MMCAP Member State requests an amendment to this Contract to include their state specific requirements, the Vendor must work with the MMCAP Member State and the MMCAP Office to execute an amendment to this Contract in a reasonable period of time. No verbal or written instructions from the MMCAP Member States, MMCAP Participating Facilities, or any of their staff or state officials to change any provision of this Contract will be accepted by the Vendor without the prior written approval of the MMCAP Office. The Vendor will immediately report any such requests to the MMCAP Office.

ARTICLE 3: REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

1. GPO Representation

MMCAP represents and warrants that it is a "group purchasing organization" (GPO) as that term is defined under 42 C.F.R. Section 1001.952(j) and that it shall comply with all applicable federal and state laws, rules and regulations, including, but not limited to, the provisions set forth in 42 U.S.C. Section 1320a-7b and the "safe harbor regulations" set forth in 42 C.F.R. Section 1001.952. MMCAP is an entity authorized to act as a purchasing agent for a group of entities who are furnishing services for which payment may be made in whole or in part under Medicare or a State health care program, and who are neither wholly-owned by MMCAP nor subsidiaries of a parent corporation that wholly owns MMCAP (either directly or through another wholly-owned entity), and the MMCAP program and this Contract do and will continue to fully comply with the safe

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harbor described therein. For the purpose of this clause the State of Minnesota shall not be deemed a parent corporation nor shall any state agency or public entity be deemed a subsidiary.

2. Federal Health Care Program Exclusion

The parties represent that, to its knowledge, its directors, officers and employees (i) are not sanctioned individuals or companies and have not been listed by any federal agency as barred, excluded, or otherwise ineligible for participation in federally funded health care programs as defined in 42 U.S.C. Sec. 1320a-7b(f) (the "Federal Healthcare Programs"); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or services, an (iii) are not under investigation or otherwise aware of any circumstances which may result in Party being excluded participation in Federal Healthcare Programs. Vendor certifies that to its knowledge it does not contract with any individuals or companies that have been sanctioned, debarred or excluded from participation in any federally funded health care programs to fulfill Vendor's obligations under this Contract. In the event of a breach of this provision, this Contract shall immediately terminate, in spite of any notice and cure provisions to the contrary. Vendor agrees to indemnify, hold harmless and defend the State of Minnesota, MMCAP and its Participating Facilities from any claims, demands or damages which the State of Minnesota, MMCAP and its Participating Facilities may suffer as a result of Vendor's breach of this *Section 2*.

3. Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions

Vendor certifies that, to its knowledge, neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Vendor's certification is a material representation upon which this Contract award is based. Vendor shall provide prompt written notice within five (5) business days to the State's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

4. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

Federal funding will be used or may potentially be used to pay for all or part of the work under the contract, 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. Vendor's certification is a material representation upon which the Contract award is based.

5. Warranties

Vendor has good title which is free and clear of all encumbrances. No applicable warranties, whether express or implied, are intended to be disclaimed or diminished by the terms of this Contract, with the exception of the following paragraphs.

VENDOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF ANY PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR USE OR PURPOSE. MMCAP AND EACH MMCAP PARTICIPATING FACILITY AND MMCAP MEMBER SHALL LOOK TO THE MANUFACTURER OF PRODUCTS AND THE PROVIDER OF SERVICES (IF OTHER THAN VENDOR) FOR ANY WARRANTY THEREON. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF VENDOR HAS ANY AUTHORITY TO MAKE ANY AFFIRMATION, REPRESENTATION, OR WARRANTY CONCERNING PRODUCTS NOT SET FORTH IN THIS CONTRACT. VENDOR AGREES TO USE COMMERCIALY REASONABLE EFFORTS TO PASS ON, ON A NON-EXCLUSIVE BASIS, FROM ANY MANUFACTURERS OR SUPPLIERS OF PRODUCTS, THE PRODUCT WARRANTIES PROVIDED BY THE MANUFACTURER OR SUPPLIER TO THE EXTENT SUCH WARRANTIES ARE TRANSFERABLE. MMCAP, AND EACH MMCAP PARTICIPATING FACILITY AND MMCAP MEMBER ACKNOWLEDGE THAT AT ALL TIMES VENDOR SHALL BE ABLE TO RELY FOR ITS OWN BENEFIT ON SUCH WARRANTIES AND VENDOR SHALL NOT BE OBLIGATED TO PASS ON SUCH WARRANTIES IF SUCH ACTION SHALL RESULT IN VENDOR BEING UNABLE TO RELY ON THE WARRANTIES FOR ITS OWN BENEFIT.

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IF DURING THE TERM OF THIS CONTRACT VENDOR MANUFACTURES AND DISTRIBUTES ITS OWN PRIVATE LABEL PRODUCTS THEN IT MUST REPRESENT AND WARRANT TO CUSTOMER THAT ITS PRIVATE LABEL PRODUCTS SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF NINETY (90) CALENDAR DAYS FROM THE DATE OF SHIPMENT. VENDOR'S OBLIGATION UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCT, AT VENDOR'S OPTION. THIS WARRANTY WILL NOT APPLY (1) IF MMCAP OR MMCAP PARTICIPATING MEMBER MISUSES THE PRIVATE LABEL PRODUCT, (2) ALTERS OR MODIFIES THE PRIVATE LABEL PRODUCT IN ANY WAY, OR (3) RESELLS THE PRIVATE LABEL PRODUCT OR DOES NOT OTHERWISE USE OR ADMINISTER THE PRIVATE LABEL PRODUCT THROUGH ITS EMPLOYEES OR AUTHORIZED AGENTS.

NEITHER MMCAP NOR AN MMCAP PARTICIPATING FACILITY OR MMCAP MEMBER SHALL HOLD VENDOR LIABLE FOR ANY DEFECT IN PRODUCTS OR SERVICES, REGARDLESS OF KIND. MEMBER AND A FACILITY AGREE TO FILE SOLELY WITH MANUFACTURER OF THE PRODUCTS OR PROVIDER OF SERVICES (IF OTHER THAN VENDOR) ANY CLAIM OR LAWSUIT ALLEGING LOSS, INJURY, DAMAGE, OR DEATH ARISING OUT OF OR CAUSED BY THE USE, SALE, DISTRIBUTION, OR POSSESSION OF PRODUCTS OR SERVICES.

ARTICLE 4: CONTRACT TERMS AND CONDITIONS

1. Contract Effective Date

Contract Effective Date will be June 25, 2018, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later. The Vendor must not begin work under this contract, nor make its pricing, Products, Services, or any benefit available until this contract is fully executed and the Vendor has been notified by the MMCAP State Contacts to begin the work. The Commencement Date will be August 23, 2018, unless a different, mutually agreeable Commencement Date is executed upon between the Vendor and MMCAP, or there is an earlier, mutually agreed upon date between Vendor and a MMCAP Member State who is ready to transition into this Contract.

2. Contract Expiration Date

June 25, 2020, the Contract may be extended for up to three (3) additional one (1) year periods upon execution of a written amendment and acceptance of both parties, for a total term not to exceed five (5) years.

3. Contract Termination

3.1. Termination without Cause

Either party may cancel this Contract at any time during the term of the Contract, without cause, upon no less than ninety (90) days' written notice to the other party. Upon termination, Vendor will be entitled to pro rata payment for Services performed in accordance with the terms and conditions of this Contract.

3.2. Termination with Cause

Except as set forth in *Article 3, Section 2*, either party may cancel this Contract at any time, with cause, upon no less than 30 days' written notice to the other party, and shall provide for a 30 day period beginning upon notice for the breaching party to cure all alleged defects.

3.3. Termination for Insufficient Funding

MMCAP may immediately terminate this Contract 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 Services covered here. Termination must be by written or fax notice to the Vendor. MMCAP is not obligated to pay for any Services that are provided after receipt of notice to Vendor from MMCAP and effective date of termination. However, the Vendor will be entitled to payment, determined on a pro rata basis, for services performed to the extent that funds are available. The State

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will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Vendor notice of the lack of funding within a reasonable time of the State's receiving that notice.

3.4. Cancellation by Member States

Subject to MMCAP termination rights, MMCAP Member States and MMCAP Participating Facilities may cancel their participation in this Contract with the Vendor at any time upon no less than thirty (30) days' written notice to the other party. Vendor shall be entitled to payment of Products delivered prior to the end of the thirty (30) day notice period.

4. Vendor's Duties

The Vendor, who is not a state employee, will provide Products and Services, in accordance with the terms and conditions of this Contract, and as set forth in *Attachments B: Statement of Work*, as attached and incorporated herein.

5. Non-Exclusive Agreement

MMCAP and Vendor acknowledge that this Contract neither creates nor implies the creation of an exclusive agreement between the parties.

6. Eligible Purchasers

Starting on the Commencement Date, all MMCAP Participating Facilities located in the United States shall be eligible to purchase Products offered under this Contract. In addition, the Vendor must allow newly added MMCAP Participating Facilities, located in the MMCAP Participating Facilities List (password protected and published online at www.mmcap.org), as incorporated herein by reference, to access Contract Products and Services at the pricing set forth on *Attachment A* throughout the term of this Contract. Upon addition to the MMCAP Participating Facilities List, Vendor will be given ten (10) business days from the date of notification to implement Contract pricing. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Participating Facilities List has been posted online. Vendor agrees to check the updated list within five (5) business days following the MMCAP monthly email notice regarding the updated list. Notwithstanding anything to contrary contained in this Contract, Vendor shall not be required to implement any MMCAP Member or MMCAP Participating Facility into Vendor's system, unless such MMCAP Member and/or MMCAP Participating Facility notifies Vendor it has elected to operate under the terms of this Contract.

In the event that an MMCAP Participating Facility ceases to be a MMCAP Participating Facility of MMCAP, Vendor agrees not to allow such entity to purchase the Vendor's Products and Services related to this Contract. Any MMCAP Participating Facility desiring to utilize the contractual options, terms and conditions described in this Contract may, at its option, and without penalty or liability, terminate any existing contract or other arrangement, in accordance with the termination provisions set forth in such existing contract or other arrangement, with Vendor for the sole purpose of participating in the group purchasing arrangement set forth in this Contract. MMCAP reserves the right to add and delete MMCAP Participating Facilities during the term of this Contract. Notwithstanding the foregoing, Vendor shall rely on the MMCAP Membership Listing electronic file available online at www.mmcap.org, which will be sent to Vendor in accordance with the terms of this *Section 6 of Article 4*. To the extent that Vendor's breach of this section is based upon incorrect information provided by MMCAP in the MMCAP Participating Facilities List, such breach shall be excused.

7. Separate Agreements

During the term of this Contract, Vendor will not actively solicit any MMCAP Participating Facilities to enter into or negotiate a separate contract or agreement for the same or substantially equivalent Products offered in this Contract, or any amendment, modification, or supplement to this Contract without MMCAP's prior written consent. Notwithstanding anything to contrary contained in this Contract, Vendor's response to

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request for proposals (RFP's) or similar tenders by MMCAP Members or MMCAP Participating Facilities will not be deemed to violate this restriction.

8. Products and Services

The Vendor shall provide Products and Services to MMCAP Participating Facilities listed on *Attachment A: Products and Services Pricing*. In addition, Vendor must at least offer Products under this Contract that are the same or substantially equivalent to the Products that are set forth on *Attachment A*. The Vendor shall not distribute any pharmacy related Products, (except select pharmacy Products, as agreed to by Vendor and MMCAP), to MMCAP Participating Facilities through this Contract, unless otherwise agreed to in writing by MMCAP.

Both influenza vaccine distribution and prescription pharmaceutical distribution (including vaccines) are independent, separate service offerings. Unless Vendor is also awarded one or both of these other service offerings through separate contract award processes, it is required that commercially reasonable efforts be made by Vendor, to not actively solicit, distribute, or market prescription pharmaceuticals (including vaccines) and influenza vaccines to MMCAP Participating Facilities under this Contract. Vendor will use commercially reasonable efforts to direct MMCAP Participating Facilities to MMCAP, for guidance on these service offerings.

All Products acquired by MMCAP under this Contract, are to be purchased for medical use only, and all uses shall be in accordance with such Products Manufacturer's intended use as set forth on the Product's labeling.

All Products provided by Vendor under this Contract must comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including registration requirements of the Office of the applicable Secretary of State. Vendor will not receive payment for Products/Services found by MMCAP or MMCAP Members to be unsatisfactory, and returned to Vendor pursuant to Vendor's return goods policy or performed in violation of federal, state or local law.

9. Products and Services Pricing

9.1. Competitive Pricing

During the term of this Contract, if MMCAP receives information from any source that indicates the pricing under this Contract are not market competitive, Vendor and MMCAP will meet and confer in good faith to determine the ongoing competitiveness of the pricing under this Agreement. Vendor reserves the right, when comparing market competitiveness, to use the following in its evaluation (i) MMCAP Member's or MMCAP Participating Facility's class of trade, (ii) MMCAP Member's or MMCAP Participating Facility's volume of Products, and (iii) MMCAP Member's or MMCAP Participating Facility's size. To the extent necessary to address market competitive conditions, and upon mutual consent between MMCAP and Vendor, such consent is not to be unreasonably withheld by Vendor, applicable prices may be adjusted.

9.2. Vendor's Published Catalog Price

Vendor shall provide a percentage discount for each of Vendor's Contracted Suppliers' categories of Products not listed on *Attachment A*. The list of the Vendor's Contracted Suppliers' categories of Products must include the percentage discount from the Vendor's published catalog price of the Product within a specific category, and be submitted on the *Non-Core Products* tab of *Attachment A*. The specific discount shall apply to each of the Vendor's Contracted Suppliers' categories of medical Products listed.

9.3. Pricing and Percentage Discounts

All Product prices and percentage discounts listed on *Attachment A*, will be considered to be ceiling prices during the term of this Contract, and the ceiling prices and/or percentage discounts set forth on *Attachment A*, may not be changed unless approved in writing by MMCAP, as set forth in *Section 38.2*,

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Amendments. The pricing and percentage discounts listed on *Attachment A*, must be made available to all MMCAP Participating Facilities regardless of the size or location of the MMCAP Participating Facilities, as agreed to in writing by MMCAP. All Product prices under the *Brand Label Core Products* and *Private Label Core Products*, excluding all any and all Medical Equipment Products and Products in the *Equipment Pricing Schedule* tab, listed on *Attachment A*, will be considered fixed for each twelve (12) month period of this Contract, with the first 12-month period commencing on the Effective Date. At the end of each twelve (12) month during the term of the Contract, if the cost of a *Brand Label Core Products* and/or *Private Label Core Products* (excluding any and all Medical Equipment Products) are subject to a Manufacturer increase or decrease, Vendor shall have the right to adjust any applicable purchase prices to MMCAP, MMCAP Member and MMCAP Participating Facilities. Vendor shall provide MMCAP ninety (90) days written notice of any changes to the price prior to passing any price changes to MMCAP Member's and MMCAP Participating Facilities. The pricing for all Medical Equipment Products and Products set forth under the *Equipment Pricing Schedule* tab (and for the avoidance of doubt including any Medical Equipment Product set forth under the *Brand Label Core Products* and *Private Label Core Products* tab) will be locally negotiated at the time of sale with the MMCAP Member or the MMCAP Participating Facility throughout the term of this Contract

9.4. No Additional Fees

Unless otherwise stated in this Contract no fee, percentage, or other cost may be added to the Products purchased under this Contract unless the fee, percentage, or cost is defined, and a formal amendment to the Contract is executed by both parties reflecting the agreed upon fee, percentage, or cost. For the avoidance of doubt, it is understood and agreed that the fees or costs for certain Services, including those set forth in *Attachment A* under the *Additional Value Offerings* tab, will incur such charges as determined at the time of sale and as may be mutually agreed upon between Vendor and a MMCAP Member or MMCAP Participating Facility, as applicable.

10. Discounts

The parties understand that the pricing for Products provided as part of this Contract (including any shareback credits as defined in *Section 2.20 of Attachment B, Part II*) may be considered a "discount" within the meaning of 42 U.S.C. Section 1320a-7b(b)(3)(A) of the Social Security Act and the regulations promulgated thereunder at 42 C.F.R. §1001.952(h). In accordance with 42 C.F.R. §1001.952(h), Vendor will comply with any applicable obligations of Vendor as "Seller" or "Offeror" of a discount, as applicable. If selling directly to an MMCAP Participating Facility, Vendor will fully and accurately report any discount on invoices, statements or reports submitted to MMCAP Participating Facilities. The parties will refrain from doing anything which would impede MMCAP Participating Facilities from meeting its obligations under the discount safe harbor regulations. In accordance with 42 C.F.R. §1001.952(h) MMCAP's Participating Facilities (as "Purchasers") shall disclose the discounts, or value of the Products under the state or federal program which provides cost or charge based reimbursement for the Products covered by this Contract, the net cost actually paid by the MMCAP Participating Facility. MMCAP Participating Facilities must claim the benefit of any discounts, rebates or other price reduction in the fiscal year in which such discounts are earned, or the following year. In the event a party determines that this discount program may not comply with such statutes, the parties agree to work together to establish a discount structure that meets the requirements of the discount safe harbor regulations set forth in 42 C.F.R. §1001.952(h).

11. Risk of Loss, Damage, and Shipping Terms

Shipments under this contract shall be FOB Destination, freight prepaid and allowed, to the MMCAP Participating Facility's receiving dock or if applicable, its pharmacy, unless otherwise agreed to by Vendor and MMCAP Participating Facility. Title to and risk of loss of the Products covered by this Contract transfers to the MMCAP Participating Facility upon delivery to the MMCAP Participating Facility, as set forth above. During the term of this Contract, Vendor shall not add any fuel surcharges to the purchase of any Products covered by this Contract. Notwithstanding the foregoing, Special Products, emergency orders, rush orders, orders for Products not regularly stocked by Vendor's local servicing distribution center, Products dropped shipped from Vendor's Contracted Supplier, capital equipment, and orders not regularly

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scheduled are subject to an added shipping and handling charge determined by Vendor and disclosed to a MMCAP Participating Facility upon request. Vendor shall have the right to ship the Products at all times via its own vehicle or a carrier selected by Vendor.

12. Compliance

Vendor shall be in accordance and comply with all applicable federal, state, and local laws, rules and regulations as applicable to Vendor, including the MMCAP Member States represented hereunder, in the performance of this Contract.

13. Failure to Supply MMCAP Core Products

Unless the result of a Manufacturer Backorder, if Vendor fails to deliver any Core Products set forth on *Attachment A* and in accordance with the terms of this Contract, to meet the anticipated needs of MMCAP Participating Facilities for Core Products, the ordering MMCAP Participating Facility may purchase an alternate equivalent Product on the open market for the period of time in which the Vendor is unable to provide the Core Product.

14. Purchase Orders and Payment

14.1. No Minimum Purchase Order Requirement

There shall be no minimum order requirements or charges, regardless of order size or payment amount.

14.2. Eligible Purchase Orders

As a condition for purchasing under this Contract, orders must only be accepted if made by authorized individuals from MMCAP Participating Facilities who are eligible purchasers under this Contract as stated in this section and defined in the Key Definitions of this Contract. MMCAP Participating Facilities may use their own forms for Orders. To the extent that the terms of any form differ from the terms of this Contract, the terms of this Contract supersede, except as applicable to the MMCAP Participating Facility issuing the Order pursuant to any Member Participation Agreements. Notwithstanding any terms on an MMCAP Member's Order or other form provided by an MMCAP Member, any orders placed by MMCAP Members with Vendor will be priced and offered by Vendor per the terms and conditions of this Contract only, and no other terms and conditions provided by the Member shall apply to such orders.

The Contract number and the purchase order number must appear on all documents (e.g., invoices, packing slips, etc.), but subject to Vendor's then current system capabilities. The terms of this Contract shall apply to each Order issued by authorized individuals from MMCAP Participating Facilities whether such Order is communicated by the Order form, EDI, internet e-commerce, facsimile, orally, or any other method, or whether reference is made to this Contract.

14.3. Verification of Authorized Purchasers

Upon request by MMCAP, Vendor must verify that it provides Products and Services pursuant to this Contract only to MMCAP Participating Facilities. Only MMCAP Participating Facilities may purchase Products and Services under the terms of this Contract. Vendor shall rely on the MMCAP Participating Facilities List subject to and in accordance with *Section 6* of this *Article 4*. If such listing is incorrect, Vendor shall not be deemed in breach of this Section.

14.4. Funds Available and Authorized/Non-Appropriation

Vendor will not be compensated for Products and Services delivered under an Order by any entity other than the MMCAP Participating Facility that issued the Order. By submitting an Order the MMCAP Participating Facility represents it has sufficient funds currently available and authorized for expenditure to finance the costs of the Order.

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14.5. Termination of Individual Purchase Orders

MMCAP Participating Facilities may terminate individual Orders (other than purchase orders for special orders and emergency preparedness), in whole or in part, immediately upon notice to Vendor, or at such later date as the MMCAP Participating Facility may establish in such notice, upon the occurrence of any of the following events:

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

Upon receipt of any such written notice of termination from a MMCAP Participating Facility, Vendor shall stop performance under the Order as directed by the MMCAP Participating Facility. Termination of a Purchase Order for any material breach of this Contract or an Order does not extinguish or prejudice the MMCAP Participating Facility's right to seek any remedies available hereunder for any such material breach by Vendor of this Contract or an Order, as applicable, that has not been cured, including any right in this Agreement of the MMCAP Participating Facility to indemnification by Vendor or enforcement of a warranty. If an Order is terminated, the MMCAP Participating Facility must pay Vendor in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Participating Facility.

14.6. Purchase Order Default

All Products furnished will be subject to inspection and acceptance by the MMCAP Participating Facility after delivery, in accordance with Vendor's Product Return Policy as set forth in *Attachment I*. No Product substitutions, shipments of non-conforming goods or Products, or cancellations are permitted without prior written approval of the MMCAP Participating Facility.

14.7. Payment of Purchase Orders

Each MMCAP Participating Facility will be responsible for payment of Products and Services provided by Vendor. MMCAP will not be liable for an unpaid invoice of any MMCAP Member or MMCAP Participating Facility. Vendor agrees to invoice the MMCAP Participating Facility for all Products shipped. Vendor will accept payment of purchase orders via Electronic Funds Transfer (EFT), credit cards authorized by the ordering MMCAP Participating Facility and any other traditional means of payment.

14.8. Federal Funds

Payments to the Vendor for Products ordered by MMCAP Participating Facilities under this Contract may be made from federal funds. The Vendor must agree to accept as payment in full for the Products and Services, the amount as determined by the federal agency or federal program administering the payments. Vendor shall comply with all applicable federal requirements imposed on these funds as may be identified by the ordering MMCAP Participating Facility.

14.9. Conditions of Payment

All Services provided by the Vendor under this Contract must be performed to MMCAP's reasonable satisfaction (directed by the MMCAP Participating Facility or MMCAP Member), and has been mutually agreed to by MMCAP, MMCAP Participating Facility or MMCAP Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Unless otherwise set forth in this Contract all Products provided under the terms of this Contract are subject to inspection and acceptance by the MMCAP Participating Facility in accordance with the Vendor's Return Product Policy as set forth in *Attachment I*.

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15. Vendor Fees

15.1. Administrative Fee

In consideration for the administrative support and other services provided by MMCAP in connection to this Contract, the Vendor agrees to pay an Administrative Fee of three percent (3%) on all MMCAP Participating Facilities' Net Purchases of Products made directly with the Vendor by the MMCAP Participating Facilities. 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), as set forth at 42 USC § 1320a-7b (b) (3) (C), and the "safe harbor regulation" set forth in 42 C.F. R. §1001.952(j). The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to three percent (3%) for all MMCAP Participating Facilities' Net Purchases covered under this Contract. Vendor must provide Administrative Fee data, including amount to be paid, to MMCAP within ten (10) business days after the end of each month. The Administrative Fee must be paid as soon as is reasonable after the end of each month, but no later than thirty (30) calendar days after the end of the month.

Vendor shall not be required to pay administrative fees on excise tax amounts or returns or other shipments for which Vendor did not collect the purchase price. 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. Vendor shall not pay administrative fees on items covered under the Additional Value Offerings tab, in *Attachment A: Products and Services Pricing*.

The parties shall comply with the requirements of 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). In this regard, the parties acknowledge that Vendor will satisfy any and all requirements imposed on sellers by these safe harbors; and MMCAP and each MMCAP Participating Facility will satisfy any and all requirements imposed on buyers and GPOs, respectively.

15.1.1. Limitations

- Vendor will not pay an Administrative Fee on the same purchase to more than one (1) GPO, nor will Vendor split an Administrative Fee on any item between such groups.
- Vendor shall have ten (10) business days from the date of notice by MMCAP that the MMCAP Participating Facility is an eligible purchaser under this Contract, provided such MMCAP Participating Facility confirms to Vendor their desire to purchase Products under the terms of this Contract, to qualify said new MMCAP Participating Facility's status and eligibility for inclusion of the purchases by said new MMCAP Participating Facility in the calculation of the Administrative Fee. Vendor will not pay an Administrative Fee on purchases of Products ordered, on or prior to the date the MMCAP Member or MMCAP Participating Facility elects to participate under the terms of this Contract.

16. Authorized Representatives

MMCAP's Authorized Representative is Alan Dahlgren, MMCAP Managing Director, or his/her successor, and has the responsibility to monitor the Vendor's performance. MMCAP shall notify Vendor's Authorized Representative if MMCAP's Authorized Representative changes at any time during the term of this Contract.

The Vendor's Authorized Representative is Andy Otersen, National Account Manager, or his/her successor. If the Vendor's Authorized Representative changes at any time during this Contract, the Vendor must promptly notify MMCAP in writing via e-mail addressed to Emilio Graulau, MMCAP's Healthcare Products and Services Coordinator, at: Emilio.Graulau@state.mn.us or their designee, who will assume that responsibility for Vendor.

17. Notices

Notices under this Contract shall be in writing, effective upon receipt and shall be sent by any of the following methods (i) facsimile or e-mail with return facsimile or e-mail acknowledging receipt; (ii) United

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States Postal Service certified or registered mail with return receipt showing receipt; (iii) courier delivery service with proof of delivery; or (iv) personal delivery. Either party to this Contract may change the names and addresses for receipt with notice to the other party.

To MMCAP:

MMCAP Healthcare Products & Services Program Coordinator
50 Sherburne Avenue, Suite 112
St. Paul, MN 55155
Email: MMCAP_HPSCONTRACTS@STATE.MN.US
Fax: 651.297.3996

To the Vendor:

Henry Schein, Inc.
General Counsel
135 Duryea Road,
Melville, NY, 11747
Fax: 631-843-5660

18. Indemnification

In the performance of this Contract by Vendor, or Vendor's agents or employees, the Vendor must indemnify, save, and hold harmless the State, MMCAP, MMCAP Participating Facilities and MMCAP Member States, their agents, and employees ("Customer Indemnified Parties"), from any claims or causes of action brought against any of them by third parties (other than claims or causes of action brought against any of them by another of the Customer Indemnified Parties), including reasonable attorney's fees incurred, to the extent caused by Vendor's negligent actions or omissions, or willful misconduct of Vendor in the performance of this Contract. On a comparative negligence basis, the indemnification obligations of this section do not apply to the extent the applicable claim or cause of action is the result of any of the Customer Indemnified Party's negligent acts or omissions or willful misconduct, in which event Vendor's obligation to indemnify the Customer Indemnified Parties shall be proportionate to such negligent acts or omissions or willful misconduct of the Vendor. This clause will not be construed to bar any legal remedies the Vendor may have for the State's failure to fulfill its obligation under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP cannot indemnify the Vendor.

19. Liability Limitations

WHILE VENDOR WILL NOT BE RESPONSIBLE FOR PRODUCT LIABILITY CLAIMS, AND MMCAP AND EACH MMCAP PARTICIPATING FACILITY SHALL LOOK TO THE MANUFACTURER OF PRODUCTS WITH RESPECT TO ANY SUCH CLAIMS IN ACCORDANCE WITH ARTICLE 3 SECTION 5 HEREOF, VENDOR WILL, AT SUCH MMCAP MEMBERS' OR MMCAP PARTICIPATING FACILITIES' REQUEST, USE REASONABLE EFFORTS TO COORDINATE DISCUSSIONS BETWEEN THE APPLICABLE MANUFACTURER AND MMCAP AND EACH MMCAP PARTICIPATING FACILITY, AS APPLICABLE, WITH RESPECT TO ANY SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES INCURRED BY THE OTHER PARTY, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT THEY HAVE BEEN ADVISED OF THE POSSIBILITY, OF SUCH DAMAGES.

19.1. Warranty

Vendor makes no representation or warranty of any kind, express or implied, as to the merchantability of any Products or their fitness for a particular use or purpose. MMCAP and each MMCAP Participating Facility shall look to the Manufacturer of Products and the provider of Services (if other than Vendor) for any warranty thereon. No agent, employee, or representative of Vendor has any authority to make any affirmation, representation, or warranty concerning Products not set forth in this contract. Vendor agrees to use commercially reasonable efforts to pass on, on a non-exclusive basis, from any Manufacturer of Products, the Product warranties provided by the Manufacturer or supplier to the extent

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such warranties are transferable. MMCAP and each MMCAP Participating Facility acknowledge that all times Vendor shall be able to rely for its own benefit on such warranties and Vendor shall not be obligated to pass on such warranties if such action shall result in Vendor being unable to rely on the warranties for its own benefit.

Neither MMCAP nor any MMCAP Participating Facility shall hold Vendor liable for any defect in Products or Services, regardless of kind. MMCAP and MMCAP Participating Facilities agree to file solely with Manufacturer of the Products or provider of the Services (if other than Vendor) any claim or lawsuit alleging loss, injury, damage or death arising out of or caused by the use, sale, distribution, or possession of Products or Services.

20. Audits

Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State, MMCAP, and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this contract. MMCAP and any MMCAP Participating Facility served by the Vendor shall have the right to audit Vendor to determine the validity of invoice pricing. Audits may be conducted by representatives of MMCAP in collaboration with other state and federal authorities. Such audits may be conducted only during ordinary business hours and upon reasonable prior notice to Vendor. The Vendor and MMCAP and/or the MMCAP Participating Facility shall each be responsible for its own costs associated with any audit, including reasonable costs related to the production of records and/or other documents requested by the other party.

21. Government Data Practices

The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 ("Statute") to the extent it applies to any data provided by MMCAP under this contract, and as it applies to any data covered by the Statute created, collected, received, stored, used, maintained, or disseminated by the Vendor under this contract. MMCAP agrees that it will not provide any personal health information (as defined in HIPAA) ("PHI") to Vendor. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Vendor or MMCAP.

If the Vendor receives a request to release the data referred to in this clause, the Vendor will notify MMCAP as and to the extent required by the Statute and will follow any lawful instructions with respect to such data to the extent required by the Statute except if Vendor's legal counsel advises against following such instructions.

Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by Vendor of any provision of the Minnesota Government Data Practices Act, including reasonable legal fees and disbursements paid or incurred to enforce this provision of the Contract, except to the extent such claims arise from MMCAP violating its obligation above to not provide any PHI to Vendor; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL VENDOR BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES INCURRED BY THE OTHER PARTY, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT THEY HAVE BEEN ADVISED OF THE POSSIBILITY, OF SUCH DAMAGES.

22. Intellectual Property and Data

MMCAP owns all rights, title, and interest in MMCAP 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 grants to Vendor a revocable, nontransferable, fully paid license, for the term of this Contract, to (i) release state specific data to an MMCAP Member's State Contact, MMCAP Participating Facilities; (ii) release any of the above data to

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Product Manufacturers, when necessary for the performance of this Contract or as required by Vendor's agreements with such Product Manufacturers; (iii) to release any of the above data to other MMCAP-approved third parties, when necessary for the performance of this Contract; (iv) provide MMCAP Participating Facility purchase data to third-party aggregators, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party and subject to written approval by MMCAP; (v) provide MMCAP Participating Facility purchase data to other GPOs of which the MMCAP Participating Facility is also a member, provided such data will not include MMCAP-identifiable data; and (vi) use any of the above data for its internal purposes. Any MMCAP identifiable data provided hereunder to a third party must identify the data as MMCAP data and subject to Minn. Stat. Ch. 13. Vendor hereby agrees that in the event that an MMCAP Member or MMCAP Participating Facility requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.

Vendor owns all rights, title, and interest to any aggregated data identifiable as not arising from this Contract and any other intellectual property created for or presented to MMCAP. Vendor grants to MMCAP an unlimited, non-revocable, non-transferable, fully paid license, for the term of this Contract, to use all intellectual property created for or presented to MMCAP under this Contract.

22.1. Pre-Existing Intellectual Property

Subject to the license rights set forth above, MMCAP and Vendor shall each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. Vendor grants to State an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, 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, an MMCAP Member, or MMCAP Participating Facility. The aforementioned license is solely for use by MMCAP, an MMCAP Member, or MMCAP Participating Facility, and its agents related to an internal business purposes.

22.2. Private Label Products Indemnification

In the event Vendor manufactures its own private label products for sale and distribution through this Contract, Vendor will defend, indemnify and hold the MMCAP Member(s) harmless from any action or other proceeding brought against a MMCAP 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 Contract 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 MMCAP Member(s) as a result thereof; provided, that a MMCAP 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.

(i) Exclusions

Vendor will have no obligations under this *Section 22.2* with respect to claims arising from: (1) modifications to Private Label Products that were not performed by Vendor; (2) misuse of the Private Label Products or Vendor's trademarks; (3) compliance with specifications provided by a MMCAP Member(s); or (4) the use or integration of Private Label Products delivered under this MMCAP Member 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 MMCAP 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.

(ii) Injunctions

If a MMCAP Member's use of any Private Label Products delivered under this Contract is, or in Vendor's opinion is likely to be, enjoined due to a claim of infringement or misappropriation as specified in *Section 22.2* above then Vendor may, at its sole option and expense: (1) obtain for a MMCAP Member the right to continue using such Private Label Products under this Contract; (2) replace or modify such Private Label Products to avoid such a claim, provided that the replaced or

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modified Private Label Products is substantially equivalent in function to the affected Private Label Products; or (3) if options (1) and (2) above are not practical in Vendor's reasonable opinion, then Vendor may take possession of the affected Private Label Products and terminate a MMCAP 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 MMCAP Member the purchase price of the affected Private Label Product net any discounts, rebates or other adjustments.

23. Workers' Compensation and Other Insurance

Vendor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Vendor shall not commence work under the contract until they have obtained all the insurance specified in the solicitation document. Vendor shall maintain such insurance in force and effect throughout the term of the contract.

Further, the Vendor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Vendor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way MMCAP's obligation or responsibility.

Vendor is required to provide certificates of insurance, and to maintain and furnish satisfactory evidence of the following insurance policies:

23.1. Workers' Compensation Insurance

Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability.

Insurance minimum limits are as follows:

\$100,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements.

If during the course of the Contract the Vendor becomes eligible for Workers' Compensation, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP with a certificate of insurance.

23.2. Commercial General Liability Insurance

Vendor will maintain commercial general liability insurance with coverage for bodily injury, including sickness or disease, death, as well as property damage, which may arise from operations under the Contract.

Insurance limits are as follows:

\$2,000,000 – per occurrence

\$2,000,000 – annual aggregate

\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

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Contractual Liability
Products and Completed Operations
MMCAP named as Additional Insured

Other; if applicable, please list _____

23.3. Commercial Automobile Liability Insurance

Vendor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract. Insurance minimum limits are as follows:

\$2,000,000 – each accident Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile

23.4. Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance

This policy will provide coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor’s professional services required under the Contract.

Vendor is required to carry the following minimum limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Vendor.

The retroactive or prior acts date of such coverage shall not be after the Effective Date of this Contract and Vendor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Vendor to fulfill this requirement.

23.5. Additional Insurance Conditions

- Vendor’s General Liability and Automobile Liability policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor’s performance under this Contract, except to the extent such liability is caused by MMCAP;
- Vendor shall provide thirty (30) days’ advanced written notice to MMCAP in the event of policy cancellation;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor’s policy(ies) shall include legal defense fees;
- Vendor shall obtain insurance policy(ies) from insurance company(ies) having an “AM BEST” rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota (except if self-insured or via captive insurance); and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor’s policy limits to satisfy the full policy limits required by the Contract.
- Vendor and its affiliates’ use of self-insurance, as it is deemed to satisfy all insurance requirements set forth under this entire Agreement.

23.6. MMCAP reserves the right to terminate the Contract in accordance with *Article 4, Section 3.2*, if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal

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remedies against the Vendor. All insurance policies must be open to inspection by MMCAP, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

23.7. The Vendor is required to submit Certificates of Insurance acceptable to MMCAP as evidence of insurance coverage requirements prior to commencing work under the contract.

24. Publicity and Endorsement

24.1. Publicity

Any publicity by Vendor regarding the content of this Contract must identify MMCAP as the sponsoring agency and must not be released without prior written approval from MMCAP's Authorized Representative as set forth in *Section 16*. Any publicity by MMCAP regarding the subject matter of this Contract must not be released without the prior written notice of Vendor's Authorized Representative as set forth in *Section 16*. Notwithstanding the foregoing either party may publicize non-trade secret or public information in the normal course of business in order to promote its services. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

24.2. Endorsement

The Vendor must not claim that MMCAP endorses its Products or Services, nor may MMCAP claim that Vendor endorses its Products or Services.

25. Direct Marketing, Advertising, and Offers with Participating Facilities

Any direct advertising, marketing, or direct offers the Vendor intends to distribute in any form to MMCAP Participating Facilities for Contract Products must be approved in writing by the MMCAP Office.

26. Governing Law, Jurisdiction and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this contract. Venue for all legal proceedings out of this contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

27. Data Disclosure

Under Minnesota Statute § 270C.65, Subdivision 3 and other applicable law, the Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

28. Payment to Sub-Contractors (If Applicable)

As required by Minnesota Statute § 16A.1245, the prime Vendor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Vendor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

29. Minnesota Statute § 181.59, Discrimination on Account of Race, Creed or Color Prohibited in Contract

The Vendor will comply with the provisions of Minnesota Statute § 181.59 which requires: Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the Vendor agrees: (1) That, in the hiring of common or skilled labor for the

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performance of any work under any contract, or any subcontract, no Vendor, material supplier, or Vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no Vendor, material supplier, or Vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the Contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this Contract.

30. Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Vendor has More than 40 Full-Time Employees in Minnesota or its Principal Place of Business

MMCAP intends to carry out its responsibility for requiring affirmative action by its Vendors.

30.1. Covered Contracts and Vendors

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

30.2. Minn. Stat. § 363A.36

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

30.3. Minn. R. 5000.3400-5000.3600

a. General

Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Vendor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

b. Disabled Workers

The Vendor must comply with the following affirmative action requirements for disabled workers.

1. The Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
3. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the

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rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

4. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

5. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the vendor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

a. Consequences

The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or MMCAP.

b. Certification

The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

31. Certification of Nondiscrimination (In Accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all amendments, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

32. Contingency Fees Prohibited

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

33. Force Majeure

Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, fire, or raw material or transportation shortages that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

Except for provisions of this Contract relating to protection of Trade Secrets and the obligation of payment, neither party will be liable for non-performance caused by circumstances beyond their reasonable control, including, but not limited to (i) Acts of God, explosion, flood, lightning, tempest, fire or accident; (ii) war, hostilities (whether war is declared or not), invasion, acts of foreign enemies; (iii) rebellion, revolution, insurrection, military or usurped power or civil war; (iv) riot, civil commotion or disorder; (v) acts, restrictions, regulations, refusals to grant any licenses or permission, prohibitions or measures of any kind on the part of any local, state, national, governmental or supra-governmental authority; (vi) state government shutdown; (vii) import or export regulations or embargos; (viii) defaults of subcontractors where such default is itself caused by force majeure.

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34. Severability

If any non-material provision of the Contract, including items incorporated by reference, or any application of the terms thereof, shall be found to be illegal, invalid, unenforceable, or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions. The remainder of the Contract, including all provisions and the application of such provisions, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

35. Dispute Resolution

35.1. Dispute Resolution between MMCAP Participating Facility and Vendor, through Vendor's Escalation Procedures

If Vendor and an MMCAP Participating Facility (each a "Designated Party" and together the "Designated Parties") have disputes related to the Vendor's performance under this Contract, then the Designated Parties will first utilize Vendor's Sales Escalation Procedure as set forth on *Attachment L* of this Contract. If the disputes cannot be resolved, the Designated Parties will handle resolution of the unresolved disputes using the following procedure set forth below:

a. MMCAP Participating Facility Notification to Vendor and MMCAP Office

The MMCAP Participating Facility shall promptly notify the Vendor and the MMCAP Office, of any known unresolved dispute and work in good faith to resolve such dispute within five (5) business days of such notice or such other time as may be needed but in no event greater than thirty (30) days. Absent resolution after five (5) business days or such other time as set forth herein, the Designated Parties shall proceed to the Documentation and Escalation steps described below.

b. Documentation

The Designated Parties will each develop written summaries of the unresolved dispute within five (5) business days that describes the issue(s), relevant impact, and positions of each Designated Party. The summaries must be sent to the MMCAP Office.

c. Escalation of Dispute

If the matter is escalated to the MMCAP Office, each Designated Party shall submit documentation to MMCAP regarding the unresolved dispute, and if MMCAP determines that the Vendor is at fault, and the issue with the Vendor's performance has not been resolved, a teleconference will be scheduled between the MMCAP Office and the Vendor's Authorized Representative, to review the briefing document and develop a proposed resolution and plan of action, to be executed in accordance to Section 35.d below. The resolution plan and timeline must be agreed to by the Designated Parties to the dispute, including the MMCAP Office.

d. Resolution plan between Vendor and the MMCAP Office

After a resolution plan and timeline has been determined between the Designated Parties and MMCAP, Vendor will cure the applicable issue, but in no event longer than thirty (30) business days, unless otherwise agreed to by the express written agreement of the Designated Parties and MMCAP. Failure to cure any defect listed below within thirty (30) business days shall give the MMCAP Office cause to declare a material breach, subject to the termination rights set forth herein.

1. Member Contract Attachment

a. Subject to Section 6 of *Article 4*, upon identifying non-attachment of a MMCAP Member to the Products and pricing of this Agreement, Vendor has ten (10) business days or a time-window as mutually understood upon between Vendor and MMCAP, to process credits to the MMCAP Member(s) on Products under the pricing of this Agreement and to report such activity of sales to the MMCAP Office in the Sales Data Usage and Administrative Fee Data Report.

b. If the Vendor does not comply with processing credits, to the MMCAP Member(s), MMCAP reserves the right to pursue any remedy available at law, including, without limitation, termination of the Contract and/or debarring the Vendor from receiving a Contract from the State of Minnesota.

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2. Reporting Requirements

a. Upon identifying the non-receipt of reporting activity from the Vendor for an applicable MMCAP Member, Vendor (i) has ten (10) business days to submit the required reporting activity to the MMCAP Office and (ii) and if applicable, shall process any credits to the MMCAP Member and Administrative Fees to the MMCAP Office.

b. If the Vendor does not comply with submitting the required reporting activity, to the MMCAP Office, MMCAP reserves the right to pursue any remedy available at law, including, without limitation, termination of the Contract and/or debarring the Vendor from receiving a Contract from the State of Minnesota.

3. Pricing Accuracy

a. Upon identifying pricing inaccuracy on the sales of Products under this Agreement for an applicable MMCAP Member, Vendor has ten (10) business days, or a time-window as mutually understood upon between Vendor and MMCAP, in order to process credits to the MMCAP Member(s).

b. If the Vendor does not comply in processing credits to the MMCAP Member(s), MMCAP reserves the right to pursue any remedy available at law, including, without limitation of the Contract and/or debarring the Vendor from receiving a Contract from the State of Minnesota.

35.2. Jurisdiction and Venue of Purchase Orders

Upon completion of the Dispute Resolution process outlined in this *Section 35*, and solely with the prior written consent of MMCAP and the State of Minnesota Attorney General's Office, the MMCAP Member may bring a claim, action, suit or proceeding against Vendor. The MMCAP Member's request to MMCAP to bring the claim, action, suit, or proceeding must state the initiating party's desired jurisdiction, venue and governing law.

Upon completion of the Dispute Resolution process outlined in this Contract, the Vendor may bring a claim, action, suit or proceeding against MMCAP Member, in Vendor's sole discretion.

35.3. Mandatory Resolution Plan Between MMCAP and the Vendor Without Need for Prior Escalation

A mandatory resolution plan and timeline shall be created by the Parties, without the prior need for Escalation of Dispute, when any of the following circumstances occur. Failure to correct identified defects, as set forth below in *Sections 35.3.1*, through *35.3.8*, within the agreed upon time, not to exceed thirty (30) business days, or the reoccurrence of any event under *Section 35* within ninety (90) days of initial resolution, shall give MMCAP cause to declare a material breach, subject to the termination rights set forth herein. Failure to correct identified defects, as described below, shall grant cause for any affected MMCAP Member or MMCAP Participating Facility to terminate this Contract in accordance with *Section 3 of Article 4*.

35.3.1. Reports

Vendor submits any such required report or data in a manner that materially fails to comply with the applicable provisions set forth in this Contract.

35.3.2. Invoices

If an MMCAP Participating Facility places an order for Product and receives a separate invoice for any fee not directly related to the cost of the Product from the Vendor without providing a separate invoice that references the same invoice number or purchase order number that is indicated on the Product invoice or purchase order.

35.3.3. Unauthorized Fees

Vendor charges an MMCAP Participating Facility any fee not authorized by this Contract or any attachment hereto.

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35.3.4. Inventory Management

MMCAP Contract Products which also include Products resulting from MMCAP's direct contracts with Manufacturers are not loaded, stocked (based upon usage, request, notice of usage or due to barriers created by Vendor to avoid stocking the Product), and viewable by all MMCAP Participating Facilities, as required pursuant to this Contract and within the timelines set forth herein.

35.3.5. Delivery Delays

Deliveries made by the Vendor are not in accordance with the time schedules specified in *Attachment B* or as otherwise agreed upon by the Vendor and MMCAP Participating Facility.

35.3.6. Ordering Information

Products and pricing are not loaded correctly into the Vendor's Product ordering system and an MMCAP Participating Facility must order alternatives to the MMCAP Contracted Products due to the Vendor's error.

35.3.7. Business Interruption Plan

Vendor experiences a systemic business interruption that materially affects Vendor's ability to perform its obligations under this Contract, excluding those systemic business interruptions caused by an event of force majeure; change in applicable laws, rules or regulations or interpretation or application thereof; changes in Manufacturer policies or procedures; or any other event outside the reasonable control of Vendor.

35.3.8. Required Licenses, Permits, and Registration

Vendor fails to maintain all necessary licenses, permits and registrations required by state, local and federal agencies. Unless the information is proprietary, Vendor must make such documentation available upon request by the MMCAP Office.

35.4. Performance while Dispute is Pending

Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Contract. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP Participating Facilities as a result of such failure to proceed shall be borne by the Vendor.

35.5. No Waiver

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

36. Required Licenses, Permits and Registration

Vendor shall have in place prior to the start of the Contract, and must maintain for the term of the Contract, all applicable current licenses, permits and registrations required by state, local and federal agencies in order to fulfill the obligations under this Contract. Vendors must make such documentation available upon reasonable request by the MMCAP Office, unless such documentation is considered Vendor's proprietary information.

37. DEA License/HIN

The Vendor shall not require an MMCAP Participating Facility to have a DEA number in order to obtain Products unless the MMCAP Participating Facility places orders for controlled substances. MMCAP Participating Facilities will have HIN numbers assigned by the MMCAP Office, or proof of applicable state licensure from MMCAP Participating Facilities.

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38. Assignment, Amendments, Waiver, and Entire Contract

38.1. Assignment

Neither party may neither assign nor transfer any rights or obligations under this Contract without the prior written consent of the other party and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

38.2. Amendments

Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.

38.3. Waiver

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

38.4. Entire Contract

This Agreement constitutes the entire Contract between MMCAP and the Vendor. This Contract shall exclusively govern the purchases of Products that occur during the Term. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

39. Survival of Terms

The following clauses survive the expiration, termination or cancellation of this Contract: 18. Indemnification; 19. Liability Limitations; 20. Audits; 21. Government Data Practices; 22. Intellectual Property and Data; 24. Publicity and Endorsement; 26. Governing Law Jurisdiction, and Venue; 27. Data Disclosure.

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40. E-Verify Certification (In Accordance with Minn. Stat. §16C.075)

For services valued in excess of \$50,000, Contractor certifies that as of the date of services performed on behalf of the State, Contractor, all its subsidiaries and its subcontractors, if any, will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at: <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the Effective Date.

1. HENRY SCHEIN MEDICAL, A DIVISION OF 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

By: Nancy A. Lanni
Title: VP, Healthcare Services
Date: 6/14/2018

2. STATE OF MINNESOTA FOR MMCAP

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

By: Sara Turbow, PharmD, BCPS
Title: Pharmacist Sr.
Date: 6-20-18

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]
Title: AMS Sr.
Date: 6/21/18

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ATTACHMENT A: PRODUCTS AND SERVICES PRICING

The MMCAP Participating Member will receive the Contract pricing as set forth, in the following tabs: the *Brand Label Core Products* tab; the *Private Label Core Products* tab; the *Non-Core Products⁴* tab; the *Equipment Schedule* tab, and the *Additional Value Offerings* tab.

The price file for *Attachment A* on this Agreement, is located next to the Contract, on the MMCAP website (<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>), and login credentials are required in order to access it.

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⁴ The listed categories in the *Non-Core Products* tab, are intended to cover the Vendor's most current, published catalog of Products, which are not listed in the remaining tabs.

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**ATTACHMENT B: STATEMENT OF WORK
AND VENDOR PERFORMANCE REQUIREMENTS**

I. OPERATIONAL REQUIREMENTS

1. Vendor Service Area

As of the Contract Commencement Date, Vendor will provide all Products and related Services, covered under this Contract, on a timely basis, to all of the MMCAP Participating Facilities located within the Service Area listed in *Attachment D* of this Contract. MMCAP reserves the right to add or delete MMCAP Members at any time, during the Contract term.

2. Required Vendor Personnel

Vendor must maintain sufficient personnel, including but not limited to, the personnel listed below, who can provide comprehensive and timely customer services and support to the MMCAP Participating Facilities and the MMCAP Office. Vendor's personnel must have professional qualifications, training and experience, to provide support related to the Products and Services covered by this Contract. In addition, Vendor represents and warrants that its personnel have validated competencies in accordance with all applicable law and regulatory agencies, related to Services and Products covered by this Contract.

Vendor personnel must include but are not limited to the following:

- Primary Account Representative, Account Representative, sales representatives;
- customer service representatives;
- clinical representatives, to the extent applicable;
- distribution center representatives;
- MMCAP Contract representatives for the MMCAP Office;
- MMCAP Contract representatives for the MMCAP Members;
- MMCAP account representatives;
- Product marketing specialists;
- Product training and education specialists in the form of facilitating such training and education with the applicable Manufacturer;
- supply chain improvement specialists;
- Product ordering system technical support and training specialists;
- Contract implementation and transition team;
- account payable/receivable specialists, capable of addressing and timely solving invoice/credit rebill inquiries.

3. Customer Service to MMCAP Office.

3.1. The Vendor will provide its customer service function to the MMCAP Office, by assigning a Primary Account Representative to the MMCAP Office, and must provide a minimum of 24 hours' advanced notice to MMCAP, if that person is reassigned. The Primary Account Representative will be responsible to discuss at a minimum, but not limited, the following topics:

- Customer satisfaction;
- Vendor performance;
- specific account performance;
- required reports;
- other Contract related issues.

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a. The Vendor's designated Primary Account Representative for the MMCAP Office will be as follows (or the Vendor's named successors):

Name	Title	Office Address	Contact Information
Andy Oterson	Manager, National Account	N/A	Phone: N/A Mobile Phone: (240) 409-6125 Fax: N/A Email: Andy.Oterson@henryschein.com

b. The alternate Account Representatives will be:

Name	Title	Office Address	Contact Information
Carole DeLong	Telesales Consultant	N/A	Phone: (775) 327-3200 x2242770 Mobile Phone: N/A Fax: N/A Email: Carole.Delong@henryschein.com

c. Additional functional contacts are:

Name	Title	Office Address	Contact Information
Andy Goldy	GM, EMS Specialty	N/A	Phone: (800) 868-2472 x2352132 Mobile Phone: N/A Fax: N/A Email: Andy.Goldy@henryschein.com
Neil Silverstone	Manager, National Sales	N/A	Phone: (631) 454-3008 x2223008 Mobile Phone: N/A Fax: N/A Email: Neal.Silverstone@henryschein.com
Stacy Garrett (Meadows)	Manager, Telesales		Phone: (775) 327-3227 x2243227 Mobile Phone: N/A Fax: Email: Stacy.Meadows@henryschein.com

d. In the event the MMCAP Office determines the Primary Account Representative is non-responsive, the MMCAP Office will escalate issues to the following individuals to take appropriate corrective action for problem resolution:

Name	Title	Office Address	Contact Information
John Ballarin	Senior Manager, National Accounts	N/A	Phone: (734) 431-1161 Mobile Phone: Fax: N/A Email: John.Ballarin@henryschein.com
Joe Kenis	Senior Manager, National Accounts	N/A	Phone: (734) 431-1161 Mobile Phone: Fax: N/A Email: Joe.Kenis@henryschein.com

e. The Vendor shall notify the MMCAP Office of changes in the Vendor's key administrative personnel, in advance and in writing. Any employee of Vendor, who, in the opinion of the MMCAP Office, the MMCAP

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Participating Facilities or the MMCAP State Contacts is unacceptable, will be removed from the project upon written notice to the Vendor; provided, however, any such removal must be for lawful reasons. In the event that an employee is removed pursuant to a written request from MMCAP's Authorized Representative, the Vendor will have thirty (30) business days in which to fill the vacancy with an employee, in Vendor's sole discretion.

There will be no charge to the MMCAP Office, MMCAP Member States or the MMCAP Participating Facilities, for assigning replacement personnel. Vendor agrees that each such replacement personnel have the necessary orientation, background, knowledge, skills, and abilities, to perform in the position replaced.

3.2. Customer Service Department

Vendor must maintain through the term of this Contract, a toll-free customer service call center. The call center operational hours must cover all the U.S. time zones, including Alaska and Hawaii, during normal business hours and have a system to respond to inquiries during its non-operational hours.

The call center representatives must be capable of responding to telephone or electronic message inquiries (e.g. email, or "click to chat feature" on Vendor's website), from the MMCAP Participating Facilities and the MMCAP Office. The call center representatives must also have the corporate authority, experience and training to respond to any inquiry related to the MMCAP Contract.

Vendor shall provide the MMCAP Participating Facilities access to the Vendor's customer service department, which at a minimum, consists of the following:

- Customer support center located at: Reno, NV and Melville, NY
- Customer service hours of operation are 8am – 8:30pm, EST; Monday - Friday, excluding the following national holidays: Christmas, New Year's Eve, 4th of July, Labor Day, Memorial Day, Thanksgiving Day and the day after Thanksgiving.
- Access to customer service representatives, with principal responsibilities in the areas of but not limited to: order entry, shipping, delivery, ordering, stocking issues, and other general customer service requests, can be reached toll free at 800-472-4346 for customer service support or 800-772-4346 to place an order; to fax an order 800-329-9109, or by e-mail at custserv@henryschein.com for customer service support or medsls@henryschein.com to place an order via email.
- Technical support is available Monday-Friday; 8am – 8pm EST. Technical support can be reached toll free by calling 800-711-6032, or via email at ECS@henryschein.com. See *Section 2.9, of II. Contract Transition and Implementation*, for more details on technical support for Product ordering.
- **Emergency Call Procedures:** Vendor agrees to use commercially reasonable efforts to accommodate any emergency orders a MMCAP Member or MMCAP Participating Facility may have which shall be used for life critical emergency situations only, that requires Product before the Next Scheduled Delivery Day, provided however that MMCAP, MMCAP Members and MMCAP Participating Facilities understand that Vendor does not have the capabilities to provide delivery of Products on the same day an Order is placed. Such MMCAP Member and/or MMCAP Participating Facility may utilize one of the contact methods outlined under *Section 3.2* of this *Attachment B* to reach out to Vendor.

3.3. MMCAP Participating Facility Customer Account Representatives

Vendor will have a designated account representative appointed by the Vendor's Primary Account Representative, who can address Contract related issues, as initiated by MMCAP Participating Facilities located in each MMCAP Member State. Upon request, the representatives will meet with MMCAP Office, MMCAP Member State/City Representatives and the MMCAP Participating Facilities, to discuss at a minimum, but not limited to, the following:

- Customer satisfaction;
- Vendor performance;

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- State account performance;
- Reports (e.g., Contract compliance);
- Invoices for charge-backs and/or Products not billed to Medicare;
- Other contract related issues.

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II. CONTRACT TRANSITION, IMPLEMENTATION AND MANAGEMENT

1. MMCAP Contract Transition and Implementation

In completing the transition of this Contract, Vendor shall work with the MMCAP Office, MMCAP State Contacts and MMCAP Participating Facilities, to determine the appropriate steps and schedule for the transition. Vendor acknowledges that the transition may be dependent upon the terms of the MMCAP Participating Facilities' existing contracts with manufacturers and distributors. Vendor's procedure for implementing and transitioning MMCAP Participating Facilities to this Contract is set forth on *Attachment E: Vendor's Contract Implementation and Transition Plan*.

1.1. Mutual Exchange of Account Based Information

Within sixty (60) days, before the Commencement Date of this Contract, the MMCAP Office will provide the Vendor with its list of current MMCAP Participating Facilities, along with Product usage information. Within sixty (60) days after the Effective Date of this Contract, the Vendor will provide the MMCAP Office, with the list of existing MMCAP Participating Facilities Vendor is servicing under this Contract.

During the term of this agreement, MMCAP and the Vendor will exchange their respective lists of Members, on a monthly as set forth in *Section 4.5. Vendor Member Listing Report*, in order to verify MMCAP Participating Facilities.

1.2. MMCAP Member Eligibility

Vendor shall inform any prospective new MMCAP business account, that before it is eligible to purchase Products covered by this Contract, at pricing available only to MMCAP Members, it must complete the MMCAP Membership Application form, and enter into a MMCAP membership agreement. Vendor also agrees to refer any prospective new MMCAP business accounts that need further assistance regarding the MMCAP Membership Application process, to the MMCAP Office and to the MMCAP State Contact.

1.3. Vendor Required Documentation

Vendors will provide written notification to new and existing MMCAP Participating Facilities and MMCAP State Contacts, about the Vendor's required documentation and instructions, to enable the MMCAP Participating Facilities to transition to the new MMCAP Contract. At least sixty (60) days before the Commencement Date of the MMCAP Contract, and throughout the Contract term, Vendor will promptly notify the MMCAP Participating Facilities and the State Contacts of any missing or incomplete documentation required for account set-up.

1.4. Start-Up Inventory

If applicable, historical Product usage data will be provided by the MMCAP Office to the Vendor, at least sixty (60) calendar days prior to the Commencement Date of the Contract. Subject to the approval and compliance requirements of the applicable Manufacturer, and upon the request of a MMCAP Participating Facility, Vendor will make commercially reasonable efforts to stock MMCAP Contract Products loaded in its ordering system, and may have a minimum of thirty (30) calendar days' Core Product supply available to order before the Commencement Date of the MMCAP Contract.

1.5. Product Samples and/or Demonstration Models

Upon the written request from any MMCAP Participating Facility, before the Commencement Date of the MMCAP Contract, or at any time during the Contract term, the Vendor agrees to provide Product samples within reason and so long as available from an applicable Manufacturer, and/or demonstration models to any MMCAP Participating Facility at no charge. Upon request from MMCAP Participating Facilities, the Vendor will use commercially reasonable efforts to also provide, if applicable, training on the Products, or facilitate the training of such Product with the applicable Manufacturer, covered by the MMCAP Contract, including the Product features and proper Product use.

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1.6. MMCAP Office Contacts

The primary MMCAP Office Contacts during the Contract implementation and transition period are:

- Emilio Graulau, MMCAP Healthcare Products & Services Coordinator
Email: Emilio.Graulau@state.mn.us
Phone: 651-201-3113
- Elizabeth Suszynski, MMCAP Healthcare Products & Services Coordinator
Email: Elizabeth.Suszynski@state.mn.us
Phone: 651-201-3125
- Jim Losinski, MMCAP Healthcare Products & Services Manager
Email: James.Losinski@state.mn.us
Phone: 651-201-2440
- Alan Dahlgren, MMCAP Managing Director
Email: Alan.Dahlgren@state.mn.us
Phone: 651-201-2410.

1.7. Business Interruption Plan

Vendor must have in place, during the term of this Contract, an emergency preparedness and business continuity plan. During the implementation and transition phase of this Contract, Vendor will work with each requesting MMCAP Participating Facility, to develop a pre-selected list of Products to be shipped in the event of a national or regional emergency. Vendor's detailed Business Interruption Plan is set forth on *Attachment K*.

1.8. Inventory Management

Described below are the Product inventory management requirements for MMCAP Contract Products that are set forth on *Attachment A*.

- **Inventory Management at an MMCAP Participating Facility**
Upon request by an MMCAP Participating Facility, Vendor may provide at cost or no cost to the MMCAP Participating Facility, inventory management support that includes but is not limited to: training, software, reporting capability, and handheld devices, to assist the facility in performing its onsite inventory. Upon request by the MMCAP Participating Facility, Vendor may agree to conduct the inventory management support Services, in accordance with the process mutually agreed upon by Vendor and such MMCAP Participating Facility.
- **Vendor Contacts**
Vendor's designated contact for all usage, inventory, and special order questions for the MMCAP Office is:

Name	Title	Office Address	Contact Information
Andy Oterson	Manager, National Accounts	N/A	Phone: N/A Mobile Phone: (240) 409-6125 Fax: N/A Email: Andy.Oterson@henryschein.com

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Vendor's designated contact for all usage, inventory and special order questions for the MMCAP Participating Facilities is:

Name	Title	Office Address	Contact Information
Andy Oterson	Manager, National Accounts	N/A	Phone: N/A Mobile Phone: (240) 409-6125 Fax: N/A Email: Andy.Oterson@henryschein.com

1.9. MMCAP Contract Products

1.9.1. Non-Stocked MMCAP Contract Products

For MMCAP Contract Products that are not stocked, an MMCAP Member or MMCAP Participating Facility, as applicable, may request the Vendor add the Product to inventory at the applicable distribution center, by contacting customer service or its account representative. Upon mutual agreement between Vendor and a MMCAP Participating Facility, such non-stocked MMCAP Contract Product will be available for delivery within seven (7) – thirty (30) business days, which such availability and delivery, shall be subject to Manufacturer's lead time, unless such non-stocked MMCAP Contract Product is delayed due to Manufacturer unavailability, or force majeure provision, as set forth in *Article 4, Section 33* of this Contract. In the event the fulfillment of any of the requests exceeds what is specified in this section, Vendor will provide prior written notice of the delay, the reason for the delay, and the estimated fulfillment date to the requesting MMCAP Member or MMCAP Participating Facility and the MMCAP Office.

- Vendor may stock MMCAP Contract Products, which meet the Stocking Requirements of Vendor and subject to the approval, availability and compliance requirements of an applicable Manufacturer, and upon the request of a MMCAP Member or MMCAP Participating Facility ("Stocked Products").
- Upon request, Vendor will develop an inventory forecasting report to the MMCAP Office. This report will monitor and forecast ordering, usage patterns, as well as, identify significant trends, including increases and decreases in purchases. Monthly Contract compliance reports to monitor purchases of MMCAP Contract Products must also be available to the MMCAP Office upon request.
- Vendor may not discontinue stocking a Stocked Product, unless an applicable MMCAP Member or MMCAP Participating Facility is not meeting the Stocking Requirements. Provided however, Vendor shall notify the applicable MMCAP Member or MMCAP Participating Facility of its intent to remove such Stocked Product from its distribution center.
- Vendor acknowledges and agrees to maintain Product utilization history data of the MMCAP Contract Products for a minimum of sixty (60) calendar days. If any Product has not been ordered after sixty (60) calendar days, Product utilization history data can be adjusted accordingly in the Vendor's Product inventory management system, to reflect the non-usage of the Product.

1.10. MMCAP Contract Product Additions

1.10.1. Except for newly added MMCAP Contract Products, Vendor will use commercially reasonable efforts to have the Products loaded and viewable in its system, and ready for delivery no later than thirty (30) business days from the time Vendor receives notification, from the Manufacturer, that the Product has been added to the MMCAP Contract.

2. MMCAP Contract Management

2.1. MMCAP Contracted Manufacturers

If MMCAP contracts directly with a Manufacturer for medical Products, Medical Equipment and Services, and select pharmacy Products, the Vendor, if it has an existing relationship with the awarded Manufacturer, may agree to stock the MMCAP Contracted Manufacturer's Product. Vendor will distribute the MMCAP Contracted Manufacturer's

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Products, as they become available to MMCAP Participating Facilities at the purchase prices agreed to by MMCAP and Vendor. Vendor will have the new MMCAP Contracted Products loaded and viewable within thirty (30) business days from verification from the Manufacturer. The stocking requirements for such new MMCAP Contracted Products will be in accordance with Vendor's stocking requirements and policies. The availability for delivery will be subject to a Manufacturer's availability and lead time. If Vendor does not have a business relationship with the new MMCAP Contracted Manufacturer, Vendor shall use commercially reasonable efforts to establish a business relationship, and will follow the terms and procedures outlined in this section.

The MMCAP Office reserves the right to modify the MMCAP Contracted Manufacturers List, as set forth in *Attachment F*, at any time during the Contract term. MMCAP shall provide Vendor notice of any changes to *Attachment F*.

2.2. Product Outages

2.2.1. Product Stock Outages

Vendor's Stock Outage and Backorder Policy is attached to this Contract as set forth in *Attachment H*. Product Backorder due to cancellations/backorders that are not created by the Vendor's Contracted Supplier, will be considered a failure to perform by the Vendor, unless such failure to perform is subject to a Force Majeure as set forth in *Section 33 of Article 4*, and may be considered grounds for termination of this Contract. In addition to the policy in *Attachment H*, the Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.

- **Immediate Notification**

Vendor will provide written notice to the MMCAP Members, MMCAP Member States and the MMCAP Office within forty eight (48) hours, of being notified by an applicable Manufacturer, of any Products covered by this Contract and that are on Manufacturer Backorder. Vendor's backorder notification will include:

- The Products placed on backorder status;
- provided that Vendor has received such information from the applicable Manufacturer, (i) the expected timeline of the backorder, from the time the Products are added to the backorder status and (ii) the back order status of the Products will be removed;
- the reason for the Product backorder, if Vendor knows the reason, and how the Vendor intends to resolve the backorder situation;
- summary of the plan to obtain Product Substitutes during the backorder period.

2.3. Options for Obtaining Backordered Products

2.3.1. Manufacturer Direct Shipment

If there are Products subject to a Manufacturer Backorder, and these Products are deemed critical by the MMCAP Participating Facility, and the Products are available from another Manufacturer, then, if expedited shipping is requested, the Vendor may have such other Manufacturer of the Product, Drop Ship the Product to the MMCAP Facility via Next Day Delivery or to the extent such Manufacturer does not Drop Ship Products, Vendor will ship the Product as soon as such Products are available to the MMCAP Facility for delivery via Next Day Delivery. The MMCAP Participating Facility may be subject to additional cost or shipping charges.

2.3.2. Purchase of Product Substitutes on the Open Market

Should the MMCAP Participating Facility opt out of the Automatic Product Substitution process for the then requested Manufacturer Backordered Product in an applicable Order, the ordering MMCAP Member may purchase a Product Substitute on the open market during the time the Vendor is unable to provide such Manufacturer Backordered Products. Vendor must distribute and deliver the Products covered under this Contract to the nationwide MMCAP Participating Facilities, including the states of Alaska and Hawaii. The Vendor must deliver to sites identified by the ordering MMCAP Members, and if necessary, add other delivery

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sites as identified by the MMCAP Members during the term of the MMCAP Contract. The Vendor will at no time, refuse to deliver to any MMCAP Participating Facility without the prior written approval by the MMCAP Member, and the MMCAP Office. Vendor will use commercially reasonable efforts to agree to deliver the Products that accommodate the business model or the specific delivery needs of the MMCAP Participating Facility.

2.3.3. Auto-Backorder

Vendor will have an auto-backorder function that is part of its existing Product ordering system, which will allow MMCAP Participating Facilities to receive backordered Product due to Vendor created Stock Outages promptly, upon availability of the Product.

2.4. Management of MMCAP Contract Products

2.4.1. Price Loading Requirements

- a. Vendor will be responsible for processing the MMCAP Contract File Updates, or the files sent to the Vendor by the MMCAP Office, which specify the Products and pricing covered under this Contract.
- b. Vendor will load the pricing covered under this Contract.
- c. Vendor will identify Products either under brand, or private labels.

d. Price Loading MMCAP Contracts

If applicable to this Contract, this may also include the Product pricing that the MMCAP Office has negotiated with MMCAP Contracted Manufacturers.

- Timeframe, including Effective Date;
- distribution fees;
- loading of Manufacturer pricing;
- Contract implementation;

- e. Vendor will load and make viewable in its ordering system, all data lines from MMCAP's Contract File update notifications, on a date agreed upon between the Vendor and MMCAP.

When Manufacturer verification is needed, in order to load an MMCAP Contracted Manufacturer's Product, and the MMCAP Contracted Manufacturer has not responded, or provides data that is inconsistent with the MMCAP Contract File Updates, Vendor will use commercially reasonable efforts to notify the MMCAP Office in writing, no later than five (5) business days (after the previously mutually agreed date allowed for Vendor processing).

- f. Provided that Vendor has received all requested account set-up information, Vendor will have all MMCAP Contract and individual MMCAP Contracted Manufacturer contracts loaded, prior to the MMCAP Member's first order. This includes all tiered Contracts, if applicable to this Contract.

2.4.2. Product Additions/Deletions

Vendor may not add or remove any MMCAP Contract Products from its database, except those identified in the *Non-Core Products* tab, of *Attachment A*, without the prior written consent of the MMCAP Office, as set forth in *Article 4, Section 38.2, Amendments*, of this Contract. Notwithstanding the foregoing, Vendor shall have the right to remove any Product as a result of any governmental agency notifying Vendor to discontinue selling Products, to include but not limited to recall Products. Vendor shall provide notice to the MMCAP Member of such occurrence.

2.4.3. Adequate Supply

Vendor agrees to use commercially reasonable efforts to maintain an adequate supply of at least thirty (30) days any Product that is added to the MMCAP Contract and to which Vendor agrees.

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2.4.4. Automatic Product Substitution

The intent of this Contract is to provide Products included on *Attachment A*, to MMCAP Participating Facilities, and not Product substitutes. During the implementation period, the Vendor shall assist MMCAP Participating Facilities with the identification of acceptable Products for Automatic Product Substitution, in the event the Products covered by this Contract are not available at the time of order placement. Automatic Product Substitution will only be permitted upon the written consent of the MMCAP Participating Facility, and a record of the Vendor's Automatic Product Substitutions shall be provided to the MMCAP Office at the quarterly business review meetings.

In instances where the Vendor uses the Automatic Product Substitution process, the MMCAP Participating Facility must be notified of the Product substitution, and the substituted Product must be annotated as such on the MMCAP Participating Facility's Order Confirmation. Automatic Product Substitution by the Vendor without the MMCAP Participating Facility's prior written consent is prohibited.

Upon request, and at any time during the term of this Contract, Vendor will supply the MMCAP Office with a list of MMCAP Participating Facilities using Automatic Product Substitution and a report of the Products substituted. In the absence of Automatic Product Substitution, if the Vendor cannot fill an order for a Product included in *Attachment A*, then the Vendor shall notify the MMCAP Participating Facility, and inform the Order Originator as to the reason the requested Product is not available, and the Vendor shall suggest possible suitable Product substitutes from the established Product substitute list. The Vendor shall not suggest its private label Products, without also suggesting at least one brand label Product. The MMCAP Participating Facility will decide whether to accept a Product substitute, or to cancel the unavailable Product from the order.

a. On-Contract Purchasing Reports

Vendor agrees to encourage MMCAP Participating Facilities to purchase MMCAP Contract Products, including purchases through open solicitations. Vendor must not condone or encourage in any way, the Product Substitution of a MMCAP Contract Product, with that of a non-MMCAP Contract Product. In order to ensure overall MMCAP Participating Facility Contract compliance, Vendor may be asked to provide, at no cost to MMCAP, a monthly report containing the following fields:

- MMCAP Participating Facility name;
- MMCAP ID Number and Vendor account number;
- Contract volume (in dollars) by facility;
- Not-on Contract volume (in dollars) by facility;
- Total volume (in dollars) by facility.

2.4.5. Product Expiration Dating

- At a minimum, expiration dating for all MMCAP Contract Products and non-contract Products, delivered to MMCAP Participating Facilities, Vendor will use commercially reasonable effort to ensure Products have at least a minimum shelf life of six (6) months remaining, upon delivery to the MMCAP Participating Facilities. MMCAP understands and agrees that Vendor relies heavily on Manufacturer's to meet this requirement.
- Vendor shall use commercially reasonable efforts to notify MMCAP Participating Facilities when the shipment of a Product has an expiration date of less than six (6) months
- If Vendor distributes short dated Product to an MMCAP Participating Facility without prior approval, the Product may be returned to the Vendor at Vendor's expense, and subject to *Section 2.18, Products Returned to the Vendor*.

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2.5. Product and Services Ordering

Vendor will implement its ordering system, including its emergency ordering system, regardless of the technological capacity of the Order Originator. Vendor will provide order training procedures to staff identified by the MMCAP Member at no charge, within a mutually agreeable timeframe to the Vendor and the MMCAP Member, after establishing a new MMCAP business account. In addition, Vendor will provide ongoing technical and training support to the MMCAP Members who use its Product and Services ordering system during the term of the Contract. Vendor will also provide its Product and Services catalog in the format requested by and within technological capabilities of the MMCAP Member, which may include an online, or other electronic based catalog, and also Microsoft Office compatible electronic files, or other paper-based format.

2.5.1. Ordering System

a. Vendor will provide to each Order Originator, a Product and Services ordering method that allows the facility to quickly and accurately order MMCAP Contract Products, and non-contract Products, within the technological capabilities of the MMCAP Member. At a minimum, Vendor's Product ordering system(s) must provide the following functionalities:

- Clearly identify all MMCAP Contract Products, and whether these Products are in stock;
- build and place electronic orders;
- review pending orders for correctness and Contract compliance;
- provide online allocation of ordered amounts;
- receive order confirmation reports.

b. Vendor will offer its Product ordering system(s) to MMCAP Members. Vendor will support the following ordering methods: Internet, EDI, phone orders via interactive voice response, direct call to customer service, handheld device ordering, and fax orders.

2.5.2. Training

Training for the Vendor's ordering system may be provided on-site at the MMCAP Member's facility, through webinars or other online training systems that must be approved of in writing by the facility.

a. Training will include but is not limited to the following:

- Proper use of Product and Services order entry devices including computer and hand held units, if applicable;
- how to access and interpret Vendor's inventory status;
- Order placement process (Product inquiry, placement, order edit, print back confirmation, etc.);
- any required Product ordering system maintenance;
- requesting or printing bar code labels, if applicable;
- download/run/print/export contractually required reports, if applicable;
- operation of inventory management program, if applicable;
- identifying MMCAP Contract Products;
- contact information in case of questions regarding ordering;
- training guides or manuals and system operating manuals, accessible on line (including all updates), if available, for all Medical Equipment and software furnished by the Vendor to each individual ordering facility (this requirement may be subject to Vendor facilitating with the applicable Manufacturer for the applicable MMCAP Facility or MMCAP Member);
- assigning of account login IDs and passwords;
- processing item returns;
- technical support to interface hand held devices with each facility's PC/network infrastructure, as applicable.

b. Vendor will provide each ordering facility with a Product and Services ordering instruction manual, outlining all online ordering functions. Vendor may work with the MMCAP Office, to develop other training processes as necessary.

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2.6. Ordering System(s) Back-up Service, Maintenance and Repair

If Vendor's ordering system is internet based, Vendor agrees that routine site maintenance will only occur on weekends, and MMCAP Participating Facilities and MMCAP State Contacts will be notified in advance of the scheduled maintenance. Vendor reserves a maintenance window during the evening Monday – Friday and all day Saturday and Sunday.

2.7. Order Placement

Vendor's Product ordering system will display at least, but is not limited to the following information:

- MMCAP Member name;
- Vendor assigned account number;
- Product and Services name;
- Vendor's Product number;
- generic name or Private Label name;
- Product and Services description;
- packaging;
- Manufacturer name;
- unit dose indicator (if applicable to the Products ordered under this Contract);
- form of Product (if applicable; e.g., tablet, capsule, etc.);
- United Nations Standard Products and Services Code® (UNSPSC®);
- Contract Price (specific to the pricing and Contract eligibility of each MMCAP Member);
- Product denoted as available as a drop shipment;
- Product inventory status (e.g., stocked, unavailable due to MBO, Vendor out of stock, or allocation situations);
- real-time Product inventory quantity available (Product in stock minus those allocated to orders);
- Product substitute search option;
- Product inquiry search option;
- automatic substitution information option, if available and in accordance with Vendor's then current system capabilities;
- auto-backordering function;
- HIN number (where applicable);
- photographic picture of the Product(s) being ordered.

2.7.1. Default Set-Up

Vendor agrees that all new MMCAP Participating Facilities will start with a standard default ordering set-up, to ensure MMCAP Contract compliance.

2.8. Confirmation Print back/Order Confirmation

The Vendor's Product and Services ordering system will allow for the input of an individual purchase order number, assigned by the MMCAP Member for each order submitted. Vendor will provide a purchase order confirmation report to the Order Originator the same day the order is placed, if submitted during Vendor's normal business hours, or the next business day. The order status report will reference the purchase order number of the original order, and include any related Product order information, including but not limited to, the turn-around time from the placement of the MMCAP Member's order, to the expected delivery of the Product.

2.9. Technical Support for Product Ordering

Vendor's technical support is available from 8am – 8pm EST Monday-Friday. After 8am – 8pm EST the line will transfer to voicemail, and Vendor's technical staff will respond to any urgent issues promptly but in no event greater than two (2) business days. The primary method for contacting technical support is via telephone, however for

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certain support scenarios, technical support can accommodate requests via email. In those instances, Vendor's technical staff will check email promptly and will respond to any urgent issue within two (2) business days.

2.10. Emergency Order Placement and Delivery

Vendor agrees to offer an emergency Product ordering system during the term of this Contract, through Vendor's website. An emergency Product order is defined as one necessary for immediate and specific patient care, which falls outside the normal order and delivery parameters. The MMCAP Office agrees to work with the Vendor, if abusive situations arise related to emergency orders.

2.10.1. Emergency Order Placement

During normal working hours, emergency orders should be directed to the customer service team assigned to service the MMCAP Member. After normal business hours, Vendor will provide each MMCAP Participating Facility access to a special after-hours notification system, in the form of electronic notification systems.

Vendor's emergency ordering system must be available twenty-four (24) hours a day, seven (7) days a week. The emergency order must be processed by the Vendor's electronic ordering system, and within a few hours will acknowledge receipt of the emergency order placed by the Order Originator.

2.10.2. Emergency Order Delivery

The emergency order must be processed the same day it is received, if received during normal business hours, and shipped by the most expeditious means possible, unless other shipping means are identified by the Order Originator and the shipping charges for such expeditious shipping means will be the responsibility of the MMCAP Participating Facility of the Order Originator.

2.11. Product Delivery

Vendor must distribute and deliver the Products covered under this Contract to the nationwide MMCAP Participating Facilities, including the states of Alaska and Hawaii. The Vendor must deliver to sites identified by the Order Originator, and if necessary, add other delivery sites as identified by the MMCAP Members during the term of the MMCAP Contract. The Vendor will at no time, unless otherwise required by law, refuse to deliver to any MMCAP Participating Facility without the prior written approval by the MMCAP Participating Member and the MMCAP Office; except Vendor shall have the right to review and hold orders to the extent an applicable MMCAP Participating Member (i) is past-due or delinquent beyond their regular payment terms. Vendor will use commercially reasonable efforts to agree to deliver the Products that accommodate the business model, or the specific delivery needs of the MMCAP Participating Facilities.

2.11.1. Routine Delivery Requirements

a. No Additional Fees

Vendor may not charge any additional fees for routine deliveries, unless such Service is subject to a charge, to MMCAP Participating Facilities.

b. Shipping Terms

All routine scheduled order for standard Product shipments will be F.O.B. Destination, Freight Prepaid and Allowed.

c. No Fuel Surcharges

Vendor agrees that it will not charge a fuel surcharge for the term of this Contract.

d. Delivery Schedule

Vendor will provide a daily order and delivery schedule for each MMCAP Participating Facility. Vendor will have three (3) business days, from the date the Product is ordered, to have the Product stocked and delivered at no extra cost to the Order Originator, barring any Manufacturer production issues or any minimum order requirements from a Manufacturer. It is understood that deliveries to Alaska or Hawaii may take longer.

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All expedited deliveries will be made next day, or on the Next Scheduled Delivery Day (excluding Alaska and Hawaii), unless communicated otherwise. MMCAP Participating Facilities will provide the Vendor with a Holiday Schedule throughout the term of this Contract, and Vendor will provide the MMCAP Participating Facilities a Holiday Delivery Schedule, which accommodates the delivery needs of the MMCAP Participating Facilities.

e. Delivery Time

Vendor's daily order cut off time will be 3:00pm EST time, with the delivery window from generally between 10:00am – 4:30pm the next business day, depending on location and distance from the servicing distribution center and the location of the applicable MMCAP Participating Facility. Orders received Monday through Thursday will be delivered in an average turnaround time from the placement of an MMCAP Member's Order, to the expected delivery date of the Product of less than three (3) business days. Orders received Friday will be delivered the next business day depending on location and distance from the servicing distribution center and the location of the applicable MMCAP Participating Facility.

f. Hazardous Materials

Vendor will only ship hazardous materials as allowed by the appropriate government regulations. MMCAP Member and MMCAP Participating Facility may be subject to additional shipping charges.

g. Damaged Products

All damaged Products must be reported to Vendor's customer service department, as set forth in *Section 2.18, Products Returned to the Vendor*, and applicable credits will be issued within three (3) business days from receipt of the damaged item.

h. Lost Products

All lost Products must be reported to Vendor's customer service department, as set forth in *Section 2.18, Products Returned to the Vendor*. Upon reconciliation, Vendor will apply credit for lost items as applicable within three (3) business days.

i. Large Size Orders

Vendor must have the ability to ship palletized deliveries via freight companies, and must be able to use large companies for dock deliveries instead of small couriers. Orders should be shipped as ordered (by case or by pallet) by the MMCAP Member, so they can be properly unloaded and stored. Vendor will ship palletized and case quantity orders on a weekly, or bi-monthly basis, for all distribution centers, or as mutually agreed upon between the Vendor and the ordering MMCAP Member. MMCAP Member and MMCAP Participating Facility may be subject to additional shipping charges.

2.12. Drop Shipments

- a. All fees associated with Drop Shipments are listed in *Attachment G: Vendor's Shipping Policy*.
- b. The Vendor will act as a conduit to expedite and simplify the ordering and payment of drop shipped Products.
- c. Unless approved by the MMCAP Member, Drop Shipments directly from Manufacturer (not shipped by Vendor) for recurring orders are prohibited.
- d. Products requiring Drop Shipment must be easily identified in Vendor's Product ordering system. Vendor's Drop Shipment Products are denoted in its Product ordering system.
- e. Timelines for the delivery of Drop Shipment Products will be made per the request of the MMCAP Participating Facility (e.g., expedited shipment, standard delivery, etc.). Vendor will place Drop Shipment requests with Manufacturers within one (1) business day of receiving the request from the MMCAP Member.
- f. In the event that Vendor is unable to fill a MMCAP Member's order for an MMCAP Contract Product, Vendor will have the Product drop shipped directly from the Manufacturer. The MMCAP Member may be assessed a fee for this shipment.

2.13. Delivery for Special Products

- a. If applicable to the Products offered under this Contract, Vendor will maintain appropriate temperatures and environmental conditions in accordance with Manufacturer requirements for delivery of Special Products to the

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MMCAP Participating Facilities. All refrigerated Special Products will be shipped in returnable coolers with appropriate packaging to maintain the required temperature range. Special Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the Manufacturer.

b. All Special Products will be adequately packaged by Vendor. If an MMCAP Participating Facility refuses Special Product that has been inadequately packaged, the MMCAP Participating Facility must notify Vendor's customer service department to log the complaint. Any costs associated with the return of Special Product due to improper packaging or transport, will be at the expense of the Vendor.

c. Vendor must not distribute MMCAP Contract Products through associated specialty distributors, without the prior written approval of the MMCAP Office or without the Manufacturer requiring the Vendor to do so.

d. In the event a Manufacturer charges Vendor for shipping, due to an expedited request by an MMCAP Member, Vendor will provide advance written notice to the MMCAP Member, and invoice the MMCAP Participating Facility by line item, for the same shipping cost charged by the Manufacturer. Backup documentation will be available upon request for any shipping fees that are charged to the MMCAP Member, for Products supplied by Vendor.

2.14. Invoicing

2.14.1. Order Invoice

a. Vendor will submit an invoice with each order. Invoices must be only for the amount of Product and Services delivered, not the amount ordered. Quantity ordered and quantity shipped must be based on the packaging associated with the Vendor's Product ID number.

b. No additional fees or special handling charges will be assessed for MMCAP Contract Products, unless such Products are Medical Equipment Products or Special Products.

c. All additional fees (e.g., expedited shipping charges) previously agreed upon between the Vendor and MMCAP, will be in line item detail, separated from the Product's cost, and will be tied back to an original invoice number.

d. Upon request, Vendor will work with the MMCAP Member, to develop a customized invoice format. At a minimum, the Vendor's invoice will contain the following fields:

- MMCAP Member name;
- Vendor-assigned account number for the MMCAP Member;
- invoice line number;
- MMCAP Member's purchase order number;
- invoice date;
- Vendor's SKU item number;
- UNSPC number;
- NDC (11 digit, if applicable to this Contract);
- Product name/description;
- packaging as associated with NDC number(if applicable to this Contract);
- unit Price;
- quantity ordered;
- quantity shipped;
- extension (unit Price multiplied by the quantity shipped);
- total invoice Price;
- bill to address;
- ship to address;
- applicable omit codes (e.g., Manufacturer backorder, Wholesaler temporarily out, Manufacturer discontinued, etc.);

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2.14.2. Invoice Rounding

Vendor agrees to round down if the third digit after the decimal is 4 or less. Vendor agrees that any rounding will occur at the MMCAP Member invoice unit Price.

2.14.3. Invoice Disputes

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

Unless expressly mandated by applicable state law, the MMCAP Member will notify Vendor of any known dispute with an invoice within fifteen (15) calendar 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 MMCAP Member appropriately, and provide a corrected invoice.

Where the above is prohibited by an MMCAP Member State's applicable law(s), the Vendor shall comply with requirements of that state's law(s) related to disputed invoices. Vendor will use commercially reasonable efforts to resolve known disputes related to Contract pricing within fifteen (15) calendar 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.

2.15. Payment

Each MMCAP Member will be responsible for payment of the Products and Services, provided by Vendor. MMCAP will have no liability for an unpaid invoice of any MMCAP Member. Vendor agrees to invoice the MMCAP Member for all Products shipped and Services provided. Vendor agrees to accept purchase orders. Vendor will accept payment in the form of check or Automated Clearing House/Electronic Funds Transfer (ACH/EFT). Vendor will accept, for payment of purchase orders, Electronic Funds Transfer (EFT) and credit cards authorized by the ordering MMCAP Member. Initial selection of, and changes to a MMCAP Participating Facility's choice of payment terms, are subject to Vendor's reasonable credit requirements. If not otherwise provided, payments are due within ten (10) days from Vendor's invoice date.

2.16. Credits and Rebills

- a. Vendor will process credits and rebills as soon as reasonably practicable, as notifications are received from an MMCAP Member. In the case of an invoice dispute, Vendor will issue credits/rebills within seven (7) business days, after the Dispute Resolution process set forth in this Contract.
- b. Vendor will provide credits and rebills to each MMCAP Member online, with the option to print a hard copy.
- c. Vendor will notify MMCAP Member of credit balances as they are generated. An account statement listing open invoices/credit memos will be sent weekly, semimonthly, or monthly, depending on the account's payment terms.
- d. Vendor credits are valid until they are refunded or the account has used payment.
- e. In the event of a facility closure, or other extreme event where the MMCAP Member will not be making another purchase through Vendor, the MMCAP Member may cash out its credit(s).
- e. Vendor will clearly identify credits as a credit.
- f. The Vendor will use commercially reasonable steps to ensure that credits that become available close to the end of the MMCAP Member's fiscal year, are activated for use by the MMCAP Member no later than five (5) business days before the end of the fiscal year.
- g. Vendor's credit memo will contain, but is not limited to the following information:
 - Original purchase order;
 - original Vendor invoice number;
 - itemized listing of the Product(s) affected;
 - any rebill associated with the credit;

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- net credit amount available to the MMCAP Member.
- h.** Vendor will clearly identify rebills as a rebill.
- i.** Vendor's rebill memo will contain but is not limited to the following information:
 - original Vendor invoice number;
 - original order date;
 - itemized listing of the Product(s) affected;
 - credit memo associated with the rebill;
 - reason for the rebill (e.g., Manufacturer chargeback denial, pricing error, etc.);
 - effective date of the Product Price change.

2.17. Price Audits and Corrections

- a.** In the event of a Product pricing error, Vendor must process credit/rebills within thirty (30) calendar days upon resolution of the pricing error.
- b.** When an MMCAP Member or the MMCAP Office discovers an error in pricing, for an MMCAP Contract Product that favors a facility, the MMCAP Member or the MMCAP Office will notify Vendor. Upon mutual agreement by the MMCAP Office and Vendor of the error in pricing, Vendor will issue credits/rebills to MMCAP Member, for the time period from the date the error began, to the date it is corrected, subject to timeframe described in letter *a* of this section.

MMCAP and MMCAP Members reserve the right to authorize delegate(s) at the sole expense of MMCAP and MMCAP Members, to audit this Contract and its transactions.

2.18. Products Returned to the Vendor

Vendor will maintain a returned goods policy set forth on *Attachment I: Vendor's Product Return Policy*, for accepting returns from the MMCAP Participating Facilities, in accordance with applicable laws, regulations, and normal business practices.

2.19. Product Recalls

Vendor's Recall Procedures/Policies are set forth in *Attachment J: Vendor's Product Recall Procedures/Policies*. If any Product covered by this Contract requires modification, is removed, or recalled by the Vendor or an applicable Manufacturer, then Vendor shall promptly notify MMCAP and the affected MMCAP Participating Facilities as follows:

a. Recall Notification

Vendor agrees to notify MMCAP and the MMCAP Participating Facilities within seventy two (72) hours, after becoming aware of any Products covered by this Contract and distributed to MMCAP Participating Facilities that require modification, removal or recall as stated above. Notices to MMCAP shall be sent by e-mail to MMCAP.HPSContracts@state.mn.us.

b. Vendor agrees to comply with any process mandated by the FDA, or any other regulatory body if applicable, and will address the recall with each MMCAP Participating Facility. The MMCAP Participating Facility may return to Vendor or the applicable Manufacturer, with such return process to be provided by Vendor at the time of a recall notification, any Products or Product components subject to recall. The Vendor shall pay all freight costs incurred by return of affected Products, and shall reimburse each MMCAP Member for its costs, including freight, in originally acquiring each affected Product.

2.20. Shareback Credits

Vendor will manage, at no additional cost to the MMCAP Office, the MMCAP Member States or the MMCAP Participating Facilities, the MMCAP annual disbursement of shareback credits, according to the schedule below:

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- a.** The MMCAP Office will provide Vendor with (i) an accurate list of MMCAP Participating Facilities receiving a credit based on Net Purchases through Vendor, (ii) the MMCAP ID numbers, facility names, facility addresses, facility cities, facility states, 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 MMCAP Participating Facilities within fifteen (15) business days of the receipt of the funds.
- c.** Within thirty (30) business days of the receipt of the funds, Vendor must provide to the MMCAP Office, an Excel Spreadsheet detailing the credit memo information. This Excel listing must include the following fields: account number, MMCAP Member ID, facility name, facility address, facility city, facility state, DEA (if applicable), HIN (if applicable), date of credit memo, credit memo number, and credit memo amount.
- d.** Within sixty (60) business days of the receipt of the funds, Vendor will refund to the MMCAP Office, any remaining dollars for which it was unable to issue credit; this may be for any MMCAP Member that were determined to no longer be valid Members, or that were not able to be located for any variety of reasons. Vendor will work with the MMCAP Office, in order to identify all MMCAP Members to the best of its ability, in an effort to issue all necessary credits, before refunding dollars back to the MMCAP Office.
 - Upon initiating the refund to the MMCAP Office, Vendor will provide a copy of the original Shareback Credit spreadsheet, detailing the credit information (received from the MMCAP Office), the reason for non-application of funds, and the dollar amount of the funds being returned to the MMCAP Office.

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III. KEY CONTRACT PERFORMANCE METRICS

1. Vendor Performance Requirements

Vendor will be required to meet the performance requirements specified in this Contract. Vendor's performance will be recorded in the Vendor Contract Performance Report, and reviewed at the quarterly business reviews with the MMCAP Office. If Vendor's performance is unsatisfactory, as measured against the performance requirements described in this Contract, then the Vendor will be put on a corrective action plan. The corrective action plan will detail the MMCAP Office's expectations, and timeline for bringing the Vendor up to a satisfactory level of performance specified in this Contract. Vendor's failure to perform at a satisfactory level, may result in the termination of this Contract, as described in *Article 4, Section 3, Contract Termination*.

1.1. MMCAP Business Reviews

The Vendor's Authorized Representative for the MMCAP account must attend and participate in business reviews, at least quarterly (every 3 months) during the term of this Contract. Upon request, or if deemed necessary, any MMCAP Participating Facility may also attend. Business reviews will include, but not be limited to the structure and topics in *Section 1.2* below.

1.2. Meeting Structure and Topics

- a. The business review meeting agenda must be finalized in advance, with significant MMCAP input.
- b. All data, backup reports, and slides pertaining to the meeting, should be sent to the MMCAP Office at least three (3) business days in advance, or, as agreed upon between MMCAP and the vendor.
- c. The quarterly business reviews will, at a minimum, address the following:
 - Contract attachment;
 - pricing accuracy;
 - Contract activity reporting;
 - industry news/updates;
 - Product information and updates (recalls, innovations, new Products etc.);
 - success stories and ongoing new business opportunities;
 - EDI setup and audits;
 - customer satisfaction;
 - Vendor's response to price inquiries;
 - Vendor performance issues;
 - Member issues;
 - conversion activities;
 - Contract implementation/transition issue;
 - a briefing on Vendor's ongoing efforts to identify any potential savings opportunities for MMCAP Participating Facilities;
 - briefing on Vendor's efforts to refer the MMCAP Members to Products that represent the "best value"

2. Products and Pricing Accessibility

2.1. Contract Attachment

Vendor agrees to connect and to provide access of MMCAP Contract Products and Services pricing to MMCAP Members, according to their membership status, and as listed on the Membership Roster of the MMCAP website so long as such MMCAP Member notifies Vendor it has elected to operate under the terms of this Contract. Under no circumstance, Vendor will deny access to MMCAP Contract Products and Services pricing to a MMCAP Member, as long as the MMCAP Member is in good standing and current on payments to the Vendor, as stated in *Section 2.15, Payment, of II. Contract Transition, Implementation and Management*, of this Agreement. Vendor agrees to encourage the MMCAP Member, procuring Products and Services pricing under this Agreement, and to extend pricing and applicable discounts, under the conditions of this Contract.

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2.2. Pricing Accuracy

Vendor agrees to extend accurate MMCAP Contract pricing and all applicable discounts to all MMCAP Members, as set forth in *Attachment A* of this Agreement. If due to error, the price that was extended to a MMCAP Member did not meet the MMCAP Contract pricing, Vendor must provide a reimbursement or credit to the affected Member, as set forth in *Section 2.16, Credits and Rebills, of II. Contract Transition and Implementation.*

2.3. Accessibility to Vendor's Order Entry System

Vendor agrees to facilitate, and to encourage the use of MMCAP Contract Products, by identifying those Products directly in its order entry system. In the case where an MMCAP Member is denied MMCAP Contract Pricing, the Vendor agrees to send notification to the MMCAP Member, as well as to the MMCAP Office via e-mail at:

MMCAP.HPSContracts@state.mn.us.

3. Vendor's Response to Price Inquiries

3.1. Price Inquiries from Members

Vendor is required to respond to Product and pricing inquiries from MMCAP Members, within five (5) business days after receipt of the request, or at a mutually agreed upon date with the MMCAP Member and/or MMCAP Office, for a specific quote request. In order to expedite the process, the MMCAP Member is responsible for providing Vendor with its MMCAP Member ID and bill to address. Subject to *Section 6* and *Section 9 of Article 4* Vendor is responsible, to ensure that the generated price quotes satisfy the pricing, as set forth in *Attachment A* of this Agreement. Subject to *Section 6* and *Section 9 of Article 4*, Orders placed as Product of generated quotes, will remain consistent with the pricing found in this Agreement. Failure of Vendor, to provide a timely response to customer inquiries on Product and Services information and pricing, will be documented in the Vendor Contract Performance Report, and the Vendor might be subject to penalties, including termination.

3.2. Price Inquiries from Potential Members

In instances in which MMCAP requests pricing from Vendor, on behalf of customers who are considering Membership with MMCAP, Vendor may provide pricing for the Products and Services, consistent with the pricing and applicable terms of this Agreement, and within the reasonable due date requested by the customer, unless such due date is changed under mutual agreement between the inquiring customer, the MMCAP Office, and the Vendor. Vendor understands that if it does not provide pricing to the customer, this might limit future sales activity with said customer, once it becomes a Member.

4. Reporting Requirements

Vendor must provide all of the following reports to the recipients as directed below. All reports must be available in electronic Microsoft Excel file format but in some cases and subject to Vendor receiving a prior written request from MMCAP, paper copy, and contain the required information fields. Vendor will work with the MMCAP Office during the transition and implementation period of this Contract, to ensure the Vendor's required reports meet the reporting requirements of this Contract. If requested by an MMCAP Participating Facility, MMCAP Member State or the MMCAP Office, the requested report may be customized to report data specific to the requesting entity and agreed to by Vendor.

4.1. Reporting Tools

- a. Vendor must provide online electronic access to all purchasing data, relating to the Products that are purchased by each MMCAP Member to the MMCAP Office, MMCAP Member State Contacts, and MMCAP Participating Facilities. Electronic access will provide a system for reporting each individual MMCAP Member's purchases, as well as reports on select groups of facilities. Users must be able to manipulate the data, in order to build reports based on each MMCAP Participating Facility's or MMCAP Member State's individual need, and/or ability to transfer data into spreadsheets in a Microsoft Office compatible format.
- b. At a minimum, Vendor will provide the following on-line reporting tools:

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- Purchase Summary Report - ranks items by sales value, over a designated period of time;
- Manufacturer backorder reporting;
- Fill-Rate Reports'
- Contract Compliance Reports.

c. Vendor will set up a user login on Vendor's online reporting system for each MMCAP Member State and the MMCAP Office, with all MMCAP Member accounts for reporting purposes at no cost.

Vendor will provide the technology to allow one user to run reports for several MMCAP Member accounts, for reporting purposes, at no cost.

4.2. Monthly Sales Data Usage and Administrative Fee Data Reports

All reports indicated in this section, must be available in an electronic Microsoft Excel file format, but in some cases and subject to Vendor receiving a prior written request from MMCAP, paper copy, and contain the required information fields set forth below. Vendor will work with the MMCAP Office during the transition and implementation period of this Contract, to ensure the Vendor submits the required reports in a format and content, mutually agreeable to both parties. If requested by an MMCAP Participating Facility, Member State or the MMCAP Office, the requested report must be customized to report data specific to the requesting entity.

a. Monthly Sales Data Usage Reports for the MMCAP Office

Vendor will supply to the MMCAP Office, accurate monthly sales data on or before the 10th business day of the subsequent calendar month. The report must include Product and Services, and dollar spend amount sorted in descending order, and grouped by Product and Services category. Also, the report MUST include the information set forth below, for every transaction between the Vendor and the MMCAP Member:

- Table 1 details the required fields for the sales data report;
- Table 2 details the required record layout, in a fixed record format.

b. Administrative Fee Data Report

The Vendor must submit a monthly *Administrative Fee Data Report* with each Administrative Fee payment, which includes sales made direct from Vendor, to the MMCAP Member.

The monthly *Administrative Fee Data Report* must contain the fields set forth below, as those fields apply to this Contract. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to Mn.MMCAP@state.mn.us, on or before 10 business days of the second subsequent month. Failure to comply with this provision, may constitute breach of this Contract. In the event the Vendor is delinquent in any undisputed Administrative Fees, MMCAP reserves the right to terminate this Contract, as set forth in *Article 4, Section 3*, and to reject any proposal submitted by the Vendor in any subsequent solicitations for medical Products, Services and Medical Equipment, and select pharmacy Products.

Table 1

Required Data Fields for the Sales Data Report
MMCAP-assigned facility ID
MMCAP Facility Name
Vendor Distribution Center Code
Vendor-assigned Account number for the MMCAP Facility
Customer Invoice Number
Customer Invoice Line Number
Customer Purchase Order Number
Invoice date (mmddyyyy)
Buyer name or equivalent of buyer ID for person submitting the invoices (May be left blank)

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Vendor's (Distributor) SKU item number
NDC of purchased Product in 5-4-2 format as stored in First DataBank, Inc. (may be left blank if not pharmaceutical)
Label Name (Product description)
Unit Dose (may be left blank if not pharmaceutical)
Pack Size (may be left blank if not pharmaceutical)
Unit (selling unit of measure)
Case Size (case packaging size)
Dose (may be left blank if not pharmaceutical)
Strength (may be left blank if not pharmaceutical)
Route (may be left blank if not pharmaceutical)
Unit Price (99999.9999) (selling unit Price)
Quantity ordered (not Vendor repackaged or re-bundled quantity) (999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit Price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
Type of transaction (MMCAP Contract purchase, other Contract purchase (340B,PHS), not on Contract purchase) 1=Contract item, 2=other contract, 3=not on Contract
Bill to Address 1
Bill to City
Bill to State (2 alpha postal code)
Bill to Zip (standard 5-4 format, no dash necessary)
Ship to Address 1
Ship to City
Ship to State (2 alpha postal code)
Ship to Zip (standard 5-4 format, no dash necessary)
Service Fee (9999.9999) (if providing negotiated service fee discounts)
MMCAP Contract Number (MMSxxxxx)
Admin Fee (9999.9999)
Credit Indicator (C for credit)
MMCAP Assigned Wholesaler Code (AmeriSource-Bergen=0401, Cardinal Health=0301, Morris-Dickson=0701, Bergen=0201, (New codes will be assigned to PPV's during implementation period of the Contract)
Manufacturer Name (MFG Name)
Class of Trade (if offering volume or tiered discounts)
340B Purchase (1=True, 0=False)
Manufacturer Part Number
Product Category
Manufacturer Part Number
Product Category
GLN - Global Location Number (if applicable)
GTIN - Global Trade Item Number (if applicable)

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Table 2

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP-assigned facility ID
B	MMCAP Facility Name
C	Vendor Distribution Center Code
D	Vendor-assigned Account number for the MMCAP Facility (this should be the ship-to account number).
E	Invoice Number
F	Invoice Line Number
G	Purchase Order Number
H	Invoice date (mmdyyy)
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 in 5-4-2 format 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)(999999.9999)
V	Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
W	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
X	Type of transaction (MMCAP contract purchase, other contract purchase (340B,PHS), not on contract purchase) 1=core item, 2=non-core, 3=not on contract
Y	Bill to Address 1
Z	Bill to City
AA	Bill to State (2 alpha postal code)
AB	Bill to Zip (standard 5-4 format, no dash necessary)
AC	Ship to Address 1
AD	Ship to City
AE	Ship to State (2 alpha postal code)
AF	Ship to Zip (standard 5-4 format, no dash necessary)
AG	Service Fee (9999.9999),
AH	MMCAP Contract Number (MMSxxxxx)
AI	Admin fee (9999.9999)
AJ	Credit Indicator (C for credit)
AK	MMCAP Assigned Wholesaler Code (<i>Codes will be assigned to PPV's during implementation period of the contract</i>)
AL	Manufacture Name (MFG Name)
AM	Class of Trade
AN	340b Purchase
AO	Category
AP	Manufacturer Part Number
AQ	List Price
AR	UNSPSC Code (XXXXXXXX), in accordance with Vendor's then current system capabilities
AS	UNSPSC Description, in accordance with Vendor's then current system capabilities

4.3. Vendor Member Listing Report

Vendor will provide a monthly listing to the MMCAP Office, of the MMCAP Members attached to the MMCAP Contract, no later than ten (10) business days of the subsequent month. The report must be submitted electronically to mn.multistate@state.mn.us.

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4.4. Vendor's Catalog for MMCAP Products

Vendor must promptly provide the MMCAP Office, with an updated Product catalog, as it becomes updated, covering, but not limited to, the following data:

- Vendor number;
- Product number;
- Product description;
- Product selling unit of measure;
- Product Contract price, per selling unit of measure
- Product type (Core, Non-Core)
- Manufacturer name;
- Manufacturer part number;
- case packaging;
- list price (per selling unit of measure);
- UNSPSC.

4.5. Contract Audit Report

Vendor will provide to the MMCAP Office, a monthly Contract audit report within thirty (30) calendar days from the end of each reportable calendar month, during the term of the MMCAP Contract (e.g., June's data will be due on August 30th). This report must be provided in an Excel format (may be zipped), and will be submitted electronically to mn.multistate@state.mn.us. The table details the required fields for the Contract Audit Report. This report must include the following, for every Product loaded and attached to the MMCAP Contract:

Long Field Description Name – Contract Audit Report
Vendor Name
MMCAP Contract Number
Manufacturer
Product Brand Name
Product Generic or Private Label Name
Vendor's Product or Part ID Number
Manufacturer's Product or Part ID Number
Item Description
Vendor Reference Contract Number
Size
Form
Unit of Measure
MMCAP Contract Cost
Contract Start Date
Contract End Date

4.6. Additional Reports for the MMCAP Participating Facilities and MMCAP Member State Contacts

Upon request from an MMCAP Participating Facility or MMCAP Member State Contacts, Vendor will provide a Sales Data Usage Report within thirty (30) business days from the date of the request. The report data will provide a summary of a particular MMCAP Member's total usage by Product and dollar spend amount, sorted in descending order, and grouped by Product category for a specified date range. Upon request by the MMCAP Participating Facility and/or MMCAP Member State Contacts, the following reports must be made available through Vendor's custom reporting tools. Vendor must be able to supply to the MMCAP Participating Facilities, accurate reports with the following information:

- a. Monthly, quarterly, and annual reports, detailing total purchases (payment amount and units) by individual Product, (clearly identified via SKU, UNSPSC Code, Vendor, and label name) sorted in both label name and descending dollar order. Units must correspond to the packaging.

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- b.** Velocity report (fastest moving and high dollar) containing forecasted velocity codes with order points, and order quantities.
- c.** Price change report (twice a month), indicating MMCAP Contract and non-contract Products, with Price changes.
- d.** Monthly list of discontinued Products and new Products, as requested by MMCAP Participating Facilities and in the method agreed to by Vendor and such MMCAP Participating Facilities.
- e.** Any other reports required by law.

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ATTACHMENT C: MMCAP MEMBER PARTICIPATION AGREEMENTS

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ATTACHMENT D: SERVICE AREA

Service area based on states and cities whom MMCAP has executed Joint Powers Agreements (JPAs) with.

Alabama	Alaska	Arizona	Arkansas	California
City of Los Angeles	City of Chicago	Colorado	Connecticut	Delaware
District of Columbia	Florida	Georgia	Hawaii	Idaho
Illinois	Indiana	Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland	Massachusetts	Michigan
Minnesota	Mississippi	Missouri	Montana	Nebraska
Nevada	New Hampshire	New Jersey	New Mexico	New York
North Carolina	North Dakota	Ohio	Oklahoma	Oregon
Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee
Texas	Utah	Vermont	Virginia	Washington
West Virginia	Wisconsin	Wyoming		

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**ATTACHMENT E:
VENDOR'S CONTRACT IMPLEMENTATION AND TRANSITION PLAN**

As Henry Schein has held MMCAP supply contracts in the past, the start-up phase for this specific Contract would be a seamless transition. Henry Schein's dedicated account team has proven to MMCAP through our past contract our ability to handle the implementation of this contract. All planning, scheduling and coordination of the numerous tasks include location scrubs, new account setups, and sales plan creation to ensure MMCAP locations receive the correct pricing. Throughout the process, the Henry Schein dedicated account team will maintain an up-to-date implementation plan, ensuring that all project tasks are completed within established time frames and in an organized, efficient and successful manner.

Upon award, a custom sales plan will be created for MMCAP with all pricing specific to the MMCAP Contract. All other details bulleted above are sorted out by the MMCAP dedicated account team in tandem with our implementation team to ensure a seamless transition.

Once MMCAP provides their current member roster, Henry Schein will perform a location scrub to indicate active accounts with Henry Schein. However, due to the fact that most customers belong to at least two different GPO partners, we must remain GPO neutral and honor the customer's choice of GPOs. Customer lists are proprietary and confidential and sharing those lists outside of Henry Schein would violate our GPO and customer agreements.

A callout campaign would be implemented by our telemarketing team within 60-days of the contract start date and/or contract execution date, whichever is later. This campaign would involve calling out to all applicable MMCAP members based on the www.mmcap.org membership list. Next, any new accounts would be set up in our system through our verifications team and assigned a team of telesales and/or field support. The Henry Schein consultant will work with each site to assist with the setup of on-line ordering, initial order processing and to provide support regarding Product inquiries and resolution of customer service issues on an ongoing basis. They will also work with MMCAP members to ensure that Product standardization and Contract utilization is a part of the educational process at each site. For existing accounts, an account/location scrub would be performed to indicate active/existing Henry Schein accounts for MMCAP members to ensure they are connected to the proper new sales plan.

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**ATTACHMENT F: MMCAP CONTRACTED MANUFACTURERS LIST
 (IF APPLICABLE TO THIS CONTRACT)**

Nutritionals	Medical Food Products	Diabetic Syringes
Abbott Nutrition	Hormel	AgaMatrix, Inc.
Nestle	Kent Precision Foods	ARKRAY USA, Inc.
Nestle Infant Nutrition (Gerber)		Retractable Technologies, Inc.
Nutricia		Roche Diagnostics
Mead Johnson		Abbott Diabetes Care
		UltiMed
		Trividia

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ATTACHMENT G: VENDOR'S SHIPPING POLICY

Delivery can be made via parcel shipment to a general receiving area, or internally to various departments within the same address if they have their own suite numbers. Delivery via parcel is next day. Orders transmitted to the distribution center by 4:00pm (EST) will be shipped the same day, for next day delivery. Henry Schein utilizes UPS for parcel services. There is no maximum amount of orders per week for MMCAP Members, although we do work alongside MMCAP Members to ensure they are placing orders efficiently which saves time and money. The sales team can work with the Member(s) and UPS should the customer need scheduled delivery times. Same day delivery is a possibility but may be subject to an additional fee.

Henry Schein's policy is to provide free freight, except for additional carrier charges related to special delivery services and hazardous material shipments. Special orders, drop ship orders, equipment delivery, and holiday, weekend or expedited deliveries may be subject to additional freight charges.

99.9% of all orders received are shipped from one of our distribution centers the same day they are received. 98% of our orders are delivered within one business day. The remaining 2% of our orders are delivered the second business day. In an emergency, UPS guaranteed early next-day delivery is available for a nominal fee.

Henry Schein will deliver to MMCAP member's receiving dock, warehouse or agreed upon drop ship location.

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ATTACHMENT H: VENDOR'S STOCK OUTAGE AND BACKORDER POLICY

Backorder Policy:

If the local distribution center is out of stock of any item, two things will happen. First, a stocking order is rushed from both the Manufacturer and from our next closest distribution center to fill the shelves. Second, any item that is out of stock will be automatically shipped from our next closest distribution center to our customers.

Backorder Notification:

Backordered or out of stock Products can be communicated a number of ways. If an Order confirmation is requested, the status of each item on the order (i.e. shipping, back ordered, or drop shipped) will appear on the confirmation. Order confirmation can also be sent via EDI or using the Order tracking feature on the Henry Schein website. As the Order is shipped, the paperwork included with the shipment will show backordered items listed as such. We have a team in place to aggressively expedite any items that have low inventory levels, past due Orders or potential out of stocks. This process includes supplier engagement, expedited shipping, and carrier partner distribution center involvement. An estimated ship date will be provided when possible.

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ATTACHMENT I: VENDOR'S PRODUCT RETURN POLICY

Returns can be easily placed online, through our customer service department or via your consultant. Once the Product is received back into our warehouse, a credit will be processed to MMCAP account and will generate a credit memo. Returned Products must be returned within 30 days of purchase. After the 30 days, a restocking fee will be assessed.

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 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.

Exceptions:

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

- Opened hand pieces, small equipment, and custom-ordered equipment
- Special order items (Products that we do not ordinarily stock)
- Personalized and imprinted items
- Opened computer hardware and software
- Controlled drugs
- Hazardous items
- Expired Products
- Items that cannot be returned to the manufacturer

Prescription Drug Returns:

Federal law requires that any drugs returned to a wholesale distributor, are kept under proper conditions for storage, handling, and shipping. The Prescription Drug Marketing Act also requires that written documentation indicating that proper conditions were maintained is provided to the wholesale distributor to which the drugs are returned. To help facilitate this process Henry Schein, Inc. has developed a Prescription Drug Return Authorization form that you may use to comply with this requirement. To receive a copy of the form and obtain proper return authorization, please contact Customer Service at 1-800-472-4346 or access our online Prescription Drug Return Policy and Return Form.

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ATTACHMENT J: VENDOR'S PRODUCT RECALL PROCEDURES/POLICIES

When notified by the manufacturer of a recall and/or advisory, our customers are notified within 72 hours. Once we are provided a list of Products we will review and notify MMCAP if there are any possible advisories or recalls which have not been announced to the public.

Henry Schein has implemented systems and procedures to timely and effectively conduct Product recalls/withdrawals initiated by a manufacturer, the FDA, or any other recalling firm as well as to ensure compliance with all appropriate laws and regulations.

When a recall/withdrawal notification is first received, Henry Schein assures all pertinent information is included within the notification. Once all of the required information has been obtained, we will proceed to determine if Henry Schein distributes any of the affected Product(s). If it is found that any of our distribution centers have inventory of the specified item(s), the Product(s) are made unavailable for sale (to ensure our customers are not shipped potentially defective Product) and our distribution centers are advised to conduct an inventory check to pull any affected Product. If affected Product is found on hand, it will be removed from saleable inventory and placed into quarantine where it will remain until the final disposition of the Product has been made.

Product recalls/withdrawals are conducted to the Wholesale, Professional/Retail or End-User Level, as instructed by the recalling firm initiating the action to be taken. For Product recalls/withdrawals conducted to the Professional/Retail or End-User level, Henry Schein will build a database for all customers who may have potentially received the affected Product(s). Henry Schein will send out a comprehensive recall/withdrawal notification, via first class mail, to these accounts within 72 hours of the receipt of the original recall/withdrawal notification. Notifications to our customers will include Product codes and lot numbers for the items on recall, the reason for the recall and the corrective action to be taken.

For recalls/withdrawals in which customers will be instructed to return affected Product, their accounts will be credited for the Product returned as well as the shipping expenses associated with the return of the affected Product(s).

Henry Schein's systems are updated with the relative recall information to ensure any affected Product on any incoming shipment will be flagged and will not make into our inventory.

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ATTACHMENT K: VENDOR'S BUSINESS INTERRUPTION PLAN

Henry Schein, Inc. is committed to safeguarding the interests of our customers if faced with an emergency or significant business disruption. This statement summarizes Henry Schein's effort to mitigate risks inherent with unforeseen business interruptions.

Our comprehensive business continuity strategy is designed to enable us to meet our existing obligations and minimize disruption to our customers even in the event of an emergency or significant business disruption. The safety and well-being of Team Schein Members (Henry Schein employees) is also a vital concern. If an emergency or significant business disruption should occur, Henry Schein will communicate with Team Schein Members using a combination of direct communications as well as a dedicated Team Schein Member Information Line. Team Schein Members will in turn be in direct communication with our customers in the event of a business disruption to advise them of the situation and any potential impact to our service levels.

Contingency planning extends to providing alternate methods of service and support to clients affected by disasters and losses, with prioritization given to customer-facing functions. Some of the major components of this plan are:

- Crisis/Incident Management and Communications
- Business Impact Analysis
- Business Relocation
- Manual Workarounds procedures

Henry Schein's recovery strategy uses multiple facilities located far enough apart to diminish risks posed by local disruptions. These facilities are a combination of internal Henry Schein facilities, commercial hot-site recovery space and business partners. This separation is a key element of the Company's overall business continuity strategy. This separation allows us to plan for events at each location individually, as no one event should effect more than a single location simultaneously. The benefit of having only one site in each location means that our response to an event will be the same whether the event is a firm-only business disruption, a disruption to a single building, a disruption to a business district or a citywide business disruption.

For example, if our Indianapolis distribution center sustained meaningful damage from a severe weather event effectively shutting it down for several days, we have the ability to very quickly shift order volume to alternate distribution centers across the country for processing. Each of the fully operations distribution centers would take a portion of the Indianapolis orders volume and process it the same day it's received. We'd then leverage our extensive relationship with UPS and other national carriers to get the orders delivered in a time sensitive manner. We could comfortably operate in this fashion until sufficient repairs were completed at the impacted facility restoring it to full operations.

Our comprehensive business continuity strategy is designed to enable us to meet our customer obligations in the event of most emergency or significant business disruptions. The plan is designed to work in many different emergency situations; but these events are, by their nature, unpredictable and it is impossible to anticipate every scenario that could cause a business disruption. Furthermore, although we are confident in our own preparedness, Henry Schein has no control over the various third party vendors that we must rely upon in the event of an emergency. Our business continuity plans are tested periodically to ensure readiness; yet such tests may not be able to replicate the actual conditions we experience in a real emergency.

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ATTACHMENT L: VENDOR'S ESCALATION PROCEDURE

If a conflict arises the escalation procedure will be as follows: if parties are unable to resolve the issue in a timely manner (14 days), either the MMCAP Member or Vendor may escalate the resolution of the issue to a higher level of management. Where escalation of the issue proves ineffective, either party may contact MMCAP and/or the Vendor's MMCAP Representative for further resolution. When escalated to MMCAP, a teleconference will be scheduled with MMCAP and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The plan and timeline must be agreed to by all parties – MMCAP, the MMCAP Member and Vendor.

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ATTACHMENT M: VENDOR'S DISCOUNT STRUCTURE

Intentionally Omitted

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**State of Minnesota
Affirmative Action Certification Form**

Complete the information requested below to determine whether Responder is subject to the Minnesota Human Rights Act certification requirement (Minnesota Statutes Section 363A.36. **Responder must provide this information and—if required—apply for Human Rights certification prior to the due date and time of the proposal and to obtain Human Rights certification prior to the execution of the contract.**

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to **BOX B**.

The proposal will be rejected unless Responder's business: has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR) **OR** has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the proposals are due.

Check one of the following statements if Responder has employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of Responder's certificate with your proposal.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____ (date). [If the date is the same as the proposal due date, indicate the time Responder's plan was received: _____ (time). Proceed to BOX C.
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our proposal will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

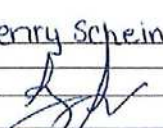
Note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by other governmental entities (federal government, county, or city) must still be reviewed and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A. Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

Box C – FOR ALL COMPANIES

By signing this statement, Responder certifies that the information provided is accurate, that you are authorized to sign on behalf of the Responder, and that Responder is in compliance with federal affirmative action requirements that may apply to the Responder's company. (These requirements are generally triggered only by participating as a prime or subcontractors on federal projects/contracts. Vendors are alerted to these requirements by the federal government.)

Name of Company: Henry Schein, Inc. Telephone number: _____
 Date: 5/12/17 Title: Vice President & CFO, Medical Group
 Authorized Signature:  Date: 5/12/17

Minnesota Department of Human Rights, Compliance Services Section	TC Metro: (651) 296-5663	Toll Free: 800-657-3704
Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101	Fax: (651) 296-9042	TTY: (651) 296-1283
Web: www.humanrights.state.mn.us		
Email: employercinfo@therightsplace.net		

AMENDMENT NO. 8 TO MMCAP INFUSE CONTRACT NO. MMS18016

THIS AMENDMENT NO. 8 ("**Amendment**") is entered into on the date all required signatures are obtained for this document and is by and between the State of Minnesota acting through its Commissioner of Administration ("**Minnesota**") on behalf of the MMCAP Infuse f/k/a Minnesota Multistate Contracting Alliance for Pharmacy ("**MMCAP Infuse**") and **Henry Schein Medical, a division of Henry Schein Inc.**, a corporation with an address of 135 Duryea Road, Melville, New York 11747 ("**Vendor**").

RECITALS

WHEREAS, MMCAP Infuse and Vendor entered into MMS18016 on June 25, 2018, as amended (collectively, the "**Original Contract**");

WHEREAS, MMCAP Infuse and Vendor have agreed to certain changes in the terms and conditions set forth in the Original Contract and have agreed to amend the Original Contract to reflect said changes;

WHEREAS, besides the terms and conditions of the Original Contract amended in this Amendment, the Original Contract remains in full force and effect; and

NOW, THEREFORE, the parties acknowledge and hereby agree that the Original Contract shall be amended as follows:

Capitalized Terms; Definitions; Conditions. The Original Contract and Amendment shall be read together as one document. Any capitalized terms used in Amendment that are defined in the Original Contract will have the same meaning(s) when used herein, unless the context clearly requires otherwise. To the extent there shall exist a conflict between the Original Contract and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted, or amended otherwise, the terms of the Original Contract will continue in their entirety and govern the contractual relationship between Vendor and MMCAP Infuse.

Clause Modifications:

Revision 1: *ARTICLE 4: CONTRACT TERMS AND CONDITIONS*, clause 2. *Contract Expiration Date* in the Original Contract is deleted in its entirety and replaced with the following:

2. Contract Expiration Date

June 25, 2021; the Contract may be extended for up to two (2) additional one (1) year periods upon execution of a written amendment and acceptance of both parties.

Revision 2: The second sentence of *ARTICLE 4: CONTRACT TERMS AND CONDITIONS*, Clause 23.6 in the Original Contract is deleted in its entirety and replaced with the following:

23.6 In the event that a court of competent jurisdiction orders Vendor to disclose its insurance policy(ies) in connection with discovery during litigation brought as a result of a dispute between the parties, Vendor agrees to adhere to such court's order with respect to disclosure of such policy(ies).

Attachment A Modifications:

Revision 3: Attachment A of the Original Contract is removed and replaced with a new *Attachment A: Products and Services Pricing*, which is attached and incorporated as Exhibit 1 of this Amendment.

[End of Amendment; Signature Page Follows]

Except as herein amended, the provisions of the Original Contract between the parties are hereby expressly reaffirmed and remain in full force and effect.

VENDOR: Henry Schein Medical, a division of Henry Schein Inc.

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

Name: Nancy A. Lanni
Signature: *Nancy A. Lanni*
Title: VP, Healthcare Services
Date: 3/3/2020

STATE OF MINNESOTA FOR MMCAP INFUSE

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

Name: *Jane B. Blah*
Signature: *Jane B. Blah*
Date: March 3, 2020

COMMISSIONER OF ADMINISTRATION

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

Name: *Jennifer VanderPlants*
Signature: *Jennifer VanderPlants*
Date: 3/4/2020

Exhibit 1

Attachment A: Products and Pricing