



APRIL 25, 2022 - 7:00 PM

**AGENDA
CORRECTIONS AND LAW ENFORCEMENT
PURSUANT TO RESOLUTION NO. 08-100, RULES I, II, AND III**

I. COMMUNICATIONS

II. RESOLUTIONS, MOTIONS, AND NOTICES

1. Resolution extending Upstate Quality Improvement and Caseload Reduction grant agreement with New York State Office of Indigent Legal Services on behalf of the Chemung County Public Defender and the Chemung County Public Advocate
2. Resolution authorizing application for and acceptance of New York State Division of Homeland Security and Emergency Services 2021-2022 Public Safety Answering Point Operations Grant on behalf of the Chemung County Office of Fire and Emergency Management
3. Resolution authorizing application for and acceptance of 2021 Statewide Interoperable Communications Formula-Based Grant Program on behalf of the Chemung County Fire and Emergency Management
4. Resolution authorizing application for and acceptance of funding from the New York State Division of Criminal Justice Services on behalf of the Chemung County Probation Department (Raise the Age)
5. Resolution authorizing Purchase Agreement with Emergent Devices on behalf of the Chemung County Sheriff's Office (Narcan)
6. Resolution authorizing agreement with Black Creek Integrated Systems Corporation on behalf of the Chemung County Sheriff (Level 1 Service Plan)
7. Resolution authorizing application for and acceptance of New York State Division of Homeland Security and Emergency Services 2022 Statewide Interoperable Communications Grant Program (Targeted Grant Program)

III. OLD BUSINESS

IV. NEW BUSINESS

V. ADJOURNMENT



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution extending Upstate Quality Improvement and Caseload Reduction grant agreement with New York State Office of Indigent Legal Services on behalf of the Chemung County Public Defender and the Chemung County Public Advocate

Resolution #:

Slip Type: GRANT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

This contract with New York State Office of Indigent Legal Services providing grant money for certain programs to reduce caseloads and improve the quality of representation of indigent people expired 12/31/21. Money remains on the contract, and ILS has offered a 12-month extension for the County to continue using these funds. Prior resolutions 19-341 and 21-195.

Vendor/Provider NYS Office of Indigent Legal Service

Term through 12/31/2022 Total Amount \$265,296.00 Prior Amount

Local Share State Share 100% Federal Share

Project Yes Funds are in Budgeted? Account #

CREATION:

Date/Time:	Department:
3/28/2022 9:34:05 AM	County Executive

APPROVALS:

Date/Time:	Approval:	Department:	
3/28/2022 9:37 AM	Approved	County Executive	
3/29/2022 8:50 AM	Approved	Budget and Research	
4/11/2022 11:18 AM	Approved	Legislature Chairman	

ATTACHMENTS:

Name:	Description:	Type:
Extension FORM to 12-31-2022-Distribution 6-Chemung-	Extension Form	Cover Memo

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[C600007.pdf](#)

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STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

STATE AGENCY (Name & Address): NYS Office of Indigent Legal Services A. E. Smith Building, 11th Floor 80 South Swan Street Albany, NY 12210	BUSINESS UNIT/DEPT. ID: OLS01 1350200 CONTRACT NUMBER: C600007 CONTRACT TYPE: <input checked="" type="checkbox"/> Multi-Year Agreement <input type="checkbox"/> Simplified Renewal Agreement <input type="checkbox"/> Fixed Term Agreement
CONTRACTOR SFS PAYEE NAME: Chemung, County of	TRANSACTION TYPE: <input type="checkbox"/> New <input type="checkbox"/> Renewal <input checked="" type="checkbox"/> Amendment
CONTRACTOR DOS INCORPORATED NAME:	PROJECT NAME: Distribution #6
CONTRACTOR IDENTIFICATION NUMBERS: NYS Vendor ID Number: 1000004326 Federal Tax ID Number: 16-6002557 DUNS Number (if applicable):	AGENCY IDENTIFIER: CFDA NUMBER (Federally funded grants only):
CONTRACTOR PRIMARY MAILING ADDRESS: Chemung County Public Advocate's Office 324 East Market Street, Suite 1 Elmira, NY 14901 CONTRACTOR PAYMENT ADDRESS: <input type="checkbox"/> Check if same as primary mailing address Chemung County Treasurer's Office 320 East Market Street Elmira, NY 14902 CONTRACTOR MAILING ADDRESS: <input checked="" type="checkbox"/> Check if same as primary mailing address	CONTRACTOR STATUS: <input type="checkbox"/> For Profit <input checked="" type="checkbox"/> Municipality, Code: 070100000000 <input type="checkbox"/> Tribal Nation <input type="checkbox"/> Individual <input type="checkbox"/> Not-for-Profit Charities Registration Number: Exemption Status/Code: <input type="checkbox"/> Sectarian Entity

STATE OF NEW YORK MASTER CONTRACT FOR GRANTS FACE PAGE

<p>CURRENT CONTRACT TERM:</p> <p>From: January 1, 2016 To: December 31, 2021</p> <p>CURRENT CONTRACT PERIOD:</p> <p>AMENDED TERM:</p> <p>From: January 1, 2016 To: December 31, 2022</p> <p>AMENDED PERIOD:</p> <p>From: January 1, 2022 To: December 31, 2022</p>	<p>CONTRACT FUNDING AMOUNT (<i>Multi-year</i> – enter total projected amount of the contract; <i>Fixed Term/Simplified Renewal</i> – enter current period amount):</p> <p>CURRENT: \$265,296.00</p> <p>AMENDED:</p> <p>FUNDING SOURCE(S):</p> <div style="margin-left: 20px;"> <input checked="" type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Other </div>																														
<p>FOR MULTI-YEAR AGREEMENTS ONLY – CONTRACT PERIOD AND FUNDING AMOUNT: (Out years represent projected funding amounts)</p>																															
<table border="1" style="width: 100%; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="width: 5%;">#</th> <th style="width: 25%;">CURRENT PERIOD</th> <th style="width: 25%;">CURRENT AMOUNT</th> <th style="width: 25%;">AMENDED PERIOD</th> <th style="width: 20%;">AMENDED AMOUNT</th> </tr> </thead> <tbody> <tr><td>1</td><td></td><td></td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td><td></td><td></td></tr> </tbody> </table>		#	CURRENT PERIOD	CURRENT AMOUNT	AMENDED PERIOD	AMENDED AMOUNT	1					2					3					4					5				
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<p>ATTACHMENTS PART OF THIS AGREEMENT:</p> <div style="margin-left: 20px;"> <input type="checkbox"/> Attachment A: <div style="display: inline-block; vertical-align: top; margin-left: 20px;"> <input type="checkbox"/> A-1 Program-Specific Terms and Conditions <input type="checkbox"/> A-2 Federally Funded Grants and Requirement Mandated by Federal Laws </div> </div> <div style="margin-left: 20px;"> <input type="checkbox"/> Attachment B: <div style="display: inline-block; vertical-align: top; margin-left: 20px;"> <input type="checkbox"/> B-1 Expenditure Based Budget <input type="checkbox"/> B-2 Performance Based Budget <input type="checkbox"/> B-3 Capital Budget <input type="checkbox"/> B-4-Net Deficit Budget <input type="checkbox"/> B-1(A) Expenditure Based Budget (Amendment) <input type="checkbox"/> B-2(A) Performance Based Budget (Amendment) <input type="checkbox"/> B-3(A) Capital Budget (Amendment) <input type="checkbox"/> B-4(A) Net Deficit Budget (Amendment) </div> </div> <div style="margin-left: 20px;"> <input type="checkbox"/> Attachment C: Work Plan </div> <div style="margin-left: 20px;"> <input type="checkbox"/> Attachment D: Payment and Reporting Schedule </div> <div style="margin-left: 20px;"> <input type="checkbox"/> Other: </div>																															

IN WITNESS THEREOF, the parties hereto have executed or approved this Master Contract on the dates below their signatures.

CONTRACTOR:

By: _____

Printed Name

Title: _____

Date: _____

STATE AGENCY:

_____ NYS Office of Indigent Legal Services _____

By: _____

_____ Patricia J. Warth _____

Printed Name

Title: Director-Office of Indigent Legal Services

Date: _____

STATE OF NEW YORK

County of _____

On the _____ day of _____, _____, before me personally appeared _____, to me known, who being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____ of the _____, the contractor described herein which executed the foregoing instrument; and that he/she signed his/her name thereto as authorized by the contractor named on the face page of this Master Contract.

(Notary) _____

ATTORNEY GENERAL'S SIGNATURE

_____ (N/A) _____

Printed Name

Title: _____

Date: _____

STATE COMPTROLLER'S SIGNATURE

Printed Name

Title: _____

Date: _____



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution authorizing application for and acceptance of New York State Division of Homeland Security and Emergency Services 2021-2022 Public Safety Answering Point Operations Grant on behalf of the Chemung County Office of Fire and Emergency Management

Resolution #:

Slip Type: GRANT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

NYS Division of Homeland Security and Emergency Services
Office of Interoperable and Emergency Communications

Announces the 2021-2022 Public Safety Answering Point Operations Grant Program

Vendor/Provider NYS DHS and Emergency
Services

Term		Total Amount	\$250,000	Prior Amount	0
Local Share	0	State Share	100%	Federal Share	0
Project Budgeted?	No	Funds are in Account #	cannot budget yet, unknown award amount		

CREATION:

Date/Time:	Department:
3/28/2022 10:08:33 AM	County Executive

APPROVALS:

Date/Time:	Approval:	Department:	
3/28/2022 10:16 AM	Approved	County Executive	
3/29/2022 8:52 AM	Approved	Budget and Research	
4/11/2022 12:09 PM	Approved	Legislature Chairman	

ATTACHMENTS:

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Name:	Description:	Type:
 2021-2022_PSAP_Grant.pdf	2021-2022 PSAP Grant	Cover Memo

**NYS Division of Homeland Security and Emergency Services
Office of Interoperable and Emergency Communications
Announces the
2021-2022 Public Safety Answering Point Operations Grant Program**

The NYS Division of Homeland Security and Emergency Services, Office of Interoperable and Emergency Communications, is pleased to announce the Public Safety Answering Point (PSAP) Operations Grant Program. The Grant allows counties to receive State support for eligible public safety call-taking and dispatching expenses. The State will provide support in the form of reimbursement for operating expenses in a PSAP, including personnel costs.

Purpose: To facilitate PSAP consolidation, regional initiatives related to 911 operations, implementation of NG911, and improvements in the operations of public safety communications; and to develop multijurisdictional PSAP compatibility throughout the state and support statewide interoperable communications for first responders, thereby improving public safety.

Eligible Applicants: Counties within New York State and New York City are eligible to apply for the 2021-2022 PSAP Operations Grant Program. Additional eligibility criteria are listed in the Request for Applications Instructions (*2021-22 PSAP Operations Grant Program*).

Source of Funds: This grant program is supported by the Statewide Public Safety Communications Account.

- **Total Funding Available for PSAP Grant:** \$10 million



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution authorizing application for and acceptance of 2021 Statewide Interoperable Communications Formula-Based Grant Program on behalf of the Chemung County Fire and Emergency Management

Resolution #:

Slip Type: GRANT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

2021 Statewide Interoperable Communications Formula-Based Grant Program
(2021 SICG-Formula Program)

Vendor/Provider NYS Homeland Security &
Emergency Services

Term	Total Amount	not to exceed \$560,000	Prior Amount
Local Share 0	State Share	100%	Federal Share
Project No	Funds are in Account #	cannot budget yet, unknown award amount	


CREATION:

Date/Time:	Department:
3/28/2022 10:20:52 AM	County Executive

APPROVALS:

Date/Time:	Approval:	Department:	
3/28/2022 10:23 AM	Approved	County Executive	
3/29/2022 8:48 AM	Approved	Budget and Research	
4/11/2022 12:09 PM	Approved	Legislature Chairman	

ATTACHMENTS:

Name:	Description:	Type:
 2021_Statewide_Interoperable_Communications_Formula_Based_Grant.pdf	2021 Statewide Interoperable Communications Formula Based Grant	Cover Memo

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**NYS Division of Homeland Security and Emergency Services
Office of Interoperable and Emergency Communications
Announces the
2021 Statewide Interoperable Communications Formula-Based **Grant** Program
(2021 SICG-Formula Program)**

The NYS Division of Homeland Security and Emergency Services, Office of Interoperable and Emergency Communications (DHSES-OIEC), is pleased to announce the 2021 Statewide Interoperable Communications Formula-Based **Grant** Program (2021 SICG-Formula Program) to aid localities in making necessary improvements and provide for sustainment of Land Mobile Radio Systems (LMR), maintenance of components supporting interoperability, continuous training and exercise, sustainment and further development of governance structure.

Purpose: The 2021 SICG-Formula Program will focus on further minimizing gaps in interoperable communications by aligning technology acquisitions with operational use by first responders, which provides the foundation necessary to accomplish a high level of interoperability. The **grant** program will concentrate on improving interoperability and operability of communication systems in New York State.

Important Note for FY2021 SICG-Formula RFA: Please note that DHSES-OIEC is combining 2 years of New York State budget appropriations for this program, FY2020-21 and FY2021-22, for the 2021 SICG-Formula RFA. Due to the pandemic and delays beyond our control, the agency is aggregating all available appropriated funding in to one RFA: FY2020-21 appropriation of \$45 million and FY2021-22 appropriation of \$45 million, totaling \$90 million. Combining two years of appropriations will allow us to bring this program up to date and provide much needed funding for counties to continue support of public safety communications.

Eligible Applicants: County governments, requesting funding for the benefit of the county as a single entity. Additional eligibility criteria are listed in the 2021 SICG-Formula Program Request for Applications.

Source of Funds: This **grant** program is supported by the Statewide Public Safety Communications Account.

Funding Total Available for 2021 SICG-Formula: \$90 Million



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution authorizing application for and acceptance of funding from the New York State Division of Criminal Justice Services on behalf of the Chemung County Probation Department (Raise the Age)

Resolution #:

Slip Type: GRANT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

The Probation Department is requesting authorization to apply for and accept funds from the Division of Criminal Justice Services (DCJS) for a contract relative to our Raise the Age (RTA) Grant. The term of for this agreement is from April 1, 2021 to March 31, 2022 in the amount of \$106,459

Prior Resolution 21-499

Vendor/Provider Chemung County Probation
Department

Term 4/1/2021-3/31/2022 Total Amount \$106,459 Prior Amount \$104,327

Local Share 0 State Share \$106,459 Federal Share 0

Project Yes Funds are in
Budgeted? Account #

CREATION:

Date/Time:	Department:
3/28/2022 2:34:54 PM	County Executive

APPROVALS:

Date/Time:	Approval:	Department:	
3/28/2022 2:36 PM	Approved	County Executive	
3/29/2022 8:50 AM	Approved	Budget and Research	
4/11/2022 11:07 AM	Approved	Legislature Chairman	

ATTACHMENTS:

Name:	Description:	Type:
memRTAContract_2021-2022.pdf	MemRTA Contract 2021-2022	Cover Memo

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CHEMUNG COUNTY PROBATION DEPARTMENT INTER-DEPARTMENTAL CORRESPONDENCE

TO: Christopher J. Moss, Chemung County Executive
David Manchester, Chairperson, Chemung County Legislature

FROM: Stephanie M. Fiorini, Probation Director

DATE: March 17, 2022

RE: **Raise the Age Contract**

The Probation Department is requesting authorization to apply for and accept funds from the Division of Criminal Justice Services (DCJS) for a contract relative to our Raise the Age (RTA) Grant. The term of for this agreement is from April 1, 2021 to March 31, 2022 for \$106,459. Prior Resolution 21-499 covered the contract period from April 1, 2020 to March 31, 2021.

RTA legislation took effect on October 1, 2018 and any costs associated are reimbursed by the State at 100%; no local share. The money requested from DCJS is a slight increase that takes into account salary increases due to union contracts and single rate raises.

If you have any questions or need further information, please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Stephanie M. Fiorini", is written above the printed name.

Stephanie M. Fiorini
Probation Director

/smf

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CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution authorizing Purchase Agreement with Emergent Devices on behalf of the Chemung County Sheriff's Office (Narcan)

Resolution #:

Slip Type: CONTRACT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

The Chemung County Sheriff's Office is requesting authorization to purchase Naloxone HCL Nasal Spray (Narcan), to be carried by their law enforcement officers. The purchase of Narcan will be made through Emergent Devices via MMCAP contract MMCAP contract MMS2000303 (PGB-2352), at a price of \$850.80 per case of 12 cartons (2-devices per carton).

Vendor/Provider Emergent Devices

Term	Total Amount	\$10,209.60	Prior Amount
Local Share	State Share		Federal Share
Project	Yes	Funds are in	
Budgeted?		Account #	

CREATION:

Date/Time:	Department:
3/28/2022 2:48:11 PM	County Executive

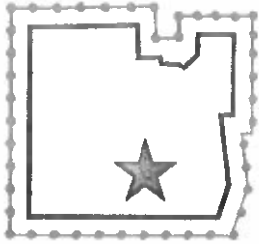
APPROVALS:

Date/Time:	Approval:	Department:	
3/28/2022 2:59 PM	Approved	County Executive	
3/29/2022 8:53 AM	Approved	Budget and Research	
4/11/2022 11:33 AM	Approved	Legislature Chairman	

ATTACHMENTS:

Name:	Description:	Type:
<input type="checkbox"/> Justification for Utilizing a Cooperative Contract signed.pdf	Justification for utilizing a Cooperative Contract	Cover Memo
<input type="checkbox"/> Legal Adv.pdf	Legal Adv	Cover Memo
<input type="checkbox"/> Print snip NARCAN pricing.pdf	Print snip NARCAN pricing	Cover Memo
<input type="checkbox"/> RFP MMS2000303.pdf	RFP MMS2000303	Cover Memo

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CHEMUNG COUNTY
CITY OF ELMIRA
PURCHASING DEPARTMENT

Justification for Utilizing a Cooperative Contract

Date 12/29/2021

Requesting Department Sheriff/Jail

Requesting Employee McKenzie Roberts Position Administrative Assistant

Cooperative or Lead Agency MMCAP / STATE of Minnesota

Contract No. MMS2000303 (PGB-2352) Pharmaceuticals and over the Counter Products (NARCAN)

Vendor(s) Name(s) Emergent Devices

We have reviewed and completed due diligence on the aforementioned cooperative contract. As part of the due diligence review, we have confirmed that the contract complies substantially with our procurement rules and practices. We have further confirmed that all purchases will comply with the terms and prices in the contract. It has been determined that it is in the best interests of our entity to utilize this contract for the reasons cited below:

Issue	Procurement Consideration
New York State Considerations:	
1. Was the contract let by the United States or any agency thereof, any state or any other political subdivision or district therein?	State of Minnesota, MN Department of Administration
2. Was the contract made available for use by other governmental entities?	✓ Yes, Pg 2 RFP
3. Was the contract let in a manner that constitutes competitive bidding "consistent with state law?"	✓ Yes, see responses to questions 4-7 below
4. Was there a public solicitation of bids consistent with GML 103.5 and serves to ensure that the purposes of GML 103 are furthered?	✓ Yes, Advertised in Minnesota State Register
5. Was the submission of sealed bids, or analogous procedure, done in a manner to secure and preserve the integrity of the process and confidentiality of the bids submitted?	✓ Electronic Bid Submissions via SpeedBuy
6. Was the preparation of bid specifications, or a similar document that provides a common standard for bidders to compete fairly?	Excel spreadsheet list of products, located on member website. Vendors can provide add'l products as well.
7. Was the award to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder?	✓ No, awarded on Best Value. See Evaluation Criteria on Pg 5 of RFP

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Justification for Utilizing a Cooperative Contract

General Considerations:	
8. Do the terms, conditions and scope of work/specifications meet the need?	Yes, this was the only vendor that can provide the specific type of dispensing Sheriff's dept. needed & auth. to use.
9. If no, are the terms, conditions and scope of work/specifications negotiable? It should be noted here if terms or prices were negotiated.	
10. Does the cooperative contract provide the most advantageous solution? Why? Factors may include advantageous terms, conditions, prices, quality, performance, timing, entity's experience and ability to duplicate the contract, age of the contract, etc.	Yes, advantageous Terms, Conditions
11. Will any and all purchases comply with the terms and prices in the contract?	Yes
12. Will volume pricing advantages be applied to purchases?	Yes, prices are based on volume purchases
13. Was past experience with the cooperative or lead agency acceptable?	Chemung County has not used this Cooperative but other NYS Counties have positive results
14. Is the item urgently needed?	Yes
15. Can a local vendor provide this service? If so, why were they not considered?	There is no local vendor
16. What is the age of the contract? How many years is it into its contract term?	Expires June 30, 2024
ADDITIONAL COMMENTS:	

Usage reviewed and approved by:

Jackie Crowley
Signature

Jackie Crowley
Buyer Name

Tricia Wise
Signature

Tricia Wise
Director of Purchasing Name

STAMP_ITEMNUMB



50 Sherburne Avenue
Suite 112
St. Paul, MN 55155
651.201.2420
infuse-mn.gov

MMCAP Infuse Procurement Certification

PROGRAM: PHARMACY CONTRACTS AND BUSINESS OPERATIONS

EVIDENCE OF PUBLICATION	Solicitation Title	Pharmaceuticals and Over the Counter Products
	RFP Publication Date	February 10, 2020
	Proposal Due Date and Time	April 17, 2020 2 p.m. Central Time
	Minnesota State Register Publication Date	February 10, 2020
	Link to State Register Notice	https://mn.gov/admin/bookstore/register.jsp Volume 44, Number 33 Located on State Register Page Number(s): 887-888
	State of Minnesota, Office of State Procurement Website Publication Solicitation Number	28866
	Addendums	Total: 7 No.1 Answers to questions. No.2 Answers to questions. No.3 Answers to questions. No.4 Extend due date No.5 Extend due date No.6 Extend due date No.7 Extend due date
RESPONSE INFORMATION	Number of Vendors Directly Notified of Open Solicitation	269
	Number of Proposals Received	163
	Names of Vendors Submitting Proposals	ABBOTT DIABETES CARE SALES CORPORATION AbbVie US LLC ACCORD HEALTHCARE INC ACELLA PHARMACEUTICALS ADAPT PHARMA INC. AFAXYS INC AGAMATRIX, INC. AKORN, INC.

		<p> Akron Pharma Inc ALKERMES, INC. Allergan USA, Inc. ALLIANCE LABS, LLC ALMATICA PHARMA, INC. ALVOGEN AMERICAN HEALTH PACKAGING AMERICAN REGENT, INC AMNEAL PHARMACEUTICALS, LLC AMPHASTAR PHARMACEUTICALS, INC. Amring Pharmaceuticals ANIP ACQUISITION COMPANY d/b/a ANI PHARMACEUTICALS, INC. APOTEX CORP. APOTHECUS PHARMACEUTICAL ASCEND LABORATORIES, LLC Aspen Pharma Group, LLC ASTRAZENECA PHARMACEUTICALS LP ATHENEX PHARMACEUTICAL DIVISION AUROBINDO PHARMA U.S.A., INC. AUROMEDICS PHARMA LLC AVET PHARMACEUTICALS INC. (formerly Heritage) AvKARE, Inc. B. BRAUN MEDICAL INC. Bausch Health US, LLC BAYER HEALTHCARE PHARMACEUTICALS Bionpharma Inc. BIRCHWOOD LABORATORIES, INC. BOEHRINGER INGELHEIM BPI LABS, LLC BRISTOL-MYERS SQUIBB Brookfield Pharmaceuticals, LLC CAMBER PHARMACEUTICALS, INC. Cardinal Health 110, LLC and Cardinal Health 112, LLC CARLSBAD TECHNOLOGY, INC. Celltrion USA, Inc. CHARTWELL PHARMACEUTICALS CIPLA USA, INC. CMP PHARMA Cosette Pharmaceuticals, Inc. Covis Pharmaceuticals CUTIS PHARMA, INC / AZURITY D2 Pharma Consulting LLC Dash Pharmaceuticals LLC DR REDDY'S LABORATORIES </p>
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		DSE Healthcare Solutions LLC DYNAX TECHNOLOGIES CORPORATION ECI PHARMACEUTICALS LLC ELI LILLY & CO EMERGENT TRAVEL HEALTH INC. EPIC PHARMA, LLC. Evus EYWA PHARMACEUTICALS INC. FERNDAL LABS FOCUS HEALTH GROUP FOSUN PHARMA USA INC. FRESENIUS KABI, LLC. G2 PRODUCTS LLC GENDOSE PHARMACEUTICALS GENSCO LABORATORIES GERI-CARE GLENMARK PHARMACEUTICALS INC., USA GOLDEN STATE MEDICAL SUPPLY, INC GREENSTONE LLC GRIFOLS USA, LLC. GSK (GLAXOSMITHKLINE) GSK CONSUMER HEALTHCARE H2-Pharma, LLC HARRIS PHARMACEUTICAL INC Hikma Pharmaceuticals USA Inc. HLS THERAPEUTICS INC. HR PHARMACEUTICALS, INC HUMCO HOLDING GP i-Health, Inc Indivior Inc. JOHNSON & JOHNSON HCS JUBILANT CADISTA PHARMACEUTICALS INC. KADMON PHARMACEUTICALS, LLC KEDRION BIOPHARMA, INC. KONSYL PHARMACEUTICALS KVK-TECH, INC. LANNETT COMPANY Laser Pharmaceuticals LEADING PHARMA, LLC LIFESCAN, INC. MACLEODS PHARMA USA, INC. MAJOR PHARMACEUTICALS MAYNE PHARMA INC. MCKESSON PACKAGING SERVICES (SKY) MEDEXUS PHARMA INC.
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		<p> MEDIQUE PRODUCTS MEITHEAL PHARMACEUTICALS, INC. MERCK SHARP & DOHME CORP. (MERCK & CO) METHOD PHARMACEUTICALS, LLC Micro Labs USA, Inc. MYLAN INSTITUTIONAL INC. MYLAN PHARMACEUTICALS MYLAN SPECIALTY L.P. NEXUS PHARMACEUTICALS, INC. NIVAGEN PHARMACEUTICALS NOVADOZ PHARMACEUTICALS LLC NOVO NORDISK PAR PHARMACEUTICALS PAR STERILE PRODUCTS, LLC. PARAPRO, LLC PATRIN PHARMA, INC. Patriot Pharmaceuticals PERRIGO PHARMACEUTICALS PFIZER INC. PFIZER INJECTABLES PHARMACEUTICAL ASSOCIATES, INC PIRAMAL CRITICAL CARE PRASCO LABORATORIES PRECISION DOSE PROVELL PHARMACEUTICALS, LLC PURDUE PHARMA LP QUINN PHARMACEUTICALS RB HEALTH (US) LLC (RBH) RETRACTABLE TECHNOLOGIES, INC Rising Pharmaceuticals Inc SAGENT PHARMACEUTICALS, INC. SANDOZ INC. SANOFI AVENTIS U.S. LLC SANOFI PASTEUR INC. SETON PHARMACEUTICALS, LLC Slayback Pharma SNAP MEDICAL INDUSTRIES, LLC SOLCO HEALTHCARE US, LLC. Somerset Therapeutics, LLC / Pharma SPECGX LLC STANBIO LABORATORY (EKF Diagnostics) STRATUS PHARMACEUTICALS STRIDES PHARMA, INC SUN PHARMACEUTICAL INDUSTRIES, INC. SUNOVION PHARMACEUTICALS, INC. </p>
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		TAGI Pharma, Inc. TARO PHARMACEUTICALS U.S.A., INC. Teligent Inc. TEVA PHARMACEUTICALS USA, Inc. TEVA SPECIALTY Tris Pharma Inc TRIVIDIA HEALTH INC. TRUPHARMA, LLC. TWI PHARMACEUTICALS USA UCB, INC. ULTI-MED UNICHEM PHARMACEUTICALS (USA), INC. UPSHER SMITH LABS VIRTUS PHARMACEUTICALS VISTAPHARM, INC. VITRUVIAS THERAPUTICS WOCKHARDT USA LLC WOODWARD PHARMA SERVICES LLC Xellia Pharmaceuticals USA, LLC. X-GEN PHARMACEUTICALS, INC. Xiromed LLC ZYDUS PHARMACEUTICALS USA
	Rejected Vendors	Number: 0
	Evaluation Committee Makeup	MMCAP Infuse staff and Members
	Final Contracts	Number: 160 Located at www.infuse-mn.gov (log in required).
CONTRACT INFORMATION	Initial Contract Term	Varies 7/1/2020 – 6/30/2024
	Available Extensions	Yes
	Names of Vendors Awarded a Contract	ABBOTT DIABETES CARE SALES CORPORATION AbbVie US LLC ACCORD HEALTHCARE INC ACELLA PHARMACEUTICALS ADAPT PHARMA INC.(Emergent Devices) AFAXYS INC AGAMATRIX, INC. AKORN, INC. Akron Pharma Inc ALKERMES, INC. Allergan USA, Inc. ALLIANCE LABS, LLC ALMATICA PHARMA, INC.

		ALVOGEN AMERICAN HEALTH PACKAGING AMERICAN REGENT, INC AMNEAL PHARMACEUTICALS, LLC AMPHASTAR PHARMACEUTICALS, INC. Amring Pharmaceuticals ANIP ACQUISITION COMPANY d/b/a ANI PHARMACEUTICALS, INC. APOTEX CORP. APOTHECUS PHARMACEUTICAL ASCEND LABORATORIES, LLC ASTRAZENECA PHARMACEUTICALS LP ATHENEX PHARMACEUTICAL DIVISION AUROBINDO PHARMA U.S.A., INC. AUROMEDICS PHARMA LLC AVET PHARMACEUTICALS INC. (formerly Heritage) AvKARE, Inc. B. BRAUN MEDICAL INC. Bausch Health US, LLC BAYER HEALTHCARE PHARMACEUTICALS Bionpharma Inc. BIRCHWOOD LABORATORIES, INC. BOEHRINGER INGELHEIM BPI LABS, LLC BRISTOL-MYERS SQUIBB Brookfield Pharmaceuticals, LLC CAMBER PHARMACEUTICALS, INC. Cardinal Health 110, LLC and Cardinal Health 112, LLC CARLSBAD TECHNOLOGY, INC. Celltrion USA, Inc. CHARTWELL PHARMACEUTICALS CIPLA USA, INC. CMP PHARMA Cosette Pharmaceuticals, Inc. Covis Pharmaceuticals CUTIS PHARMA, INC / AZURITY D2 Pharma Consulting LLC Dash Pharmaceuticals LLC DR REDDY'S LABORATORIES DSE Healthcare Solutions LLC DYNAVAX TECHNOLOGIES CORPORATION ECI PHARMACEUTICALS LLC ELI LILLY & CO EMERGENT TRAVEL HEALTH INC. EPIC PHARMA, LLC.
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		<p> Evus Pharmaceuticals, LLC EYWA PHARMACEUTICALS INC. FERNDAL LABS FOCUS HEALTH GROUP FOSUN PHARMA USA INC. FRESENIUS KABI, LLC. G2 PRODUCTS LLC GENDOSE PHARMACEUTICALS GENSCO LABORATORIES GERI-CARE GLENMARK PHARMACEUTICALS INC., USA GOLDEN STATE MEDICAL SUPPLY, INC GREENSTONE LLC GRIFOLS USA, LLC. GSK (GLAXOSMITHKLINE) GSK CONSUMER HEALTHCARE H2-Pharma, LLC HARRIS PHARMACEUTICAL INC Hikma Pharmaceuticals USA Inc. HR PHARMACEUTICALS, INC HUMCO HOLDING GP i-Health, Inc Indivior Inc. JOHNSON & JOHNSON HCS JUBILANT CADISTA PHARMACEUTICALS INC. KADMON PHARMACEUTICALS, LLC KEDRION BIOPHARMA INC KONSYL PHARMACEUTICALS KVK-TECH, INC. LANNETT COMPANY Laser Pharmaceuticals LEADING PHARMA, LLC LIFESCAN, INC. MACLEODS PHARMA USA, INC. MAJOR PHARMACEUTICALS MAYNE PHARMA INC. MCKESSON PACKAGING SERVICES (SKY) MEDEXUS PHARMA INC. MEDIQUE PRODUCTS MEITHEAL PHARMACEUTICALS, INC. MERCK SHARP & DOHME CORP. (MERCK & CO) METHOD PHARMACEUTICALS, LLC Micro Labs USA, Inc. MYLAN INSTITUTIONAL INC. MYLAN PHARMACEUTICALS </p>
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		<p> MYLAN SPECIALTY L.P. NEXUS PHARMACEUTICALS, INC. NIVAGEN PHARMACEUTICALS NOVADOZ PHARMACEUTICALS LLC NOVO NORDISK PAR PHARMACEUTICALS PAR STERILE PRODUCTS, LLC. PARAPRO, LLC PATRIN PHARMA, INC. Patriot Pharmaceuticals PERRIGO PHARMACEUTICALS PFIZER INC. PFIZER INJECTABLES PHARMACEUTICAL ASSOCIATES, INC PIRAMAL CRITICAL CARE PRASCO LABORATORIES PRECISION DOSE PROVELL PHARMACEUTICALS, LLC PURDUE PHARMA LP QUINN PHARMACEUTICALS RB HEALTH (US) LLC (RBH) RETRACTABLE TECHNOLOGIES, INC Rising Pharmaceuticals Inc SAGENT PHARMACEUTICALS, INC. SANDOZ INC. SANOFI AVENTIS U.S. LLC SANOFI PASTEUR INC. SETON PHARMACEUTICALS, LLC Slayback Pharma SNAP MEDICAL INDUSTRIES, LLC SOLCO HEALTHCARE US, LLC. Somerset Therapeutics, LLC / Pharma SPECGX LLC STANBIO LABORATORY (EKF Diagnostics) STRATUS PHARMACEUTICALS SUN PHARMACEUTICAL INDUSTRIES, INC. SUNOVION PHARMACEUTICALS, INC. TAGI Pharma, Inc. TARO PHARMACEUTICALS U.S.A., INC. Teligent Inc. TEVA PHARMACEUTICALS USA, Inc. TEVA SPECIALTY Tris Pharma Inc TRIVIDIA HEALTH INC. TRUPHARMA, LLC. </p>
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		<p>TWI PHARMACEUTICALS USA</p> <p>UCB, INC.</p> <p>ULTI-MED</p> <p>UNICHEM PHARMACEUTICALS (USA), INC.</p> <p>UPSHER SMITH LABS</p> <p>VIRTUS PHARMACEUTICALS</p> <p>VISTAPHARM, INC.</p> <p>VITRUVIAS THERAPUTICS</p> <p>WOCKHARDT USA LLC</p> <p>WOODWARD PHARMA SERVICES LLC</p> <p>Xellia Pharmaceuticals USA, LLC.</p> <p>X-GEN PHARMACEUTICALS, INC.</p> <p>Xiromed LLC</p> <p>ZYDUS PHARMACEUTICALS USA</p>
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COMMENTS REGARDING THIS PROCUREMENT

- This procurement was drafted and managed in compliance with the State of Minnesota's procurement laws, rules, and policies.
- Responses to the solicitation were received prior to the due date and time above and only responsive proposals were evaluated.
- The evaluation panel strictly followed all procurement requirements, and awards were only made to vendors that provided the best value to MMCAP Infuse members.
- Each contract was negotiated individually for the best benefit of MMCAP Infuse members as a whole.
- Notice of the contracts have been made to MMCAP Infuse members and are posted on the MMCAP Infuse website.

CERTIFICATION

I certify that MMCAP Infuse, as a government-operated group purchasing organization housed in the State of Minnesota Department of Administration, Office of State Procurement, has strictly followed State of Minnesota laws, rules and policies for this procurement.

MMCAP Infuse Pharmacy Program Manager: Sara Turnbow	Signature: <small>DocuSigned by:</small> <i>Sara Turnbow</i>
Project Manager: Jennifer VanderPlaats	<small>894A651D2CF54DE</small> Signature: Jennifer VanderPlaats <small>Digitally signed by Jennifer VanderPlaats Date: 2021.01.13 10:27:54 -06'00'</small>
Contact Information: 651.201.2420	Date: 1/13/2021

	A	B	C	D	E	
		MMCAP Infuse Catalog - 1/24/22				
1						
2						
3	NDC	UPC/ISBN	SKU	MMCAP INFUSE CONTRACT PRICE	CONTRACT END DATE	ITEM DESCRIPTION
716	00024584001			\$800.00	6/30/24	00024584001 ZALTRAP 100 MG/4 ML VIAL ZIV-AFLIBERCEPT 100 MG/4ML VIAL STR: 100 M
717	00024584101			\$1,600.00	6/30/24	00024584101 ZALTRAP 200 MG/8 ML VIAL ZIV-AFLIBERCEPT 200 MG/8ML VIAL STR: 200 M
718	00075062300			\$213.69	6/30/24	00075062300 LOVENOX 100 MG/ML SYRINGE ENOXAPARIN SODIUM 100 MG/ML SYRINGE
719	00955101010			\$213.69	6/30/24	00955101010 ENOXAPARIN 100 MG/ML SYRINGE ENOXAPARIN SODIUM 100 MG/ML SYRINGE
720	69547035302			\$70.90	6/30/24	69547035302 NARCAN 4 MG NASAL SPRAY NALOXONE HCL 4 MG SPRAY STR: 4 MG DS commercial insurance
721	63824005718			\$8.54	6/30/24	63824005718 MUCINEX D ER 600-60 MG TABLET GUAIFENESIN/PSEUDOEPHEDRNE HCL 600
	63824005718			\$8.54	6/30/24	63824005718 MUCINEX D ER 600-60 MG TABLET GUAIFENESIN/PSEUDOEPHEDRNE HCL 600

STAMP_ITEMNUMBER

State of Minnesota

MMCAP INFUSE

OFFICE OF STATE PROCUREMENT



Request for Proposals (RFP) for Pharmaceuticals and Over the Counter Products

Minnesota's Commitment to Diversity and Inclusion

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to www.mn.gov/admin/oep.



Request for Proposals for Pharmaceuticals and Over the Counter Products

Proposal Due Date: March 24, 2020, 2 p.m. Central Time

RFP Release Date	February 10, 2020
Cutoff Date for Questions	March 10, 2020, 2 p.m. Central Time
Final RFP Answers Posted	March 12, 2020
Proposal Due Date	March 24, 2020, 2 p.m. Central Time
Contract Effective Date	July 1, 2020

MMCAP Infuse (MMCAP Infuse) is a governmental cooperative serving thousands of state and local government facilities across the United States. MMCAP Infuse is operated by the State of Minnesota (State) Department of Administration's Office of State Procurement (OSP) and is governed by Minnesota laws and procurement policies.

MMCAP Infuse Members are state agencies and political subdivisions throughout the United States. Membership is available to government-operated facilities, and the extent to which a Member participates in the program is voluntary. Members can include but are not limited to the following classes of trade: correctional facilities, psychiatric treatment facilities, student health services, public health services, nursing homes, and public hospitals. For more information on MMCAP Infuse, visit www.infuse-mn.gov.

SECTION 1 – INSTRUCTIONS TO RESPONDERS

Steps for Completing Your Response	Follow the steps below to complete your response to this RFP: Step 1: Read the solicitation document and ask questions, if any Step 2: Write your response Step 3: Sign and submit your response
Incomplete Submittals	A proposal must be submitted along with any required additional documents. Incomplete proposals that materially deviate from the required format and content may be rejected.

STEP 1 READ THE SOLICITATION DOCUMENT & ASK QUESTIONS, IF ANY

How to Ask Questions	The contact for questions is: mmcap_infuse.rfp@state.mn.us Questions must be emailed to the contact by the Cutoff Date for Questions listed in this RFP. Questions will be answered in batches as they arrive. Answers will not be attributed to the entity asking the question and repetitive questions will be batched, summarized, and responded to with a single answer. The final
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STEP 1 READ THE SOLICITATION DOCUMENT & ASK QUESTIONS, IF ANY

posting of answers will be no later than 4:30 p.m., Central Time on the Final RFP Answers Posted date listed in this RFP.

For the duration of this solicitation, MMCAP Infuse will post answers to questions on an ongoing basis. Answers will be issued as an addendum. Copies of addenda will be automatically e-mailed to those submitting a request for a copy of this RFP through the State of Minnesota portal: <http://www.mmd.admin.state.mn.us/process/admin/postings.asp>. Responders will not receive automatic notice of addenda when obtaining this RFP from any other source.

MMCAP Infuse staff will not respond to any material questions regarding the scope of the RFP after the Cutoff Date for Questions. MMCAP Infuse Members must not be contacted in regard to this RFP.

STEP 2 WRITE YOUR RESPONSE

Request for Proposals (RFP)

In Section 3, insert your response to the questions as asked or provide content as requested.

By signing this response, your Company is making a legal, binding offer for a contract to provide services to the State of Minnesota.

STEP 3 SIGN & SUBMIT YOUR RESPONSE

Documents Required for a Complete Proposal

- ☐ Vendor Response Form, Section 3
- ☐ Exceptions to MMCAP Infuse's Sample Agreement Terms and Conditions and General Requirements, Exhibits A and B, submitted in Microsoft Word unlocked and unrestricted for editing
- ☐ Exhibit C: Workforce Certificate Form (submitted in PDF),
- ☐ Exhibit D: Certification Regarding Lobbying (submitted in PDF),
- ☐ Exhibit E: Affidavit of Noncollusion (submitted in PDF),
- ☐ Products and Pricing, Section 4, consisting of:
 - ☐ Electronic submission via BuySpeed, at <https://mmcap.buyspeed.com>
 - ☐ Electronic Excel spreadsheet via email, of products and pricing that is submitted by Responder in BuySpeed. Title this Excel document Exhibit F and include it with your response.
- ☐ Exhibit G: additional Proposed Products not in First DataBank (if applicable)

Where to Send Your Response

Responder must submit an electronic copy of the completed proposal documents, Exhibits A – G, via email to

STEP 3**SIGN & SUBMIT YOUR RESPONSE**

MMCAP_Infuse.RFP@state.mn.us using the Responder's Company Name and "Pharmaceutical RFP Response" in the subject line.

Response Submission Deadline Must be received not later than Proposal Due Date and time listed in this RFP as indicated by the email timestamp. All costs incurred in responding to this RFP will be borne by the responder.

Responders are encouraged to prepare and submit proposals prior to the due date, as late proposals may not be considered.

SECTION 2 – RFP PROJECT INFORMATION**1. Description of Project:**

MMCAP Infuse is requesting proposals for pharmaceutical and over the counter (OTC) products from manufacturers and suppliers. MMCAP Infuse is required to conduct a public solicitation using fair and open competition in order to contract with Responders. Products awarded as a result of this solicitation will be ordered through and delivered to member facilities using MMCAP Infuse contracted pharmaceutical wholesalers. MMCAP Infuse's current wholesalers are AmerisourceBergen Drug Corporation, Cardinal Health, Morris & Dickson Co., FFF Enterprises, and Diplomat Pharmacy Inc. (**Authorized Wholesalers**). MMCAP Infuse reserves the right to work with its Authorized Wholesalers during the RFP process to verify information related to Responders' proposals. Direct sales from contracted vendors to members are not the preferred method of delivery but may be permitted at the discretion of MMCAP Infuse in very limited circumstances.

All products proposed for this RFP must be available in the marketplace, as well as loaded and viewable in MMCAP Infuse's Authorized Wholesalers' ordering systems, by May 15, 2020, and available for distribution by the Contract Effective Date. If the product is not available by May 15, 2020, MMCAP Infuse reserves the right to withdraw the award and re-award the product to the next Responder providing the best value.

Products excluded from this solicitation include:

- a. Pharmaceuticals compounded under Section 503B of the Federal Food, Drug, and Cosmetic Act
- b. Oral, metabolic, infant formula, and enteral nutritional supplement products, which will be managed by a forthcoming solicitation

- 2. Product Distribution.** Unless approved by MMCAP Infuse for direct sales or an alternate distribution method, Responder must have a contractual relationship with Authorized Wholesalers. AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co. are MMCAP Infuse's contracted distributors for pharmaceutical and OTC product distribution, while FFF Enterprises and Diplomat Pharmacy Inc. are MMCAP Infuse's primary distributors for specialty pharmaceuticals. In the event of a pre-approved distribution method outside of the Authorized Wholesalers, MMCAP Infuse reserves the right to dual award those products. Upon execution of contracts awarded from this RFP, MMCAP Infuse's Authorized Wholesalers will be given the names of awarded Vendors, the awarded products, and the prices. MMCAP Infuse requires written confirmation that products and pricing have

been reported to its Authorized Wholesalers. While MMCAP Infuse will work with Authorized Wholesalers to stock awarded products, product stocking is solely the responsibility of the awarded Responder.

3. Contract and Duration.

We anticipate the awards resulting from this RFP will last up to five years (Agreement).

For multisource products, MMCAP Infuse will issue an annual products and pricing RFP. Multisource products may be awarded to other Responders during each annual cycle. In the event an awarded vendor loses all products on its Agreement during an annual cycle, it will not lose its vendor status with MMCAP Infuse and is eligible to resubmit products and pricing during the next annual cycle. Awarded vendors with no awarded products are still encouraged to submit offers throughout the term of the Agreement; all offers will require a right of first refusal to the awarded vendor. MMCAP Infuse reserves the right to open its RFP process to new vendors during each annual cycle.

Pricing for single source products will be negotiated through this RFP and throughout the term of the Agreement.

Agreement extensions beyond the originating term may be offered on an extremely limited basis and only when both MMCAP Infuse and the awarded vendor agree to the term and/or extension.

This RFP cannot be used as a procurement vehicle by which the Responder and member enter into their own stand-alone agreement.

4. Response Evaluation

Responses will first be reviewed to confirm compliance with the minimum qualifications identified above. Responses that meet all the minimum qualifications will be further evaluated in accordance with the following:

Factors	Percentage
Agree to fixed pricing for the term of the contract (through June 30, 2021)	10%
Ability to completely comply with Administrative Fee Data Format listed in Article 2.9 of the MMCAP Infuse Contract (e.g., Responder's ability to produce requested reports in the desired format) as evidenced by a sample report due with the Proposal submission	5%
Communication with the MMCAP Infuse Authorized Wholesalers via EDI (electronic data interchange) for chargebacks, contract load and product loading.	5%
Price	80%

Preferences

6% Minnesota Certified Targeted Group/Economically Disadvantaged Preference

6% Veteran-owned Preference

Minnesota Resident Vendor Preference

Responses will be evaluated by a team of MMCAP Infuse staff and Members. MMCAP Infuse reserves the right to require a demonstration of capabilities and/or ordering systems via in-person meetings, webinar, or other such mechanism.

This RFP does not obligate MMCAP Infuse to award a contract or complete the project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

If a Responder with an Agreement with MMCAP Infuse is awarded a contract as a result of this RFP, MMCAP Infuse reserves the right to amend the active agreement to include the scope of this RFP rather than issue a brand-new document.

5. Additional MMCAP Infuse Rights Reserved

MMCAP Infuse typically makes awards to one Responder (sole awards) per drug, strength, and pack size. MMCAP Infuse reserves the right to either not award or dual award products based on the following:

- a. Family awards
- b. Product formulations (e.g., alcohol free/sugar free, flavor, product, size)
- c. Packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.)
- d. Products not carried by MMCAP Infuse's Authorized Wholesalers
- e. Look-alike/sound-alike products
- f. Tall-man letters
- g. Unit-of-use bar coding and/or other patient safety features
- h. Member-specific preferences, such as flavor and color
- i. The product's appearance on the current FDA/ASHP Drug Shortages List
- j. Additional, award decisions will be made when, in the opinion of MMCAP Infuse, therapeutic response, patient compliance, product availability, quality, and/or patient safety may be adversely affected if a single manufacturer's product line (all strengths and package sizes) is awarded

SECTION 3 – VENDOR RESPONSE FORM

INSTRUCTIONS: Fill in the information requested below.

1. Responder's Contact Information

Company's Full Legal Name:	
Business Address:	
Company Website:	
Federal Employer Identification Number:	
Primary Contact Person's Name:	
Title:	
Telephone Number:	
E-Mail Address:	
Alternate Contact Person:	
Title:	
Telephone Number:	
E-Mail Address:	
Admin Fee Contact Person:	
Telephone Number:	
E-Mail Address:	
Membership Contact Person:	
Telephone Number:	
E-Mail Address:	
Reporting/Data Contact Person:	
Telephone Number:	
E-Mail Address:	

2. Pass/Fail Criteria

Does Responder comply with each term?

Yes	No	Term
		cGMP Responder certifies it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act, if applicable
		Drug Supply Chain Security Act (DSCSA) Responder is in compliance with all currently applicable sections of the Drug Quality and Security Act Title II.
		Authorized Wholesalers/Chargeback System Responder has products available at least two of MMCAP Infuse's three Authorized Wholesalers (AmerisourceBergen, Cardinal Health, and Morris & Dickson) AND has a chargeback system in place with these wholesalers. If Responder checks "No," an explanation must be provided in Responder's submission.

Responders that have not completed each section will not be further considered.

3. Scored Criteria

Yes	No	Term
		Price Increases Responder agrees to fixed pricing for the term of the contract, through June 30, 2021.
		Administrative Fee Data Responder will provide data in the format and timeframe defined in Article 2.9 of the MMCAP Infuse Sample Contract.
		Communication via Electronic Data Interchange (EDI) Responder's chargebacks, product and pricing communication with MMCAP Infuse's Authorized Wholesalers is via EDI
		Administrative Fee Responder will pay a 3% administrative fee on all contract purchases (minus any credits) to MMCAP Infuse.

4. Alterations or Additions to the State's Agreement

If you wish to take an exception to the State's Agreement (Exhibit A), please indicate that below and attach any appropriate documentation.

☐None

☐See attached document detailing proposed alterations and/or additions to the State's General Terms.

5. Alterations or Additions to the State's RFP General Terms

If you wish to take an exception to the State's RFP General Terms (see Exhibit B), please indicate that below and attach any appropriate documentation.

☐None

☐See attached document detailing proposed alterations and/or additions to the State's RFP Terms.

6. Does Responder allow MMCAP Infuse Members to seek reimbursement for products from third party insurers?

☐ Yes

☐ No

7. Does Responder allow MMCAP Infuse Members able to seek credit for unopened, expired product through reverse distributors Inmar Rx Solutions, National Pharmaceutical Returns, Inc., and/or PharmaLink, Inc?

8. List Responder's proposed products that are non-returnable when ordered from MMCAP Infuse's Authorized Wholesalers or directly from Responder, if applicable.

9. List Responder's manufacturing facility locations where products being proposed are manufactured.

SECTION 4 – Products and Pricing Proposal

A. Required Submissions

1.) Electronic Submission Via BuySpeed

MMCAP Infuse uses BuySpeed (<https://mmcap.buyspeed.com>) for receiving and evaluating Products and Pricing Proposals submitted in response to this RFP. All Responders must use this web-based system. Products and Pricing Proposals submitted in any other manner may not be considered. To enter products and pricing into BuySpeed, Responders must have a Vendor ID and Password.

- **Responders that ARE current contract holders** will receive a Vendor ID and Password in an email notification on the RFP Release Date. Responders that do not receive the notification on RFP Release Date should check junk or spam email folders and if the notification cannot be found, send a request to MMCAP_Infuse.RFP@state.mn.us.
- **Responders that ARE NOT current contract holders** should send a Vendor ID and Password request to MMCAP_Infuse.RFP@state.mn.us. BuySpeed account creation may take up to 48 hours. Be prepared to provide the following information:
 - Company name
 - Company address
 - Contact name and title
 - Contact phone number
 - Contact email address
 - Federal Employer Identification Number (EIN)

Be aware that entering a Products and Pricing Proposal into BuySpeed will take considerable time. Responders should not wait until the last minute to submit a proposal. It is recommended that Responders submit proposals a minimum of 48 hours prior to the Proposal Due Date. The deadline for submitting a Products and Pricing Proposal will end at the Proposal Due Date and time indicated in this RFP. If you are in the middle of submitting a Products and Pricing Proposal at the deadline, BuySpeed will not accept Responder's submission. Late proposals may not be considered during the award process.

BuySpeed has created a [vendor training manual](#) to aid in submission. Be sure to follow the steps precisely. For assistance with BuySpeed, either email MMCAP_Infuse.RFP@state.mn.us or call the BuySpeed helpdesk at 651-201-3320.

2.) Electronic Submission Via Email

MMCAP Infuse requires an electronic copy of Responder's completed Products and Pricing Proposal be submitted via email. All Responders must use this template, which can be obtained from BuySpeed by saving a copy of your completed proposal prior to uploading it into BuySpeed. Products and Pricing Proposals submitted in any other manner may not be considered.

- B. Usage data.** Product usage data reflects MMCAP Members' purchases between January 1, 2019, and December 31, 2019. All totals are Members' purchases made through AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co. and do not include direct purchases, limited distribution network products, or specialty pharmacy products unless these products are distributed through AmerisourceBergen Drug Corporation, Cardinal Health, and Morris & Dickson Co. and are available to MMCAP Infuse's members.
- C. NDC Numbers.** Each product proposed in BuySpeed must have an 11-digit NDC code that is registered with First DataBank, Inc. (FDB). BuySpeed uses Responder's labeler code (the first five digits of Responder's NDCs) to create a list of Responder's products for bidding. For questions on NDCs or to

add a labeler code in BuySpeed, contact MMCAP_Infuse.RFP@state.mn.us. MMCAP Infuse reserves the right to reject any product not included in FDB.

In the event a Responder wishes to include any products in its proposal that are not in FDB, it must propose these products using Exhibit G. If Responder does not have NDCs, UPCs and/or SKUs must be provided on Exhibit G, along with detailed descriptions of the products.

If Responder receives an award, it is expected that the 11-digit NDC numbers and UPCs/SKUs submitted to MMCAP Infuse in this proposal will be reported to MMCAP Infuse' Authorized Wholesalers in the same format.

- D. **Product Pricing.** Provide the unit price per package as specified in the pack, unit, and case column described by the NDC. It is important for the price to match the packaging specified (e.g., FDB lists packaging as 2mL x 1, but the product is sold as 2mL x 10; provide the price for 2mL x 1). Extend prices two decimal places only.

MMCAP Infuse accepts the following options for pricing type:

1. Fixed price (this price will be fixed for once year with no exceptions);
2. Non-fixed, with a minimum 30-day notice of price increase to MMCAP Infuse;
3. Non-fixed, with a minimum 60-day notice of price increase to MMCAP Infuse;
4. Non-fixed, with a minimum 90-day notice of price increase to MMCAP Infuse;
5. Percentage off Wholesale Acquisition Cost (e.g., 5% off WAC);
6. Fixed discount off WAC (e.g., \$10.00 off WAC).

Pricing type submitted must match Responder's contract terms and conditions, which are found in Article 1 of the Agreement (Exhibit A).

- E. **Changes to Pricing.** Price increases on multisource products after the bid closes and prior to the contract start date, may be subject to re-award.

EXHIBIT A
Sample Agreement



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

[VENDOR]
VENDOR CONTRACT: MMSXXXX
Prepared on January 31, 2020

IMPORTANT

Responders awarded products through this solicitation will be required to execute a contract with the State of Minnesota MMCAP Infuse. Please review this sample agreement and if necessary, to take exception to contract language, clearly indicate what language is to be stricken and what language is to be added using "Track Changes." MMCAP Infuse will not accept the Responder's boilerplate contract as an alternative. To obtain a copy of the document in Word, send a request to MMCAP_Infuse.RFP@state.mn.us. Numerous and/or onerous exceptions that contradict Minnesota law may result in the Responder's proposal being disqualified from further review and evaluation and consideration for award of a contract. Only those exceptions indicated in the Responder's proposal will be available for discussion or negotiation. Negotiating the terms of a contract with MMCAP Infuse does not guarantee Responder will be awarded a contract. **Redlines to the Agreement must be returned to MMCAP at MMCAP_Infuse.RFP@state.mn.us no later than the Proposal Due Date and time**

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

Definitions

1. **Administrative Fee:** Means three percent (3%) of Contract Pricing for a Products or as listed on *Attachment A*, which will supersede Prefix A.
2. **Agreement:** Means the resulting agreement that is reached between MMCAP Infuse and the Vendor.
3. **Authorized Wholesaler(s):** _____
4. **Class of Trade:** All Members are eligible for contract pricing.
5. **Contract Pricing:** Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership as set forth on *Attachment A* and any subsequent amendment to this Agreement.
 - A. **Fixed Pricing:** Means Vendor cannot increase the Contract Pricing for the Products identified on *Attachment A* or any subsequent amendment to this Agreement during the Contract Term.
 - B. **Non-Fixed Pricing:** Means all Products identified as such on *Attachment A* or any subsequent amendment to this Agreement.
 - C. **Wholesale Acquisition Cost (WAC) Minus** - a percentage or dollar amount off WAC that changes by providing MMCAP Infuse prior written notice of the price change along with the new WAC and contract price.
6. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
7. **Failure to Supply (FTS):** Means when the Vendor could not fulfill a combined direct and/or wholesaler purchase volume of one hundred fifty percent (150%) of the Members' previous quarter's volume.
8. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
9. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
10. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **Onboarding Date:** Means the Vendor must allow new Members to access to the Agreement within seven (7) days of notice by MMCAP Infuse and/or the completion of the required paperwork on *Attachment C*.
12. **Primary Account Representative:** _____ (Name, Title, Email, Phone)
13. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in *Attachment A*.
14. **State:** Means one of the recognized fifty (50) states of the United States of America.

AGREEMENT FOR MMCAP INFUSE NO. XXXXXXXX

THIS Agreement is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration ("Minnesota") on behalf of MMCAP Infuse ("MMCAP Infuse") and _____, a limited liability company/corporation with an address of _____ ("Vendor").

Contract Term:

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

AGREEMENT COMPONENTS

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

1. **Prefix A:** Definitions
2. **Attachment A:** Products and Pricing
3. **Attachment B:** Further Discounts
4. **Attachment C:** Required Member Onboarding Forms (if applicable)
5. **Attachment D:** Required Reporting
6. **Attachment E:** MN Statutory Language

ARTICLE I PRICING AND CHANGES

- 1.1 **Notices.** All notices under this Article must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 1.2 **Pricing Structure:** Pricing for Products are listed on **Attachment A** and will remain in effect during the Contract Term.
- 1.3 **Fixed Pricing.** Vendor must hold pricing firm for at least one (1) year from the Effective Date.
 - A. **Price Reductions.** After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must notify MMCAP Infuse before they can take effect.
 - B. **Price Increases.** Price increases will only be accepted with (i) at least 30 days' written notice; (ii) a force majeure condition can be established; (iii) and is approved by the MMCAP Infuse. Except as provided for in this Agreement, no fee, percentage, or other cost may be added to the products purchased under this Agreement unless the fee, percentage, or cost is defined and approved in writing by MMCAP Infuse.
- 1.4 **Non-Fixed Pricing.** All Non-Fixed Pricing requires notice of increases be submitted to MMCAP Infuse at least ninety (90) days before the requested increases may take effect. Vendor cannot increase prices until one hundred twenty (120) calendar days after the Effective Date of the Agreement. In the event of any price reductions, Vendor will advise MMCAP Infuse as set forth on Paragraph 1.3(A).
- 1.5 **Wholesale Acquisition Cost (WAC) Minus Percentage or Dollar Pricing.** If specifically noted on **Attachment A** that the prices are a percentage or price off WAC, the price may be changed by providing MMCAP at least five (5) business days' prior written notice of the price change along with the new WAC and pricing. Notices of WAC increases must be sent to MMCAP Infuse. In the event Vendor does not notify MMCAP Infuse of a WAC increase, Vendor must honor wholesalers' chargebacks for the most recent previous pricing until such time as MMCAP Infuse receives notice of the WAC increase.
- 1.6 **Notice to MMCAP Infuse:** Vendor must provide justification for all price increases. In the event Vendor does not notify MMCAP Infuse of a price increase, Vendor must honor wholesalers' chargebacks for the most recent previous Contract price until such time as MMCAP Infuse receives notice of and approves the price increase.
- 1.7 **Notice to Authorized Wholesalers.** The Vendor must notify any and all Authorized Wholesalers of price changes. If Vendor fails to send price notification(s), Vendor agrees to honor all chargebacks at the lower Contract Pricing until such time the Authorized Wholesalers receive notice of and approves the price change. Vendor must confirm with MMCAP Infuse that price changes have been sent to the Authorized Wholesalers.
- 1.8 **Competitive Pricing.** If MMCAP Infuse is made aware and determines during the Contract Term Vendor is offering better Contract Pricing and/or Products to another group purchasing organization or Government Unit, Vendor will

have ten (10) days to work with MMCAP Infuse to amend this Agreement to provide MMCAP Infuse the same Contract Pricing and/or Products.

- 1.9 **Vendor's Right of First Refusal on Equivalent Products.** If an equivalent product's market price is less than the Contract Pricing, MMCAP Infuse will provide ten (10) days to the Vendor to match the price. If the Vendor does not match the price or fails to respond, MMCAP Infuse reserves the right to dual award or re-award the Product(s).
- A. In the event Vendor increases the Contract Pricing, MMCAP Infuse reserves the right to obtain quotes from other vendors and to dual or reward a Product to the vendor offering the best value.
 - B. For Vendor to receive right of first refusal on a post one hundred eighty (180) day new generic, the new generic must be a Product on this Agreement at least one-hundred fifty (150) consecutive days before the expiration of the one-hundred eighty (180) day exclusivity period; failure to do so waives Vendor's right of first refusal.
 - C. If Vendor submits an offer for a Product currently awarded to another vendor, each vendor will be permitted one best and final offer. If a Product is challenged by another vendor, each vendor will be provided one best and final offer.
- 1.10 **Value-Added Programs.** Members must be offered any programs normally offered to the Vendor's general customer base (e.g., rebates, tiered pricing, continuing education courses, marketing information, etc.) at the same or lower cost as that offered to the general customer base.
- 1.11 **Product Dating.** All Products supplied to Authorized Wholesalers must have an expiration date of at least one (1) year from the date of manufacture and have a least a six (6) month shelf life from the date of acceptance of the Product by the Authorized Wholesaler.
- 1.12 **Annual Bid Cycle.** Vendor will be required to submit Contract Pricing on an annual basis. Products may be awarded to other contract holders during this annual cycle. In the event Vendor loses all Products on its contract during an annual cycle, it will not lose its Vendor status with MMCAP Infuse and is eligible to resubmit products and pricing during the next annual cycle. MMCAP Infuse reserves the right to open its RFP process to new suppliers during the annual cycle.
- A. *Bid Roll.* Vendor must report its Products to the Authorized Wholesalers no later than forty-five (45) days prior to the start of the next annual cycle. Changes to the Contract will be managed per Paragraph 1.13.
 - B. No Contract Pricing increases can become effective until one hundred twenty (120) calendar days after the effective date of the awards resulting from the annual bid cycle.
- 1.13 **Changes.** Any changes to this Agreement, including but not limited to product additions/deletions, price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed by the effective date of the amendment. With the exception of changes to Contract Pricing which are subject to Paragraph 1.7, Vendor must send confirmation of amendment changes, including but not limited to additions/deletions, NDC changes, Product removals, etc., to the Authorized Wholesalers within two (2) business days of the time that documentation of the change is received by the Vendor from MMCAP Infuse. If MMCAP Infuse's Authorized Wholesalers do not receive the notification(s), Vendor agrees to honor all chargebacks at the Contract Pricing from the effective date indicated on the amendment. Vendor-generated Product offers, and notifications may be used as amendments to **Attachment A** by submitting to MMCAP Infuse a letter on Vendor's letterhead with the following elements (**Offer Letter**):
- A. Offer Date
 - B. MMCAP Infuse Contract Number
 - C. Action (e.g., addition, deletion, price change, NDC conversion)
 - D. NDC Number
 - E. Product Description
 - F. Packaging
 - G. Most recent previous Contract Price
 - H. New Contract Price
 - I. Pricing Type
 - J. Effective Date
 - K. Signature of an individual authorized to bind Vendor's change to contract.

Upon written acceptance by MMCAP Infuse, Offer Letter will automatically amend **Attachment A** of this Agreement. If MMCAP Infuse indicates that aspects of the Offer Letter conflict with Agreement at that time, Paragraph 10.5 will apply to any subsequent conflicts and/or issues that may arise subsequently. If MMCAP Infuse executes the Offer Letter and provides counters, the Vendor has fifteen (15) days to object to MMCAP Infuse's counters before they are deemed as accepted by Vendor. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP Infuse will draft all amendments. Vendor must countersign the amendments drafted by MMCAP Infuse to be incorporated into the Agreement. Amendments must be countersigned by the Vendor by the earlier of the following (A): fifteen (15) days; or (B) the Expiration Date.

ARTICLE II
SUPPLYING AND AVAILABILITY

- 2.1 **Authorized Wholesaler Requirements.** Vendor will notify the Authorized Wholesalers of the initial Products and Contract Pricing and any subsequent changes.
- A. All sales of Products to Members must be through the Authorized Wholesalers unless previously authorized in writing by MMCAP Infuse. Direct sales to Members without written authority may result in immediate termination of this Agreement at the sole discretion of MMCAP Infuse.
 - B. Vendor must establish and maintain chargeback agreement(s) with the Authorized Wholesalers.
 - C. Vendor must notify MMCAP Infuse immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect the Contract Products' availability. Notices must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 2.2 **Dual Award.** MMCAP Infuse reserves the right to award or dual award Products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by Authorized Wholesalers, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products with unit-of-use barcoding, specific products requested by Members, recall situations, product availability and shortages, quality concerns, failure to supply situations, and in situations that are in the best interest of the MMCAP Infuse and its Members.
- 2.3 **First DataBank, Inc.** All prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc., unless such designation is expressly waived by MMCAP Infuse.
- A. If NDC codes are not applicable (e.g., OTC products), Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]). If the Product does not have an NDC number or a UPC code, Vendor must use its product number with leading zeroes (e.g., product #90024 = 00000-0900-24).
 - B. Vendor must report Products to Authorized Wholesalers using only these approved formats.
- 2.4 **Product Discontinuation.** With the exception of a recall, If the Vendor assigns, discontinues, or deletes a Product during the Agreement, Vendor must provide written notice to MMCAP Infuse and Authorized Wholesaler at least sixty (60) days prior. If the Vendor removes a Product, Vendor will honor Contract Pricing until the Authorized Wholesalers' inventories are depleted or a mutually agreed upon removal date. If inventory is depleted prior to the end of the sixty (60) day period, Paragraph 2.9 will apply; removal of Products on backorder or shortage will be subject to Paragraph 2.9.
- 2.5 **Price Audits and Corrections.** In the event of a Contract Pricing error that is attributable to the Vendor, Vendor agrees to accept credit/rebills for the past twelve (12) calendar months. When MMCAP Infuse discovers an error in pricing, it will notify Vendor.
- 2.6 **Product Recalls.** Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.
- 2.7 **Returned Goods/Credits.** The Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.
- 2.8 **Backorders.** Vendor must provide written notice of all Product backorders expected to last longer than thirty (30) calendar days and/or inability to supply situations to MMCAP Infuse within twenty (24) hours of the knowledge of the situation. Notices must include the reason(s) for and the expected duration of the issue. Notices must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 2.9 **Failure to Supply (FTS).** It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Members. Provided Vendor was responsible for the FTS as opposed to an Authorized Wholesaler or force majeure, The Vendor agrees to utilize the following process in the event of an FTS:
- A. Member may purchase an alternate equivalent generic product on the open market for the period in which the Vendor is unable to provide the Product. If the cost for the alternative is higher, the Vendor will be liable for any excess cost over the Contract Pricing.
 - B. Reimbursement: Members will submit the following information to the Vendor for each Product that reimbursement is expected:
 - i. Name, Address, City, State, and Zip
 - ii. DEA or HIN
 - iii. Point of contact for reimbursement (including telephone number and e-mail address)
 - iv. Product NDC number, description
 - v. MMCAP Infuse Contract Price
 - vi. Authorized Wholesaler Name, Address, City, State, Zip
 - vii. Authorized Wholesaler account number
 - viii. Authorized Wholesaler distribution service fee

- ix. Alternate NDC
 - x. Alternate NDC manufacturer
 - xi. Alternate NDC purchase price
 - xii. Alternate NDC quantity purchased
 - xiii. Alternate NDC date purchased
 - xiv. Amount due
 - xv. Reason (e.g., brief description, such as Manufacturer Backorder)
 - xvi. A copy of the invoice showing the purchase of an equivalent generic product from the alternate source.
- C. Vendor must pay claims directly to the Authorized Wholesaler within thirty (30) days of receipt of a claim as described above. A detailed payment of claim report must be provided with payment to the Member.
 - D. Vendor will not be liable for FTS if Vendor can prove that its inability to supply any Product was not due to its acts or omissions. Vendor must provide written documentation to MMCAP Infuse, demonstrating there were adequate stock levels at Vendor's warehouse, Authorized Wholesaler order patterns that show inconsistency, and Authorized Wholesaler order information that includes order date and ship date, for the relevant time period.
 - E. Vendor will be responsible for payment of FTS claims for one hundred eighty (180) calendar days unless the Vendor has provided MMCAP Infuse with at least one hundred eighty (180) calendar days' advanced written notice of the intent to remove said Product(s) from production and discontinue distribution in the U.S. market. Vendor will remain responsible for all FTS claims during the notice period.
 - F. In the event MMCAP Infuse chooses to process FTS claims on behalf of the Member, Vendor will receive thirty (30) days' advanced written notice. Vendor agrees to accept electronic claims from MMCAP Infuse, any MMCAP Infuse contracted FTS claims system vendor, and/or the Member. All FTS payments made to MMCAP Infuse must be separate from Administrative Fee payments and must be clearly identified as such.

ARTICLE III

TERMINATION, CANCELLATION, AND REMEDIES

- 3.1 **Cancellation.** MMCAP Infuse may cancel this Agreement any time, without cause, upon thirty (30) days' written notice to the other Vendor.
- 3.2 **Termination for Cause.** Either party may terminate this Agreement at any time on the basis the other party breached this Agreement. The moving party must provide written notice to the other party, which upon the receiving party has thirty (30) days to cure the defects. Upon thirty days (30), the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.
- 3.3 **Termination for Insufficient Funding.** MMCAP Infuse may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Products covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Products that are provided after notice and effective date of termination. However, the vendor will be entitled to payment, determined on a pro rata basis, for Products satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any costs, fees, or other charges if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. MMCAP Infuse must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP Infuse receiving that notice.
 - A. For orders made by a Member, Vendor agrees to the applicable statutory terms of the applicable Member if the Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Products.
- 3.4 **Force Majeure.** Parties will not be considered in default in the performance of its obligations in the Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.
- 3.5 **Breach.** In the event of a breach of this Agreement, MMCAP Infuse and Members reserve the right to pursue any other remedy available by law. Vendors may be removed from the Vendor's list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 3.6 **Failure to Perform.** Upon failure to perform the following items in the time and manner as set forth herein, the following fees shall be paid by Vendor:

- A. Reports. In the event that any report and/or data provided by the Vendor, pursuant to the terms of this Agreement, is not received according to schedule, contains incorrect data, incomplete data, or no data, or is more than a minor defect or causes harm to MMCAP Infuse's ability to conduct business or its governmental purpose, Vendor will pay the following to MMCAP Infuse: \$500/day, until resolved.
 - B. Late Administrative Fee Payments: As provided for in statute for late payments to the State of Minnesota.
 - C. Notices and Signatures. If the Vendor fails to provide notice or signature as provided for in this Agreement, the Vendor will pay the following to MMCAP Infuse: \$200/day, until resolved.
 - D. Class of Trade: In connection with this Agreement, if the Vendor denies pricing to any class of trade that has not been pre-approved by MMCAP Infuse, Vendor will pay MMCAP Infuse \$200/per violation.
 - E. Adding and Removing Members. Every time the Vendor fails to meet the timeline requirements in this Agreement to add or remove a Member's eligibility to purchase Products Infuse, Vendor will pay MMCAP Infuse \$1,500/per violation.
 - F. Application of Fees. The application of the amounts herein shall not excuse Vendor's performance obligations as set forth in this Agreement, nor will it waive any rights of MMCAP Infuse or Members to seek any and all available legal and equitable remedies. Vendor acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP Infuse and Members whole for any failure of performance by the Vendor, as based upon good faith estimates as agreed to by the parties.
- 3.7 **Dispute Resolution**. Vendor and MMCAP Infuse will handle dispute resolution for unresolved issues using the following procedure.
- A. Notification. Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within thirty (30) days.
 - B. Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP Infuse or Vendor may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action.
 - C. Performance while Dispute is Pending. Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.
 - D. No Waiver. This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE IV MEMBERSHIP

- 4.1 **Onboard, Transition, and Implementation**. If the Vendor requires additional paperwork for Members to acquire the Products, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition. Vendor's documents and/or procedure for implementing and transitioning Members to this Agreement is set forth on **Attachment C**.
- 4.2 **Membership Listing**. MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Contract Term.
 - A. New Members. The Vendor must allow new Members to access to the Agreement the Onboarding Date. As new Members are added, MMCAP Infuse will provide Vendor with monthly e-mail notices announcing a new Membership list has been posted.
 - B. Removing Members. Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member. If MMCAP Infuse does not receive notification that a Member has been removed from Contract Pricing, Vendor will honor Contract Pricing for the Member for thirty (30) after MMCAP Infuse receives the written notice.
- 4.3 **Membership Eligibility**. Upon request, Vendor will send an electronic eligibility list identifying which Members are eligible for contract pricing to: MMCAP_Infuse.Contracts@state.mn.us.
 - A. If the Vendor has eligibility requirements, Vendor must provide MMCAP Infuse access to Vendor's online contract and eligibility management system in addition to providing MMCAP Infuse the algorithm it uses to categorize a Member's into a class of trade.
- 4.4 **Non-Solicitation**. During the term of this Agreement, Vendor will not solicit any Members or prospective Members to enter into or negotiate a separate contract or agreement for the same or substantially equivalent products and services offered in this Agreement without MMCAP Infuse's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and services covered by this Agreement.

- 4.5 **DEA License/HIN.** Unless the Member purchases a controlled substance, the Vendor may not require that a Member have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from Member.
- 4.6 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

ARTICLE V

AGREEMENT MANAGEMENT

- 5.1 **Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. In the event that the Primary Account Representative is unresponsive or does not meet MMCAP's Infuse needs, the Vendor will assign another Primary Account Representative upon MMCAP Infuse's request. The Primary Account Representative will be responsible for:
- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
 - B. Timely response to all MMCAP Infuse inquiries
 - C. Performance of the business review as described in Paragraph 5.2.
 - D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- 5.2 **Business Reviews.** Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

ARTICLE VI

WARRANTS, COVENANTS, AND DUTIES OF VENDOR

- 6.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.
- 6.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse.
- 6.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Products has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish Products that have not been adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.
- 6.4 **cGMP** Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act. If the Vendor receives a 483 or similar type warning letter for any Product, it must be provided to MMCAP Infuse within ten (10) days of receipt by Vendor.
- 6.5 **Debarment.** Vendor warrants and certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota, the United States federal government, or any Member; and has not been convicted of a criminal offense related to the subject of this Agreement. Vendor further warrants that it will provide immediate written notice to the MMCAP if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.
- A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion: Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.
- 6.6 **Indemnification.** Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Except for causes due to MMCAP Infuse's or Members' sole negligence, Vendor will defend and hold harmless MMCAP Infuse, including MMCAP Infuse's, Members, agents, directors, employees, attorneys, and other representatives during and after this Agreement from and against all actual and potential claims relating to loss,

liability, damage, costs and expenses (including attorneys' fees and legal costs), causes of action, regulatory proceedings, suits, demands, or judgements relating to Vendor's:

- A. Intentional, willful, or negligent acts or omissions;
- B. Fraud and or deceit;
- C. Actions that give rise to strict liability;
- D. Breach of contract;
- E. Breach of warranty;
- F. Violations of federal, state, or local laws, orders, and/or policies;
- G. Employees or subcontractors' criminal and civil claims; and/or
- H. Failure to pay fees, charges, expenses, taxes, or other debts to third parties.

- 6.7 **Antitrust.** The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota, and/or the antitrust laws of any Member unless otherwise assigned directly to that Member by Vendor with MMCAP Infuse's approval.

ARTICLE VII ADMINISTRATIVE FEE

- 7.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on all purchases of Products made by Members with the Vendor through an Authorized Wholesaler.

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

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

- B. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.

- 7.2 **Reporting.** The Vendor must submit a monthly Administrative Fee Data Report that includes both direct (sales made direct from Vendor to Member) and indirect purchases (sales made through an Authorized Wholesaler). The monthly Administrative Fee Data Report must contain the fields detailed below. Vendor agrees that for indirect sales, chargeback or sales data received from Authorized Wholesalers will be utilized to create the Administration Fee Data Report and if additional reports are needed to support creation of the Administration Fee Data Report, Vendor agrees to bear the cost of any special reporting that may be required by the Vendor in its relationship with the Authorized Wholesalers. All Administrative Fee Data Reports must be sent to: mmcap.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The required items for the reports are found on **Attachment D**.

- A. Administrative Fee Data Report fields:

- i. MMCAP Infuse Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)
- ii. MMCAP Infuse Assigned Manufacturer Number
- iii. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
- iv. Invoice Date (Point of Sale Date)
- v. Invoice Number
- vi. MMCAP Infuse Participating Facility Name
- vii. Vendor's Account Number for the MMCAP Infuse Facility
- viii. MMCAP Infuse Participating Facility DEA Number, if applicable
- ix. MMCAP Infuse Participating Facility HIN Number, if applicable
- x. MMCAP Infuse Participating Facility Address
- xi. MMCAP Infuse Participating Facility City
- xii. MMCAP Infuse Participating Facility State
- xiii. Product's NDC (Use all 11 digits (00076888888))
- xiv. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- xv. Credit Indicator (C = credit)
- xvi. Contracted Units (The number of units purchased on contract.)
- xvii. MMCAP Infuse Contracted Unit Price

- xviii. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.030))
- xix. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)

ARTICLE VIII

INTELLECTUAL PROPERTY

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

ARTICLE IX
INSURANCE

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

9.2 **Additional Insurance Conditions.**

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

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

- A. Workers' Compensation Insurance: Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
 - i. \$100,000 – Bodily Injury by Disease per employee
 - ii. \$500,000 – Bodily Injury by Disease aggregate
 - iii. \$100,000 – Bodily Injury by AccidentIf Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements. If during the course of the Agreement the Vendor becomes eligible for Workers' Compensation, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.
- B. Commercial General Liability Insurance: Vendor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Agreement. Insurance minimum limits are as follows:
 - i. \$5,000,000 – per occurrence
 - ii. \$5,000,000 – annual aggregate
 - iii. \$5,000,000 – annual aggregate – Products/Completed Operations
 - iv. The following coverages shall be included:
 - a. Premises and Operations Bodily Injury and Property Damage
 - b. Personal and Advertising Injury
 - c. Blanket Contractual Liability
 - d. Products and Completed Operations Liability
 - e. Other; if applicable, please list _____

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

ARTICLE X

GENERAL TERMS

- 10.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.
- 10.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales a Member.
 - A. Invoice and Pricing Audit. MMCAP Infuse and Members served by this Agreement may periodically audit validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
 - B. Costs. Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 10.3 **Assignment.** The Vendor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP Infuse and a fully executed assignment agreement.
- 10.4 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 10.5 **Order of Precedence.** Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, order forms, website use of terms, Offer Letters, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this section, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.
- 10.6 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.
- 10.7 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP Infuse and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding and will be fully performed.
- 10.8 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

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

ATTACHMENT D

Reporting Requirements

Table 1: Required Data Field for Sales Data Report

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

AN	340b Purchase
AO	Category
AP	Manufacturer Part Number
AQ	List Price
AR	UNSPSC Code (XXXXXXX)
AS	UNSPSC Description
AT	GLN
AU	GTIN

Table 2: Sales Data Usage Report-Fixed Length Fields

Monthly Sales Data Usage Report - Fixed Length Fields							
Required Data Field Full Name	Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
MMCAP-assigned facility ID	MMCAP Id	Alpha Numeric		7	1	1	7
MMCAP Facility Name	MMCAP Name	Alpha Numeric		30	1	8	37
Vendor Distribution Center Code	DistributionCenter	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	VendAccountNo	Alpha Numeric		10	1	41	50
Invoice Number	InvoiceNumber	Alpha Numeric		15	1	51	65
Invoice Line Number	InvoiceLineNo	Alpha Numeric		4	1	66	69
Purchase Order Number	poNumber	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	InvoiceDate	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	BuyerName	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	SKU	Alpha Numeric		13	1	113	125
NDC of purchased product (in 5-4-2 format as stored in First DataBank, Inc)	NDC	Alpha Numeric	999999999	11	1	126	136
Label Name	LabelName	Alpha Numeric		40	1	137	176
Unit Dose	UD	numeric	9	1	1	177	177
Pack Size	Pack Size	numeric	99999.999	9	1	178	186
Unit	Unit	Alpha Numeric		2	1	187	188
Case Size	Case Size	numeric	9999	4	1	189	192
Dose	D	Alpha Numeric		10	1	193	202
Strength	STR	Alpha Numeric		10	1	203	212
Route	RT	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	UnitPrice	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(999999.9999)	QuantityOrdered	numeric	999999.9999	11	1	233	243
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)	QuantityShipped	numeric	999999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)	ExtendedPrice	numeric	99999999.999	13	1	255	267
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	SaleType	Alpha Numeric		1	1	268	268
Bill to Address 1	billtoaddress1	Alpha Numeric		30	1	269	298
Bill to City	billtocty	Alpha Numeric		20	1	299	318
Bill to State (2 alpha postal code)	billtostate	Alpha Numeric		2	1	319	320
Bill to Zip (standard 5-4 format, no dash necessary)	billtozip	Alpha Numeric		9	1	321	329
Ship to Address 1	shiploadress1	Alpha Numeric		30	1	330	359
Ship to City	shiplocity	Alpha Numeric		20	1	360	379
Ship to State (2 alpha postal code)	shiplostate	Alpha Numeric		2	1	380	381
Ship to Zip (standard 5-4 format, no dash necessary)	shiplozip	Alpha Numeric		9	1	382	390
Service Fee (9999.9999)	ServiceFee	numeric	9999.9999	9	1	391	399
MMCAP Contract Number (MMSxxxxx)	contractnumber	Alpha Numeric		10	1	400	409
Admin Fee (9999.9999)	AdminFee	numeric	9999.9999	9	1	410	418
Credit Indicator (C for credit)	CreditIndicator	Alpha Numeric		1	1	419	419
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)	WholeCode	Alpha Numeric		4	0	420	423
Manufacture Name (MFG Name)	MfgName	Alpha Numeric		40	1	424	463
Class of Trade	ClassofTrade	Alpha Numeric		4	1	464	467
340b Purchase	340b	Alpha Numeric		1	1	468	468

ATTACHMENT E
Minnesota Statutory Procurement Language

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

- c. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - d. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
 - iii. **Consequences.** The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or Minnesota.
 - iv. **Certification.** The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075).** For services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.
 6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
 7. **Contingency Fees Prohibited.** Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
 8. **Diverse Spend Reporting.** If the total value of this Agreement may exceed \$500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.
 9. **Retainage for Minnesota Government Units.** Under Minn. Stat. § 16C.08, subd. 2 (10), no more than ninety percent (90%) of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by a Minnesota agency head. The balance due will be paid when the Minnesota agency head determines that the Vendor has satisfactorily fulfilled all the terms of this Agreement.
 10. **Payment to Subcontractors.** To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the Vendor must pay all subcontractors, less any retainage, within ten (10) calendar days of the Vendor's receipt of payment from a Member for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

EXHIBIT B
General RFP Requirements

Conflicts of Interest

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. This includes any conflict of interests the Responder may have with a Member. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

Organizational Conflicts of Interest

To the best of Responder's knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons,

- A. vendor is unable or potentially unable to render impartial assistance or advice to the State;
- B. the vendor's objectivity in performing the contract work is or might be otherwise impaired; or
- C. the vendor has an unfair competitive advantage.

If after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State's Chief Procurement Officer which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to OSP, the State may terminate the contract for default. Organizational conflicts of interest terms apply to any subcontractors for this work.

Proposal Contents

By submission of a proposal, Responder warrants that the information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

Responses are Nonpublic during Evaluation Process All materials submitted in response to this Solicitation will become property of the State. During the evaluation process, all information concerning the responses submitted will remain private or nonpublic and will not be disclosed to anyone whose official duties do not require such knowledge. Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the State having completed negotiating a contract with the selected responder. The State will notify all responders in writing of the evaluation results.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

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.

Required Reporting. During the length of the contract, Responder agrees to provide the required data and metrics in the format that MMCAP Infuse will provide to the awarded Respondents.

Reimbursements

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the contractor as a result of the contract will be in no greater amount than provided in the current "Commissioner's Plan" promulgated by the commissioner of Minnesota Management and Budget will not be made for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

Targeted Group, Economically Disadvantaged Business, Veteran-Owned and Individual Preference.

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, businesses that are eligible and certified by the State as targeted group (TG) businesses, economically disadvantaged (ED) businesses, and veteran-owned businesses will receive points equal to 6% percent of the total points available as preference.

For TG/ED/VO certification and eligibility information visit the Office of Equity in Procurement website at <https://mn.gov/admin/business/vendor-info/oep/> or call the Division's Helpline at 651.296.2600.

Certification Regarding Lobbying

For State of Minnesota Contracts and Grants over \$100,000, the undersigned certifies, to the best of his or her knowledge and belief that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT C

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Organization Name

Name and Title of Official Signing for Organization

By: _____
Signature of Official

Date

EXHIBIT D - MINNESOTA – WORKFORCE CERTIFICATE INFORMATION

Required by state law for ALL bids or proposals that could exceed \$100,000

Complete this form and return it with your bid or proposal. The State of Minnesota is under no obligation to delay proceeding with a contract until a company becomes compliant with the Workforce Certification requirements in Minn. Stat. §363A.36.

BOX A – MINNESOTA COMPANIES that have employed more than 40 full-time employees within this state on any single working day during the previous 12 months, check one option below:

- ☐ Attached is our current Workforce Certificate issued by the Minnesota Department of Human Rights (MDHR).
- ☐ Attached is confirmation that MDHR received our application for a Minnesota Workforce Certificate on _____ (date).

BOX B – NON-MINNESOTA COMPANIES that have employed more than 40 full-time employees on a single working day during the previous 12 months in the state where it has its primary place of business, check one option below:

- ☐ Attached is our current Workforce Certificate issued by MDHR.
- ☐ We certify we are in compliance with federal affirmative action requirements.

BOX C – EXEMPT COMPANIES that have not employed more than 40 full-time employees on a single working day in any state during the previous 12 months, check option below if applicable:

- ☐ We attest we are exempt. If our company is awarded a contract, we will submit to MDHR within 5 business days after the contract is fully signed, the names of our employees during the previous 12 months, the date of separation, if applicable, and the state in which the persons were employed. Send to compliance.MDHR@state.mn.us.

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of your company.

Name of Company: _____ Date _____

Authorized Signature: _____ Telephone number: _____

Printed Name: _____ Title: _____

For assistance with this form, contact:

Minnesota Department of Human Rights, Compliance Services

Web:	http://mn.gov/mdhr/	TC Metro:	651-539-1095	Toll Free:	800-657-3704
Email:	compliance.mdhr@state.mn.us			TTY:	651-296-1283

EXHIBIT E
STATE OF MINNESOTA
AFFIDAVIT OF NONCOLLUSION

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the MMCAP Infuse Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Representative (Please Print) _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public Signature: _____

My commission expires: _____



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

Emergent Devices Inc.
Agreement Number: MMS2000303
Prepared on July 31, 2020

PREFIX A

Definitions and Acronyms

Are attached and incorporated into the Agreement

Definitions

1. **Agreement:** Means the resulting agreement that is reached between MMCAP Infuse and the Vendor.
2. **Authorized Wholesaler(s):** Means Cardinal Health and Morris & Dickson Co. LLC.
3. **Class of Trade:** Means First Responder, State or Local Government Agency, School/ University, or a Community-based organization.
4. **Contract Pricing:** Means the price that the Vendor has agreed to provide the Products to MMCAP Infuse and its Membership provided that the Members have met the Vendor's eligibility criteria (*Paragraph 5.2*) as set forth on *Attachment A* and any subsequent amendment to this Agreement.
 - A. **Non-Fixed Pricing:** Means all Products identified as such on *Attachment A* or any subsequent amendment to this Agreement.
 - B. **Wholesale Acquisition Cost (WAC) Minus** - a percentage or dollar amount off WAC that changes by providing MMCAP Infuse prior written notice of the price change along with the new WAC and contract price.
5. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in *Attachment A*.
6. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
7. **Failure to Supply (FTS):** *Deleted in its entirety.*
8. **Government Unit:** Any entity as defined by Minnesota Statute 471.59.
9. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
10. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Members, and other Government Units.
11. **Onboarding Date:** Means the Vendor must allow new Members to access to the Agreement within seven (7) days of notice by MMCAP Infuse and/or the completion of the required paperwork on *Attachment C*.
12. **Onboarding Forms:** Emergent Declaration Form, Emergent Letter of Authorization, Emergent Credit Application
13. **Primary Account Representative:** Paul Hunter, Sr. Director – US Market Access & Distribution, 484 253 3028, hunterp@ebsi.com
14. **State:** Means one of the recognized fifty (50) states of the United States of America.

AGREEMENT FOR MMCAP INFUSE NO. MMS2000303

THIS Agreement is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration ("Minnesota") on behalf of MMCAP Infuse ("MMCAP Infuse") and Emergent Devices Inc. (formerly known as Adapt Pharma Inc.), a corporation with an address of 401 Plymouth Road, Suite 400, Plymouth Meeting, Pennsylvania 19462 ("Vendor").

Contract Term:

1. **Effective Date:** September 1, 2020 or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** June 30, 2024.
3. The Contract Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

AGREEMENT COMPONENTS

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

1. **Prefix A:** Definitions
2. **Attachment A:** Products and Pricing
3. **Attachment B:** Further Discounts
4. **Attachment C:** Required Member Onboarding Forms
5. **Attachment D:** Required Reporting
6. **Attachment E:** MN Statutory Language

ARTICLE I
PRICING AND CHANGES

- 1.1 **Notices.** All notices under this Article must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 1.2 **Pricing Structure:** Pricing for Products are listed on **Attachment A** and will remain in effect during the Contract Term.
- 1.3 **Fixed Pricing.** Reserved.
- 1.4 **Non-Fixed Pricing.** All Non-Fixed Pricing requires notice of increases be submitted to MMCAP Infuse at least ninety (90) days before the requested increases may take effect. Vendor cannot increase prices until one hundred twenty (120) calendar days after the Effective Date of the Agreement.
 - A. **Price Reductions.** After the Effective Date, Vendor may submit to MMCAP Infuse price reductions but must notify MMCAP Infuse before they can take effect.
- 1.5 **Wholesale Acquisition Cost (WAC) Minus Percentage or Dollar Pricing.** If specifically noted on **Attachment A** that the prices are a percentage or price off WAC, the price may be changed by providing MMCAP Infuse at least two (2) business days' prior written notice of the price change along with the new WAC and pricing. Notices of WAC increases must be sent to MMCAP Infuse. In the event Vendor does not notify MMCAP Infuse of a WAC increase, Vendor must honor wholesalers' chargebacks for the most recent previous pricing until such time as MMCAP Infuse receives notice of the WAC increase.
- 1.6 **Notice to MMCAP Infuse:** Vendor must provide two (2) business days' prior written notice for all price increases as set forth in **Paragraph 1.6**. In the event Vendor does not notify MMCAP Infuse of a price increase, Vendor must honor wholesalers' chargebacks for the most recent previous Contract Pricing until such time as MMCAP Infuse receives notice of the price increase in accordance with **Paragraph 1.6**.
- 1.7 **Notice to Authorized Wholesalers.** The Vendor must notify any and all Authorized Wholesalers of price changes. If Vendor fails to send price notification(s), Vendor agrees to honor all chargebacks at the lower Contract Pricing until such time the Authorized Wholesalers receive notice of and approve the price change. Vendor must confirm with MMCAP Infuse that price changes have been sent to the Authorized Wholesalers.
- 1.8 **Competitive Pricing.** Subject to applicable law, Vendor agrees that the Contract Pricing for Product offered by Vendor to MMCAP Infuse through this Agreement shall be at least as good as Vendor's national U.S. average price for such Products provided to group purchasing organizations of comparable size, function, and membership that impose on their members comparable compliance requirements to those imposed by MMCAP Infuse, provided that (i) the type, term, product mix and other terms and conditions of the applicable group purchasing agreements are materially comparable, and (ii) the anticipated volumes of products purchased under the applicable group purchasing agreements, and the actual volumes of products purchased, over any twelve-month period are substantially the same.
- 1.9 **Vendor's Right of First Refusal on Equivalent Products.** If an equivalent product's market price is less than the Contract Pricing, MMCAP Infuse will provide ten (10) days to the Vendor to match the price. If the Vendor does not match the price or fails to respond, MMCAP Infuse reserves the right to dual award or re-award the Product(s).

- A. In the event Vendor increases the Contract Pricing, MMCAP Infuse reserves the right to obtain quotes from other vendors and to dual or reward a Product to the vendor offering the best value.
 - B. For Vendor to receive right of first refusal on a post one hundred eighty (180) day new generic, the new generic must be a Product on this Agreement at least one-hundred fifty (150) consecutive days before the expiration of the one-hundred eighty (180) day exclusivity period; failure to do so waives Vendor's right of first refusal.
 - C. If Vendor submits an offer for a Product currently awarded to another vendor, each vendor will be permitted one best and final offer. If a Product is challenged by another vendor, each vendor will be provided one best and final offer.
- 1.10 **Value-Added Programs.** Members must be offered any programs normally offered to the Vendor's general customer base who are in the same class of trade (e.g., rebates, tiered pricing, continuing education courses, marketing information, etc.) at the same or lower cost as that offered to the general customer base of the same class of trade.
- 1.11 **Product Dating.** All Products supplied to Authorized Wholesalers must have an expiration date of at least one (1) year from the date of manufacture and have a least a six (6) month shelf life from the date of acceptance of the Product by the Authorized Wholesaler.
- 1.12 **Annual Bid Cycle.** *Deleted in its entirety.*
- 1.13 **Changes.** Any changes to this Agreement, including but not limited to product additions/deletions, price changes, NDC changes, changes to terms and conditions, etc., must be made in writing as an amendment and must be fully executed by the effective date of the amendment. With the exception of changes to Contract Pricing which are subject to Paragraph 1.7, Vendor must send confirmation of amendment changes, including but not limited to additions/deletions, NDC changes, Product removals, etc., to the Authorized Wholesalers within two (2) business days of the time that documentation of the change is received by the Vendor from MMCAP Infuse. If MMCAP Infuse's Authorized Wholesalers do not receive the notification(s), Vendor agrees to honor all chargebacks at the Contract Pricing from the effective date indicated on the amendment. Vendor-generated Product offers and notifications may be used as amendments to **Attachment A** by submitting to MMCAP Infuse a letter on Vendor's letterhead with the following elements (**Offer Letter**):
- A. Offer Date
 - B. MMCAP Infuse Contract Number
 - C. Action (e.g., addition, deletion, price change, NDC conversion)
 - D. NDC Number
 - E. Product Description
 - F. Packaging
 - G. Most recent previous Contract Price
 - H. New Contract Price
 - I. Pricing Type
 - J. Effective Date
 - K. Signature of an individual authorized to bind Vendor's change to contract.

Upon written acceptance by MMCAP Infuse, Offer Letter will automatically amend **Attachment A** of this Agreement. If MMCAP Infuse indicates that aspects of the Offer Letter conflict with Agreement at that time, Paragraph 11.5 will apply to any subsequent conflicts and/or issues that may arise subsequently. If MMCAP Infuse executes the Offer Letter and provides counters, the Vendor has fifteen (15) days to object to MMCAP Infuse's counters before they are deemed as accepted by Vendor. In the event the Vendor is unwilling or unable to provide offers in this format, MMCAP Infuse will draft all amendments. Vendor must countersign the amendments drafted by MMCAP Infuse to be incorporated into the Agreement. Amendments must be countersigned by the Vendor by the earlier of the following (A): fifteen (15) days; or (B) the Expiration Date.

ARTICLE II

SUPPLYING AND AVAILABILITY

- 2.1 **Authorized Wholesaler Requirements.** Vendor will notify the Authorized Wholesalers of the initial Products and Contract Pricing and any subsequent changes.
- A. Sales of Products to Members may be through the Authorized Wholesalers or direct to Members.
 - B. Vendor must establish and maintain chargeback agreement(s) with the Authorized Wholesalers.
 - C. Vendor must notify MMCAP Infuse immediately of any issues (e.g., failure to negotiate terms, etc.) with Authorized Wholesalers that could affect the Contract Products' availability. Notices must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 2.2 **Dual Award.** MMCAP Infuse reserves the right to award or dual award Products based on the following: family awards, product formulations, (e.g., alcohol free/sugar free, flavor, product, size), packaging type based on facility need (e.g., non-metal tubes for correctional facilities, etc.), drugs not carried by Authorized Wholesalers, drugs not eligible for reimbursement by Medicaid, look-alike/sound-alike products, products with tall-man lettering, products

with unit-of-use barcoding, specific products requested by Members, recall situations, product availability and shortages, quality concerns, failure to supply situations, and in situations that are in the best interest of the MMCAP Infuse and its Members.

- 2.3 **First DataBank, Inc.** All prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc., unless such designation is expressly waived by MMCAP Infuse.
- A. If NDC codes are not applicable (e.g., OTC products), Vendor must use the product's UPC number to create an 11-digit number by adding a zero to the sixth position (e.g., 5-5 [99999-99999] becomes 5-4-2 [99999-0999-99]). If the Product does not have an NDC number or a UPC code, Vendor must use its product number with leading zeroes (e.g., product #90024 = 00000-0900-24).
- B. Vendor must report Products to Authorized Wholesalers using only these approved formats.
- 2.4 **Product Discontinuation.** With the exception of a recall, If the Vendor assigns, discontinues, or deletes a Product during the Agreement, Vendor must provide written notice to MMCAP Infuse and Authorized Wholesaler at least sixty (60) days prior. If the Vendor removes a Product, Vendor will honor Contract Pricing until the Authorized Wholesalers' inventories are depleted or a mutually agreed upon removal date.
- 2.5 **Price Audits and Corrections.** In the event of a Contract Pricing error that is attributable to the Vendor, Vendor agrees to accept credit/rebills for the past twelve (12) calendar months. When MMCAP Infuse discovers an error in pricing, it will notify Vendor.
- 2.6 **Product Recalls.** Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.
- 2.7 **Returned Goods/Credits.** The Product purchased at the MMCAP Contract Price is not returnable. The Vendor will supply a copy of its returned goods/credit policy to MMCAP Infuse and/or Authorized Wholesalers upon request.
- 2.8 **Backorders.** Vendor must provide written notice of all Product backorders expected to last longer than thirty (30) calendar days and/or inability to supply situations to MMCAP Infuse within twenty-four (24) hours of the knowledge of the situation. Notices must include the reason(s) for and the expected duration of the issue. Notices must be sent to: MMCAP_Infuse.Contracts@state.mn.us.
- 2.9 **Failure to Supply (FTS).** Deleted in its entirety.

ARTICLE III

PAYMENT, DIRECT ORDERS, AND DELIVERY

- 3.1 **Conditions of Payment.** All Products provided by the Vendor under this Agreement must be performed to the satisfaction of MMCAP Infuse and the Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for Products found by MMCAP Infuse to be unsatisfactory or performed in violation of federal, state, or local law.
- 3.2 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT) as a payment method and Member will initiate this process with its financial institution. The Vendor will not accept credit cards or government purchase cards.
- A. **Mailing Payment:** MMCAP Infuse Members will remit payment for the Product purchased directly from Vendor to the following address:
- Emergent Devices Inc.
PO BOX 65030
Baltimore, MD 21264
- 3.3 **Federal Funds.** Payments under this Agreement may be made from federal funds. The Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with federal requirements.
- 3.4 **Direct Orders.** Members can make direct purchases from the Vendor by its customer service, which can be contacted at: narcancustomerservice@ebsi.com.
- A. **Required Information:** To purchase directly, Members will provide Vendor with one of the following documents:
- Standing order signed by a physician; or
 - Letter of authorization signed by a physician or physician assistant or nurse practitioner. A sample letter of authorization can be located in **Attachment C**; or
 - Copy of the Member's pharmacy license. If the address on the pharmacy license is different from the address the units of product are shipping to, the letter of authorization will be completed by a pharmacist authorized to sign such document on behalf of the Member.

To start the account set-up process, MMCAP Infuse Members must submit the above documentation to Vendor's customer service at narcancustomerservice@ebsi.com. Members must allow two (2) business days to process the account set-up once Vendor has received all appropriate documentation referenced in this Section

- B. Credit Applications will only be required for MMCAP Infuse Members that are not a governmental entity. The credit application can be found in **Attachment C**.

3.5 **Orders Conditions.** As a condition for purchasing under this Agreement, purchasers must be Members in good standing with MMCAP Infuse. Vendor may use their own Order Forms. To the extent that the terms of any Order Form(s) conflict with the terms of this Agreement, the terms of this Agreement supersede. Notwithstanding the foregoing, the Vendor reserves the right to dispute any discrepancies arising from additional terms and conditions in the MMCAP Infuse Member's purchase orders. Each Member will be responsible for payment for Products to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Member. Vendor agrees to invoice the Members as established in this Agreement.

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

- A. The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Products to be purchased under the Order Form;
- B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Product under the Order Form are prohibited, or the Member is prohibited from paying for the Product from the planned funding source; or
- C. Back orders, failure to meet delivery requirements, or failures to meet specifications in the Order Form and/or the Agreement authorizes the ordering entity to cancel the order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the Vendor
- D. Vendor commits any material breach of this Agreement or Order Form.
- E. Upon receipt of written notice of termination, Vendor will stop performance under the Order Form as directed by the Member. If a standing Order Form is terminated, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.

3.7 **Jurisdiction and Venue of Orders.** Upon completion of the dispute resolution process outlined in this Agreement, and solely with the prior written consent of MMCAP Infuse and the State of Minnesota Attorney General's Office, the Member may bring a claim, action, suit, or proceeding against Vendor. The Member's request to MMCAP Infuse to bring the claim, action, suit, or proceeding must identify the desired jurisdiction, venue, and governing law. As it applies to purchases made by a Member, nothing in the Agreement will be construed to deprive the Member of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions, or limitations of liability applying to this Agreement or afforded by the Member's law.

3.8 **Shipment for Products.** Vendor must distribute and deliver the Products covered under this Agreement to all Members, including the states of Alaska and Hawaii. If the Member account is in good standing, the Vendor will at no time, refuse to deliver to any Member without the prior written approval by the Member and MMCAP Infuse. Delivery for Products under this Agreement shall be FOB Destination, freight prepaid is allowed, unless otherwise agreed to by Vendor and Member. Vendor will not add any fuel surcharges to the purchase under this Agreement. Notwithstanding the foregoing, emergency orders, rush orders, orders for products not regularly stocked by Vendor's local servicing distribution center, products dropped shipped from Vendor's contracted supplier, and orders not regularly scheduled are subject to an added shipping and handling charge determined by Vendor and disclosed to Member before a purchase is made.

- A. Delivery Schedule: Upon request from Member, Vendor will work with Member to establish a routine delivery schedule. Delivery for stock items will occur within three (3) business days, from the date the Product is ordered. It is understood that deliveries to Alaska or Hawaii may take longer. All expedited deliveries will be made next day, or on the next scheduled delivery day (excluding Alaska and Hawaii), unless communicated otherwise.
- B. Hazardous Materials: Vendor will only ship hazardous materials as allowed by the appropriate government regulations.
- C. Damaged and Lost Products: If Product arrives in broken or damaged condition, the MMCAP Member must have the carrier's agent note the damage on the delivery receipt. Within seven (7) business days of the receiving date, the MMCAP Infuse Member shall report to Vendor any in-transit loss or shortage of Vendor Products. All damaged Products will be reported to Vendor's customer service department and applicable credits will be issued within ten (10) days from date of notification of the damaged item.
- D. Minimum Order Requirements: Vendor has a minimum order quantity of 12 units and order quantities must be in multiples of twelve (12), as the Product is packaged twelve (12) units to a case.
- E. Special Conditions for Products: If applicable to the Products offered under this Agreement, Vendor will maintain appropriate temperatures and environmental conditions in accordance with manufacturer requirements for delivery of the Products to the Members. All refrigerated Products will be shipped in returnable coolers or disposable coolers with appropriate packaging to maintain the required temperature range. Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the manufacturer. If Member refuses Products that have been inadequately packaged, the Member will notify Vendor's customer service department to log the complaint. Any costs associated with the return of Product due to improper packaging or transport, will be at the expense of the Vendor.

3.9 **Invoicing.** Vendor will submit an invoice with each order.

- A. **Invoice Fields:** At a minimum, Vendor's invoice will contain the following fields:
- Member name and Vendor-assigned account number for the Member;
 - Invoice line number and Member's order number (Member must provide an order number at the time of order for this to appear on Vendor's invoice);
 - Bill to and ship to address;
 - Invoice date;
 - Vendor's SKU item number, Contracted Item name/description and packaging as associated with NDC number (if applicable to this Agreement);
 - Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), and total invoice price; and
 - Applicable omit codes (e.g., manufacturer backorder, manufacturer discontinued, etc.).
- B. **Invoice Rounding:** Vendor agrees to round down if the third digit after the decimal is four (4) or less. Vendor agrees that any rounding will occur at the Member invoice unit price.
- C. **Invoice Disputes:** Member will notify Vendor of any known dispute with an invoice within fifteen (15) days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the Member appropriately, and provide a corrected invoice. Where the above is prohibited by a Member state's applicable law(s), the Vendor shall comply with requirements of that state's law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Agreement pricing within thirty (30) days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.

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

3.10 **Payment Terms:** Members will be invoiced by Vendor and have thirty (30) days from date of invoice to pay.

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

- Vendor credits are valid until they are refunded or the account has used payment.
- In the event of a facility closure, or other extreme event where the Member will not be making another purchase through Vendor, the Member may cash out its credit(s).
- If directed by a Member, a credit can be transferred from one account to another account.
- The Vendor will take all commercially reasonable steps to ensure that credits that become available close to the end of the Member's fiscal year, are activated for use by the Member no later than five (5) days before the end of the fiscal year.
- Vendor's credit memo will contain, but is not limited to the following information:
 - original order number and invoice number;
 - itemized listing of the Contract Items affected;
 - any new invoices associated with the credit; and
 - Net credit amount available to the Member.

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

ARTICLE IV

TERMINATION, CANCELLATION, AND REMEDIES

- 4.1 **Cancellation.** Either party may cancel this Agreement any time, without cause, upon thirty (30) days' written notice to the other party.
- 4.2 **Termination for Cause.** Either party may terminate this Agreement at any time on the basis the other party breached this Agreement. The moving party must provide written notice to the other party, which upon the receiving party has thirty (30) days to cure the defects. Upon thirty (30), days the breaching party has not cured the defects, the moving party may terminate this Agreement after ten (10) subsequent days.
- 4.3 **Termination for Insufficient Funding.** MMCAP Infuse may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the Products covered here. Termination must be by written or electronic mail notice to the Vendor. MMCAP Infuse is not obligated to pay for any Products that are provided after notice and effective date of termination; provided that MMCAP must promptly return to Vendor any such Products delivered after the effective date of termination for which MMCAP does not pay Vendor in full. However, the vendor will be entitled to payment, determined on a pro rata basis, for Products satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any costs, fees, or other charges if the Agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds.

Infuse must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP Infuse receiving that notice.

- A. For orders made by a Member, Vendor agrees to the applicable statutory terms of the applicable Member if the Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels enough to pay for the Products.
- 4.4 **Force Majeure.** Parties will not be considered in default in the performance of their obligations (other than payment obligations) in the Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes or events beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.
- 4.5 **Breach.** In the event of a breach of this Agreement, the non-breaching party reserves the right to pursue any other remedy available by law. If the Vendor breaches this Agreement, the Vendor may be removed from the Vendor's list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 4.6 **Failure to Perform.** Upon failure to perform the following items in the time and manner as set forth herein, MMCAP Infuse will notify Vendor and Vendor will have thirty (30) days to cure the issue. If the Vendor fails to cure the issue within the thirty (30)-day period, the following fees shall be paid by Vendor:
 - A. **Reports.** In the event that any report and/or data provided by the Vendor, pursuant to the terms of this Agreement, is not received according to schedule, contains incorrect data, incomplete data, or no data, or is more than a minor defect or causes harm to MMCAP Infuse's ability to conduct business or its governmental purpose, Vendor will pay the following to MMCAP Infuse: \$500/day, until resolved.
- 4.7 **Dispute Resolution.** Vendor and MMCAP Infuse will handle dispute resolution for unresolved issues using the following procedure.
 - A. **Notification.** Parties shall promptly notify each other of any known dispute and work in good faith to resolve such dispute within thirty (30) days.
 - B. **Escalation.** If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP Infuse or Vendor may escalate the resolution of the issue to a higher level of management. When escalated a teleconference will be scheduled between MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action.
 - C. **Performance while Dispute is Pending.** Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute.
 - D. **No Waiver.** This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE V

MEMBERSHIP

- 5.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Products, Vendor will work with MMCAP Infuse and Members to determine the appropriate steps and schedule for an onboard and transition. Vendor's documents and/or procedure for implementing and transitioning Members to this Agreement is set forth on **Attachment C**.
- 5.2 **Eligibility Criteria.** All MMCAP Infuse Members within the defined Class of Trade are eligible for Contract Pricing. In order to access the Contract Pricing set forth in **Attachment A**, the Member must:
 - A. Submit to MMCAP Infuse a declaration form ("**Declaration Form**"), which is attached and incorporated as part of Attachment C. MMCAP Infuse will maintain a list of MMCAP Infuse Members eligible for Contract Pricing and will communicate this information to Vendor in a mutually agreeable manner. MMCAP Infuse will receive completed Declaration Forms from MMCAP Infuse Members and submit these to Vendor. Provided the MMCAP Infuse Member meets the Vendor's eligibility criteria, Contract Pricing will be effective upon approval by Vendor and Vendor will send communication of eligibility to the Authorized Wholesalers. Vendor retains sole control of the eligibility criteria and may remove an MMCAP Infuse Member that does not meet the eligibility criteria upon notice to MMCAP Infuse;
 - B. Not seek third party reimbursement of any kind for the Product; and
 - C. Purchase the Product for the Member's own use, including uses by the Member's employees and agents, however, in no event will the Product be resold by any Member and/or its employees or agents.

Vendor reserves the right to audit MMCAP Members to ensure the Product purchased at the Contract Pricing meets the eligibility criteria of the Declaration Form.

- 5.3 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Contract Term.
- A. **New Members.** Subject to Paragraph 5.2, the Vendor must allow new Members to access to the Agreement by the Onboarding Date. As new Members are added, MMCAP Infuse will provide Vendor with monthly e-mail notices announcing a new Membership list has been posted.
 - B. **Removing Members.** Vendor must provide MMCAP Infuse written notification at least thirty (30) days prior to removing any Member. If MMCAP Infuse does not receive notification that a Member has been removed from Contract Pricing, Vendor will honor Contract Pricing for the Member for thirty (30) days after MMCAP Infuse receives the written notice.
- 5.4 **Membership Eligibility.** Upon request, Vendor will send an electronic eligibility list identifying which Members are eligible for contract pricing to: MMCAP_Infuse.Contracts@state.mn.us.
- A. If the Vendor has eligibility requirements, Vendor must provide MMCAP Infuse access to Vendor's online contract and eligibility management system in addition to providing MMCAP Infuse the algorithm it uses to categorize a Member into a class of trade.
- 5.5 **Non-Solicitation.** During the term of this Agreement, Vendor will not intentionally use the MMCAP Infuse Membership list to solicit any Members to enter into or negotiate a separate contract or agreement for the same or substantially equivalent products and services offered in this Agreement without MMCAP Infuse's prior knowledge. Vendor is not prohibited from responding to a request for proposals issued by a Member that may include Products and services covered by this Agreement.
- 5.6 **DEA License/HIN.** Unless the Member purchases a controlled substance, the Vendor may not require that a Member have a Drug Enforcement Administration number assigned to it in order to be eligible for contracted prices. The Vendor may require a Health Industry Number from Member.
- 5.7 **Product Use.** All items acquired by Members under this Agreement are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise.

ARTICLE VI AGREEMENT MANAGEMENT

- 6.1 **Primary Account Representative.** Vendor will assign a Primary Account Representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. In the event that the Primary Account Representative is unresponsive or does not meet MMCAP's Infuse needs, the Vendor will assign another Primary Account Representative upon MMCAP Infuse's request. The Primary Account Representative will be responsible for:
- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
 - B. Timely response to all MMCAP Infuse inquiries
 - C. Performance of the business review as described in Paragraph 6.2.
 - D. **Personnel Changes.** Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- 6.2 **Business Reviews.** Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

ARTICLE VII WARRANTS, COVENANTS, AND DUTIES OF VENDOR

- 7.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to Vendor, in the performance of this Agreement.
- 7.2 **Required Licenses, Permits, and Registration.** Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Agreement, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP Infuse.
- 7.3 **FDA-Certified Drug Application.** The Vendor acknowledges that each Product has, if required by law, an FDA-certified New Drug Application, an Abbreviated New Drug Application, or a Biologics License Application on file and accepts the liability with which such application confers. The Vendor guarantees to furnish Products that have not been adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, or as required by each member state's Board of Pharmacy.
- 7.4 **cGMP** Vendor certifies that it is in compliance with the Food and Drug Administration's current "Good Manufacturing Practices" (cGMP) (as codified in 21 C.F.R. § 201-211) and the current United States Food, Drug, and Cosmetic Act.

Act. If the Vendor receives a 483 or similar type warning letter for any Product, it must be provided to MMCAP Infuse within ten (10) days of receipt by Vendor.

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

A. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion: Federal money will be used or may potentially be used to pay for all or part of the work under the Agreement, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549.

- 7.6 **Indemnification.** Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP Infuse cannot indemnify the Vendor. Except for causes due to MMCAP Infuse's or Members' sole negligence or willful misconduct, Vendor will defend and hold harmless MMCAP Infuse, including MMCAP Infuse's, Members, agents, directors, employees, attorneys, and other representatives during and after this Agreement from and against all actual third party claims relating to loss, liability, damage, costs and expenses (including attorneys' fees and legal costs), causes of action, regulatory proceedings, suits, demands, or judgements relating to Vendor's:

- A. Intentional, willful, or negligent acts or omissions;
- B. Fraud and or deceit;
- C. Actions that give rise to strict liability;
- D. Breach of contract;
- E. Breach of warranty;
- F. Violations of federal, state, or local laws, orders, and/or policies;
- G. Employees or subcontractors' criminal and civil claims; and/or
- H. Failure to pay fees, charges, expenses, taxes, or other debts to third parties.

- 7.7 **Liability.** In no event shall Vendor be liable whether in contract, tort or otherwise, for any indirect, incidental, consequential, or special damages or losses of any nature, including lost revenue, lost profits, or lost business arising out of Member's purchases, the use of the Product, or Vendor's failure to deliver Product.

ARTICLE VIII **REPORTING**

- 7.1 **Intentionally Deleted.**

- 7.2 **Reporting.** The Vendor must submit a monthly purchase report ("Purchase Report") that includes both direct (sales made direct from Vendor to Member utilizing the MMCAP Infuse GPO) and indirect purchases (sales made through an Authorized Wholesaler). The monthly Purchase Report must contain the fields detailed below. Vendor agrees that for indirect sales, chargeback or sales data received from Authorized Wholesalers will be utilized to create the Purchase Report and if additional reports are needed to support creation of the Purchase Report, Vendor agrees to bear the cost of any special reporting that may be required by the Vendor in its relationship with the Authorized Wholesalers. All Purchase Reports must be sent to: mmcap.infuse@state.mn.us at the end of each month, but no later than thirty (30) days after the end of the month. The required items for the reports are found on **Attachment D**.

A. Purchase Report fields:

- i. MMCAP Infuse Assigned Authorized Wholesaler Number (Cardinal=0301, AmerisourceBergen=0401, Morris & Dickson=0701)
- ii. MMCAP Infuse Assigned Manufacturer Number (Emergent Devices Inc.= 1333)
- iii. Direct or Indirect Purchase Indicator (I=Indirect, D=Direct)
- iv. Invoice Date (Point of Sale Date)
- v. Invoice Number
- vi. MMCAP Infuse Member Name
- vii. Vendor's Account Number for the MMCAP Infuse Facility
- viii. MMCAP Infuse Member DEA Number, if applicable
- ix. MMCAP Infuse Member HIN Number, if applicable
- x. MMCAP Infuse Member Address
- xi. MMCAP Infuse Member City
- xii. MMCAP Member State
- xiii. Product's NDC (Use all 11 digits (00076888888))
- xiv. Product Name (e.g. Acetaminophen with Codeine, Acticin Cream 5%)
- xv. Credit Indicator (C = credit)
- xvi. Contracted Units (The number of units purchased on contract.)
- xvii. MMCAP Infuse Contracted Unit Price

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- xviii. Administrative Fee Decimal Percentage (The contracted administrative fee percentage for the NDC number. Report as a decimal (e.g. 0.000))
- xix. Vendor Contracted Sales (Contracted Units * Contracted Unit Price. Report in dollars)
Administrative Fee Payment Amount (Administrative Fee Decimal Percentage * Vendor Contracted Sales. Report in dollars)

ARTICLE IX INTELLECTUAL PROPERTY

- 9.1 **Intellectual Property Indemnification.** The Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless MMCAP Infuse, at the Vendor's expense, from any third party action or claim brought against MMCAP Infuse to the extent that it is based on a claim that the Products infringe upon the intellectual property rights of others. The Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Vendor's opinion is likely to arise, the Vendor must, at the Vendor's discretion, either procure for the MMCAP Infuse the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the MMCAP Infuse will be in addition to and not exclusive of other remedies provided by law.
- 9.2 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from MMCAP Infuse. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Agreement.
 - A. **Marketing.** Any direct advertising, marketing, or direct offers with Members regarding this Agreement must be approved by MMCAP Infuse. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP Infuse may reject any proposal submitted by the Vendor in any subsequent solicitations for awards.
 - B. **Endorsement.** The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services.

ARTICLE X INSURANCE

- 10.1 **Notice.** The Vendor is required to submit Certificates of Insurance as evidence of insurance coverage requirements prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. In the event that a court of competent jurisdiction orders Vendor to disclose its insurance policy(ies) in connection with discovery during litigation brought as a result of a dispute between the parties, Vendor agrees to adhere to such court's order with respect to disclosure of such policy(ies).
- 10.2 **Additional Insurance Conditions.**
 - A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP Infuse with respect to any claim arising out of Vendor's performance under this Agreement;
 - B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify MMCAP Infuse within five (5) business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP Infuse;
 - C. Vendor is responsible for payment of Agreement related insurance premiums and deductibles;
 - D. If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
 - E. Vendor's policy(ies) shall include legal defense fees in its liability policy limits;
 - F. Vendor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
 - G. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.
- 10.3 **Coverage.** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies.

- A. **Workers' Compensation Insurance:** Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
- i. \$100,000 – Bodily Injury by Disease per employee
 - ii. \$500,000 – Bodily Injury by Disease aggregate
 - iii. \$100,000 – Bodily Injury by Accident
- If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements. If during the course of the Agreement the Vendor becomes eligible for Workers' Compensation, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP Infuse with a certificate of insurance.
- B. **Commercial General Liability Insurance:** Vendor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Agreement whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Agreement. Insurance minimum limits are as follows:
- i. \$5,000,000 – per occurrence
 - ii. \$5,000,000 – annual aggregate
 - iii. \$5,000,000 – annual aggregate
 - iv. The following coverages shall be included:
 - a. Premises and Operations Bodily Injury and Property Damage
 - b. Personal and Advertising Injury
 - c. Blanket Contractual Liability
 - d. MMCAP Infuse named as an Additional Insured, to the extent permitted by law
- C. **Network Security and Privacy Liability Insurance, Including Ransomware (or equivalent):** Vendor will maintain insurance to cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
- i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate
- D. **Products/Completed Operations Insurance:** Vendor is required to maintain Products/Completed Operations insurance with minimum limits of:
- i. \$5,000,000 – per occurrence
 - ii. \$5,000,000 – annual aggregate
 - iii. \$5,000,000 – annual aggregate

ARTICLE XI GENERAL TERMS

- 11.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.
- 11.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales to a Member under this Agreement.
- A. **Costs.** Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 11.3 **Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party; provided no such consent shall be required in the event of any assignment or transfer to an affiliate or in connection with a merger, consolidation or sale of assets and the assigning or transferring party provides advance written notice to the other party.
- 11.4 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by both parties.
- 11.5 **Order of Precedence.** To the extent permitted under applicable laws, this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, order forms, website use of terms, Offer Letters,

and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this section, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.

- 11.6 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse and Vendor expressly agree to conduct transactions under the Agreement by electronic means (including, without limitation, with respect to execution, delivery, storage, and transfer of this Agreement by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.
- 11.7 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP Infuse and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding, and will be fully performed.
- 11.8 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.
- 11.9 **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Agreement. Venue for all legal proceedings out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

VENDOR: Emergent Devices Inc.

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

Name: Eric Karas
 Signature: *Eric Karas* Electronically signed by: Eric Karas
Reason: I approve this document
Date: Aug 11, 2020 09:09 EDT
 Title: VP GM US Commercial
 Date: Aug 11, 2020

**STATE OF MINNESOTA FOR MMCAP
INFUSE**

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

Name: _____
 Signature: *Jennifer Vanderplaats* DocuSigned by:
CD83E8168C084D1 8/11/2020
 Date: _____

COMMISSIONER OF ADMINISTRATION

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

Name: _____
 Signature: *Sara Turnbow* DocuSigned by:
694A8F1D2CF64DE 8/11/2020
 Date: _____

ATTACHMENT B
Further Discounts

NOT APPLICABLE

ATTACHMENT C

MMCAP Infuse Declaration

Emergent Devices, Inc.

To be valid, the form must be completed by an individual authorized to bind the Member.

MMCAP Infuse Member Organization _____

Street Address _____

City, State, Zip Code _____

Phone Number _____

HIN Number _____

(If unknown, MMCAP Infuse will insert the HIN.)

MMCAP Infuse Member is electing to purchase Emergent Devices Inc. NARCAN® (naloxone HCl) Nasal Spray (Product) under the terms of the MMCAP Infuse Agreement with ADAPT Pharma (No. MMS2000303). Provided the Member meets the Eligibility Criteria below, contract pricing will be effective upon approval by Emergent Devices, Inc.

Eligibility Criteria

In order to access Contract Pricing, the Member must:

- a) Submit this Declaration form to MMCAP Infuse; and
- b) Not seek third-party reimbursement of any kind for the Product, including Medicaid or any commercial insurance.

Emergent Devices, Inc. retains sole control of Contract Pricing eligibility criteria and may remove an MMCAP Infuse Member from Contract Pricing if it does not meet the eligibility criteria stated above.

Product Use

All items acquired by MMCAP Infuse members under Agreement No. MMS2000303 are purchased for consumption in traditional governmental functions and not for the purpose of competing against private enterprise. The unauthorized transfer or sale of any Products purchased at the Contract Pricing to any other unauthorized party constitutes a violation of Agreement No. MMS2000303 and is a material breach thereof. In such event, Emergent Devices, Inc. may immediately disqualify the MMCAP Infuse Member in breach from purchasing Products at Contract Pricing.

Additional Terms

In exchange for Contract Pricing on Product(s) under Agreement No. MMS2000303:

- a) Any product purchased is not returnable or refundable;
- b) Emergent Devices, Inc. does not provide indemnity to the Member; and
- c) Emergent Devices, Inc. reserves the right to audit Member to ensure compliance with the Eligibility Criteria.

By signing below, Member acknowledges the requirements of this Declaration and certifies it meets the Eligibility Criteria.

By:

Authorized Representative of Member (Signature)

Title of Authorized Representative

Authorized Representative of Member (Printed Name)

Date

Emergent Devices Inc. retains the sole right to determine eligibility of Member signing this Agreement.

Return this completed form via email to MMCAP Infuse at:
mmcap_infuse.contracts@state.mn.us

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ATTACHMENT C (continued)
Emergent Letter of Authorization

[MMCAP Infuse MEMBER LETTERHEAD]
[ADDRESS]
[CITY, STATE, ZIP]
[PHONE NUMBER]

[DATE]

Email to narcancustomerservice@ebsi.com

Emergent Devices Inc.
ATTN: Customer Service
401 Plymouth Road, Suite 400,
Plymouth Meeting, PA 19462

I, [PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE PRACTITIONER NAME], am the responsible person for purchases made by [FACILITY NAME AND ADDRESS / IF MULTIPLE: PLEASE LIST ALL NAMES AND ADDRESSES] under my state license number [INDICATE STATE LICENSE #]) issued by the State of [INDICATE STATE NAME]

I will notify Emergent Devices, Inc. immediately if my responsibility status and/or relationship with this facility is changed or terminated.

[PHYSICIAN, PHYSICIAN ASSISTANT, OR NURSE PRACTITIONER SIGNATURE]

ATTACHMENT C (continued)
Emergent Credit Application



Credit Application

ORGANIZATION'S CONTACT INFORMATION				
Organization's legal name (purchaser):				
D/B/A (if different from entity legal name above):				
Organization's business address:				
City:	State:		ZIP Code:	
BILLING CONTACT INFORMATION				
Name:		Title:		
Telephone:		Email address:		
ORGANIZATION TYPE & OWNERSHIP				
Organization Type				
<input type="checkbox"/> C - Corporation <input type="checkbox"/> S - Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> LLC <input type="checkbox"/> Trust/estate				
Federal Tax ID#:		State Tax ID:		
State of Incorporation:				
Suits, Liens or Judgements				
Are there currently any suits, liens, or judgements filed against the organization or its business and has the organization ever filed for bankruptcy: <input type="checkbox"/> Yes <input type="checkbox"/> No				
If yes, please provide description:				
Organization Ownership				
List the names of the proprietor, partners, or officers of the organization				
#	Name	Title	% Ownership	Home Address
1				
2				
3				

Legal entity name: _____
Printed legal entity name

Authorized signatory

Printed Name of signatory

Title of authorized signatory

Date

ATTACHMENT D**Reporting Requirements****Table 1: Required Data Field for Sales Data Report**

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP Infuse - assigned facility ID
B	MMCAP Infuse Member Name
C	Vendor Distribution Center Code
D	Vendor-assigned Account number for MMCAP Infuse Member (this should be the ship-to account number)
E	Invoice Number
F	Invoice Line Number
G	Purchase Order Number
H	Invoice date (MMDDYYYY)
I	Buyer name or equivalent of buyer ID for person submitting the invoices (if available)
J	Vendor's (distributor) SKU item number
K	NDC of purchased Product as stored in First DataBank, Inc. (Required for pharmaceutical Products)
L	LabelName/Product Description
M	Unit Dose (Required for pharmaceutical Products)
N	Pack Size
O	Unit
P	Case Size
Q	Dose (Required for pharmaceutical Products).
R	Strength (Required for pharmaceutical Products).
S	Route (Required for pharmaceutical Products).
T	Unit Price (99999.9999)
U	Quantity Ordered (not Vendor repackaged or re-bundled quantity) (99999.9999)
V	Quantity Shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)
W	May be left blank
X	Type of transaction (MMCAP Infuse contract purchase, other contract purchase (340B, PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract
Y	Bill to Address 1
Z	Bill to City
AA	Bill to State (2 alpha postal code)
AB	Bill to Zip (standard 5-4 format, no dash necessary)
AC	Ship to Address 1
AD	Ship to City
AE	Ship to State (2 alpha postal code)
AF	Ship to Zip (standard 5-4 format, no dash necessary)
AG	Service Fee (99999.9999)
AH	MMCAP Infuse Contract Number (MMS2000303)
AI	May be left blank
AJ	Credit Indicator (C for credit)
AK	MMCAP Infuse - Assigned Wholesaler Code (Cardinal Health = 0301; Morris & Dickson = 0701)
AL	Manufacturer Name (MFG Name)
AM	Class of Trade
AN	340b Purchase
AO	Category

STAMP_ITEMNUMB

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

ATTACHMENT E
Minnesota Statutory Procurement Language

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

- d. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - e. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Vendor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
 - iii. **Consequences.** The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Agreement by the Commissioner or Minnesota.
 - iv. **Certification.** The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.
5. **E-Verify certification (In accordance with Minn. Stat. § 16C.075).** For services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of Minnesota, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of Minnesota. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/VerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to Minnesota upon request.
6. **Certification of Nondiscrimination (In accordance with Minn. Stat. § 16C.053).** The following term applies to any contract for which the value, including all extensions, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.
7. **Contingency Fees Prohibited.** Pursuant to Minn. Statute § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.
8. **Diverse Spend Reporting.** If the total value of this Agreement may exceed \$500,000 in Minnesota, including all extension options, the Vendor must track and report, on a quarterly basis, the amount paid to diverse businesses both: (A) directly to subcontractors performing under the Agreement, and (B) indirectly to diverse businesses that provide supplies/services to your company (in proportion to the revenue from this Agreement compared to your company's overall revenue). When this applies, you will be set up in a free portal to help report the Tier 2 diverse spend, and the requirement continues as long as the Agreement is in effect.
9. **Retainage for Minnesota Government Units.** Under Minn. Stat. § 16C.08, subd. 2 (10), no more than ninety percent (90%) of the amount due under this Agreement may be paid until the final product of this Agreement has been reviewed by a Minnesota agency head. The balance due will be paid when the Minnesota agency head determines that the Vendor has satisfactorily fulfilled all the terms of this Agreement.
10. **Payment to Subcontractors.** To the extent applicable, pursuant to Minn. Stat. § 16A.1245, the Vendor must pay all subcontractors, less any retainage, within ten (10) calendar days of the Vendor's receipt of payment from a Member for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent (1.5%) per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

AMENDMENT NO. 1 TO MMCAP INFUSE CONTRACT NO. MMS2000303

THIS AMENDMENT NO. 1 ("Amendment") to MMS2000303 ("Agreement") 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 ("MMCAP Infuse") and Emergent Devices, Inc., a corporation with an address of 401 Plymouth Road, Suite 400, Plymouth Meeting, Pennsylvania 19462 ("Vendor").

RECITALS

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

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

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

Capitalized Terms; Definitions; Conditions. The Agreement and Amendment shall be read together as one document. Any capitalized terms used in Amendment that are defined in the Agreement 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 Agreement and this Amendment, the terms of this Amendment will control. Unless otherwise clearly altered, modified, deleted, or amended otherwise, the terms of the Agreement will continue in their entirety and govern the contractual relationship between Vendor and MMCAP Infuse.

In this Amendment, changes to pre-existing Agreement language will use strike-through for deletions and underlining for insertions.

Modifications:

Revision 1: Paragraph 12 in Prefix A of the Agreement will be revised as follows:

12. Onboarding Forms: ~~Emergent Declaration Form~~; Emergent Letter of Authorization, Emergent Credit Application

Revision 2: Paragraph 5.2 of the Agreement will be revised as follows:

5.2 Eligibility Criteria. All MMCAP Infuse Members within the defined Class of Trade are eligible for Contract Pricing. In order to access the Contract Pricing set forth in *Attachment A*, the Member must:

~~A. Submit to MMCAP Infuse a declaration form ("Declaration Form"), which is attached and incorporated as part of Attachment C. MMCAP Infuse will maintain a list of MMCAP Infuse Members eligible for Contract Pricing and will communicate this information to Vendor in a mutually agreeable manner. MMCAP Infuse will receive completed Declaration Forms from MMCAP Infuse Members and submit these to Vendor. Provided the MMCAP Infuse Member meets the Vendor's eligibility criteria, Contract Pricing will be effective upon approval by Vendor and Vendor will send communication of eligibility to the Authorized Wholesalers. Vendor retains sole control of the eligibility criteria and may remove an MMCAP Infuse Member that does not meet the eligibility criteria upon notice to MMCAP Infuse;~~

AB. Not seek third party reimbursement of any kind for the Product; and

BG. Purchase the Product for the Member's own use, including uses by the Member's employees and agents, however, in no event will the Product be resold by any Member and/or its employees or agents.

Vendor reserves the right to audit MMCAP Members to ensure the Product purchased at the Contract Pricing meets the eligibility criteria in this Paragraph of the Declaration Form. Vendor retains sole control of the eligibility criteria and may remove a Member that does not meet the eligibility criteria upon notice to MMCAP Infuse.

Revision 3: The Emergent Declaration Form will be removed in its entirety from Attachment C of the Agreement.

MMS2000303
Amendment #1
Tendered: April 22, 2021

VENDOR: Emergent Devices, 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: Eric Karas
Signature: *Eric Karas*
Title: VP d GM, North America Commercial
Date: 4/25/21

**STATE OF MINNESOTA FOR MMCAP
INFUSE**

In accordance with Minn. Stat. § 18C.03, subd. 3

Name: Michelle Korpela
Signature: *Michelle Korpela*
Date: 450F253EFE4D41F 5/4/2021

COMMISSIONER OF ADMINISTRATION

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

Name: Jennifer vanderplaats
Signature: *Jennifer VanderPlaats*
Date: CD83E8166CD84D1 5/5/2021



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution authorizing agreement with Black Creek Integrated Systems Corporation on behalf of the Chemung County Sheriff (Level 1 Service Plan)

Resolution #:

Slip Type: CONTRACT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

Authorization to renew the Level 1 Service Plan Agreement with Black Creek Integrated Systems Corp. to provide maintenance for the electronic security system at the Chemung County Jail for the period of 1/1/2022 - 12/31/2022. Prior Resolution No.21-118.

Vendor/Provider Black Creek Integrated Systems Corp.

Term	1/1/2022-12/31/2022	Total Amount	\$18,832.00	Prior Amount	\$16,528.00
------	---------------------	--------------	-------------	--------------	-------------

Local Share	\$18,832.00	State Share	N/A	Federal Share	N/A
-------------	-------------	-------------	-----	---------------	-----

Project Budgeted?	Yes	Funds are in Account #	
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CREATION:

Date/Time:	Department:
3/28/2022 3:49:05 PM	County Executive

APPROVALS:

Date/Time:	Approval:	Department:	
3/28/2022 3:51 PM	Approved	County Executive	
3/29/2022 8:49 AM	Approved	Budget and Research	
4/6/2022 4:15 PM	Approved	Legislature Chairman	

ATTACHMENTS:

Name:	Description:	Type:
2022_BC_Level_1_Service_Agreement.pdf	2022 BC Level 1 Service Agreement	Cover Memo

STAMP_ITEMNUMB

STATE OF NEW YORK)
COUNTY OF CHEMUNG)

ss:

AGREEMENT

THIS AGREEMENT made this 11th day of November, 2021, by and between **BLACK CREEK INTEGRATED SYSTEMS CORP.**, an Alabama Corporation with offices at 2900 Crestwood Blvd., Irondale, AL 35210 ("Black Creek") and **CHEMUNG COUNTY**, a municipal corporation of the State of New York with offices at 211 William St., Elmira, New York 14901 ("Chemung County").

WHEREAS, Black Creek has submitted to Chemung County a quotation for a 12-month, Level 1, Service Plan dated July 7, 2021 and attached hereto as Exhibit "A" ("The Plan").

WHEREAS, Black Creek and Chemung County desire to enter into an agreement in which Black Creek agrees to provide to Chemung County the maintenance services described in The Plan and Chemung County agrees to pay Black Creek for such maintenance services the amount of \$18,832.00, payable on January 1, 2022.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year written below, acting through their authorized representatives.


SHERIFF

**CHEMUNG COUNTY
COUNTY ATTORNEY**

**BLACK CREEK INTEGRATED
SYSTEMS CORPORATION**

Authorized Signature

Authorized Signature



Authorized Signature

Typed or Printed Name

Typed or Printed Name

Connie Hill

Typed or Printed Name

Sheriff

Title and Date

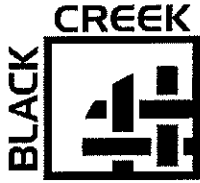
County Executive

Title and Date

Vice President, 11/11/21

Title and Date

EXHIBIT A



Black Creek integrated Systems Corporation
P. O. Box 101747
Irondale, AL 35210
Ph: (205)949-9900 Fax: (205)949-9910

QUOTATION

Date	Number	Revision
7/7/2021	102.21188.1	

Terms	Ship Via	Freight	F.O.B.	Delivery
See Below	n/a	n/a	n/a	n/a

To:

John Hamula
Chemung County Jail
211 William Street
Elmira, NY 14901
jhamula@co.chemung.ny.us

Description	Amount
<u>Level One Service Plan</u> See attached plan for description Net due if Paid Monthly in Advance	\$18,941.00
<u>Discounts Available:</u> 2.5% Discount if paid Quarterly in Advance 5.0% Discount if paid paid Semi-Annually in Advance 7.5% Discount if paid Annually in Advance	\$18,442.00 \$17,969.00 \$17,520.00
<u>VMS Support</u> Net due if Paid Monthly in Advance	\$1,418.00
<u>Discounts Available:</u> 2.5% Discount if paid Quarterly in Advance 5.0% Discount if paid paid Semi-Annually in Advance 7.5% Discount if paid Annually in Advance	\$1,381.00 \$1,346.00 \$1,312.00
<u>Total Annual Support</u> For period 1/1/22 through 12/31/22 Net due if Paid Monthly in Advance	\$20,359.00
<u>Discounts Available:</u> 2.5% Discount if paid Quarterly in Advance 5.0% Discount if paid paid Semi-Annually in Advance 7.5% Discount if paid Annually in Advance	\$19,823.00 \$19,315.00 \$18,832.00

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SERVICE PLAN DESCRIPTIONS



BLACK CREEK INTEGRATED SYSTEMS CORP.

LEVEL ONE SERVICE PLAN DESCRIPTION

Page 1 of 2

A. Purpose of Plan

The Black Creek Level One Service Plan (L1SP) is a non-emergency service offering for Black Creek's customers with limited in-house technical support who desire a minimum level of telephone support in system troubleshooting and repair from the system supplier. The Plan incorporates customer participation in order to limit costs. The Level One Service Plan is a **labor only** plan.

B. Plan Features

- 1. Non-Emergency Telephone Support** - Black Creek will provide unlimited telephone support including on-line system diagnostics and maintenance between normal business hours of 8:00 a.m. to 5:00 p.m. (Central Time), Monday through Friday (excluding holidays) for a period of 12 months.
- 2. Parts Depot Service** - Black Creek will provide single source parts ordering for all system components originally furnished by BCIS with no minimum order restrictions.
- 3. Discount On Parts** - Level One Service Plan participants will receive a 15% discount from BCIS standard pricing levels on all parts purchases.
- 4. Discount On Labor** - Level One Service Plan participants will receive a 15% discount from Black Creek's On Call Account labor rates for on-site services and telephone support in excess of the hours provided under the basic plan.
- 5. Document Maintenance Surcharge Waiver** - The per call surcharge assessed to on call customers related to the maintenance of as-built system documentation, computer and PLC programs and O&M manuals on-line and in current condition is waived for plan participants.

C. Customer Responsibilities

- 1. Broadband Internet Connection** - The customer shall install and maintain a broadband internet connection to be used for remote on-line touchscreen control system diagnostics. The Internet connection will be installed adjacent to the Remote Access/Utility computer, and must be assigned a real-world static IP address. The internet connection can be made via cable modem, DSL, or through the County Network, providing the previous listed requirements are met.
- 2. Customer-Designated Service Contact** - The customer shall designate a single individual as the primary service contact. This individual shall be responsible for the resolution of security system problems and be familiar with current and previous service needs and status. This person shall serve as liaison to Black Creek for service-related matters. All other customer personnel shall route service needs to this designated individual.

D. Extended Services

The services listed in this section **are not** provided as part of the Level One Service Plan but may be purchased by Plan participants.

- 1. Parts Replacement or Repair** - Repair or replacement of failed parts is specifically excluded. Parts may be purchased from Black Creek in accordance with the terms previously described in this service plan.
- 2. Emergency Telephone Support** - Telephone support outside of normal business hours and during weekends and holidays shall be billed at the rates indicated in the attached Extended Services Rate Sheet.



BLACK CREEK INTEGRATED SYSTEMS CORP. LEVEL ONE SERVICE PLAN DESCRIPTION

Page 2 of 2

3. On-Site Repair Service - On-site visits shall be billed at the rates indicated in the attached Extended Services Rate Sheet.

E. Billing

Billing for the base service plan contract shall be on a lump sum basis. Billing shall be rendered upon receipt of the customer's purchase order for those services and shall be payable upon receipt of invoice. Billing for parts and extended services shall be rendered upon shipment of parts or completion of services and shall be payable upon receipt of invoice.

F. Warranty

Any parts and labor provided relative to extended services are warranted for a period of 90 days. Damage to systems or components due to abuse, negligence or acts of God are excluded from the warranty provisions.

• • • •





BLACK CREEK INTEGRATED SYSTEMS CORP
EXTENDED SERVICES RATE SHEET
EFFECTIVE 7/6/17

	Standard Rate	Level 1 Accounts	Level 2 Accounts	Level 3 - 5 Accounts
Telephone Support Hourly Rates (Unlimited Coverage Hours M-F, 8 a.m.- 5 p.m. Central Time)				
Service Manager	\$189.00	\$161.00	\$161.00	\$161.00
Programmer	\$220.00	\$187.00	\$187.00	\$187.00
Engineer	\$220.00	\$187.00	\$187.00	\$187.00
Electronics Technician	\$169.00	\$144.00	\$144.00	\$144.00
Documents Maint. Surcharge	\$275.00/Call	Waived	Waived	Waived
Parts Sales				
Parts Discount	- 0 -	15%	15%	15%
Minimum Parts Order	\$100.00	- 0 -	- 0 -	- 0 -
Handling Charge	\$25.00/ Shipment	\$25.00/ Shipment	\$25.00/ Shipment	\$25.00/ Shipment
Shipping Charge	At Cost	At Cost	At Cost	At Cost
On-Site Service Support Hourly Labor Rates (Coverage Hours M-F, 8 a.m.- 5 p.m. Central Time) (Rates are portal to portal)				
Programmer	\$290.00	\$247.00	\$247.00	\$247.00
Engineer	\$290.00	\$247.00	\$247.00	\$247.00
Electronics Technician	\$208.00	\$177.00	\$177.00	\$177.00
On-Site Service Support Travel Rates				
Service Technician & Truck (Round Trip)	\$2.25/mi.	\$2.00/mi.	\$2.00/mi.	\$2.00/mi.
Air Fare	At Cost	At Cost	At Cost	At Cost
Car Rental	At Cost	At Cost	At Cost	At Cost
Hotel	At Cost	At Cost	At Cost	At Cost
Upcharge Options				
Out Of Coverage Hours ¹	1.5 Times Standard Rate	1.5 Times Contract Rate	1.5 Times Contract Rate	1.5 Times Contract Rate
Sundays/Holidays ²	2 Times Standard Rate	2 Times Contract Rate	2 Times Contract Rate	2 Times Contract Rate

¹ Out of coverage hours are defined as any hours outside of 7:30 A.M. - 5:30 P.M. Monday – Thursday, and 7:30 A.M. – 11:30 A.M. Friday, Central Time, AND any hours in excess of eight (8) hours onsite per day and Saturday.

² Sundays and Holidays are defined as any Sunday, AND, holidays observed by the facility being serviced.



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution authorizing application for and acceptance of New York State Division of Homeland Security and Emergency Services 2022 Statewide Interoperable Communications Grant Program (Targeted Grant Program)

Resolution #:

Slip Type: GRANT

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):

New York State Division of Homeland Security and Emergency Services 2022
Statewide Interoperable Communications Grant Program (Targeted Grant Program)

Vendor/Provider NYS DHS & Emergency
Services

Term	4 Years	Total Amount	up to \$6,000,000	Prior Amount	0
Local Share	0	State Share	100%	Federal Share	0
Project Budgeted?	No	Funds are in Account #	unknown amount of award at this time		


CREATION:

Date/Time:	Department:
4/11/2022 11:19:35 AM	County Executive


APPROVALS:

Date/Time:	Approval:	Department:	
4/11/2022 11:23 AM	Approved	County Executive	
4/13/2022 11:09 AM	Approved	Budget and Research	
4/14/2022 12:53 PM	Approved	Legislature Chairman	

ATTACHMENTS:

Name:	Description:	Type:
 SICG 22 TARGETED GRANT.pdf	SICG FY22 Grant	Cover Memo

STAMP_ITEMNUMB

 NYS_Division_of_Homeland_Security_2022_SICG_Program.pdf	NYS Division of Homeland Security & Emergency Services SICG (Targeted Grant Program)	Cover Memo
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The goal of the 2022 SICG-Targeted program is to improve the overall status of land mobile radio interoperability for public safety agencies within New York as well as with other States, through implementing a targeted approach.

For the 2022 SICG Targeted Program, a total of \$62,427,798¹ in funding is available for Counties to improve infrastructure related to National Interoperability channels, which is a core tenet and feature of interoperability. Funding will be applied or distributed to eligible Applicants, those of which were identified as areas with insufficient coverage and/or insufficient infrastructure of National Interoperability Channels. The maximum available award is \$6 million.

The SICG-Targeted Program is State support in the form of reimbursement for eligible expenses that concentrate on improving interoperability of communication systems in New York State. The funding is distributed based on the interoperability evaluation and gap analysis.



**Homeland Security
and Emergency Services**

**New York State
Division of Homeland Security and
Emergency Services**

**2022
Statewide Interoperable Communications
Grant Program
(Targeted Grant Program)**

Request for Applications (RFA)

Application Deadline: May 11th, 2022

Substantive written questions regarding this RFA will be accepted until 5:00PM EDT on April 27th, 2022. RFA updates will be posted on May 3rd, 2022.

Revision 2, March 21st, 2022

STAMP_ITEMNUMB

Revision History

Revision #	Date	Description	Pages Affected
Original	01/24/2022	Original Document	1-33
2	03/21/2022	Deadlines	Cover Page

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I. General Information

1. Summary Description

The purpose of this Request for Applications (RFA) is to solicit applications for the 2022 Statewide Interoperable Communications Grant Program Targeted Grant Program (2022 SICG-Targeted Program). Funding for the 2022 SICG-Targeted Program is distributed by an analysis of data related to the implementation of National Interoperability Channels in New York and provided by applicant counties in the 2022 SICG-Formula grant applications and this RFA.

The 2022 Statewide Interoperable Communications Targeted Grant Program is a non-competitive grant program for counties and New York City, as a single entity, (hereafter “Counties” or “Applicant”) to close gaps in the interoperability infrastructure, regional communications deficiencies, and implementation of National Interoperability channels.

The goal of the 2022 SICG-Targeted program is to improve the overall status of land mobile radio interoperability for public safety agencies within New York as well as with other States, through implementing a targeted approach.

For the 2022 SICG Targeted Program, a total of \$62,427,798¹ in funding is available for Counties to improve infrastructure related to National Interoperability channels, which is a core tenet and feature of interoperability. Funding will be applied or distributed to eligible Applicants, those of which were identified as areas with insufficient coverage and/or insufficient infrastructure of National Interoperability Channels. The maximum available award is \$6 million.

The SICG-Targeted Program is State support in the form of reimbursement for eligible expenses that concentrate on improving interoperability of communication systems in New York State. The funding is distributed based on the interoperability evaluation and gap analysis.

For public safety purposes, “interoperability” is defined as the ability of emergency responders to work seamlessly with other systems or products without any special effort. “Wireless communications interoperability” specifically refers to the ability of

¹ 2022 SICG Targeted consists of following appropriations: (FY2019-20-\$20 mil) + (FY2020-21-\$20 mil) + (FY2021-22-\$20 mil) + (unexpended funds from 2018 SICG-Targeted - \$2,427,798.00).

emergency response officials to share information via voice and data signals on demand, in real time, when needed, and as authorized.

Final awards are contingent upon 1) the submission of a completed application from a County meeting the Eligibility Criteria set in this RFA, and 2) an executed, reimbursement-based contract.

This document contains information about the 2022 SICG-Targeted Program rules and requirements, the types of expenses eligible for funding, and instructions for completing and submitting the grant application.

The SICG-Targeted Program is open only to county governments and New York City, provided they meet the criteria contained in Part II below. Please refer to Part II for further details on eligibility.

The final authority to administer this grant program rests with DHSES, including amendments or modifications to these guidelines, award distribution, and/or the amount available for award distribution.

2. Goals and Objectives

The Office of Interoperable and Emergency Communications (OIEC) seeks to ensure progress towards the goals and milestones described in the New York State Statewide Communications Interoperability Plan (SCIP) and toward communication priorities identified by the Federal government (i.e., SAFECOM Guidance). The SICG-Targeted Program focuses on closing gaps in National Interoperability channels implementation and enhancing regional alliance, ensuring that county communication systems are capable to support multijurisdictional response. The SICG-Targeted Program provides a way forward for providing a safer environment for public safety personnel, integration with other emergent technologies, and the ability to establish technology and performance standards.

The overall objective of the SICG-Targeted Program is to improve infrastructure related to National Interoperability channels, which is a core tenet and feature of interoperability.

The main goals of the SICG-Targeted Program:

- **Implement Hailing and Command Channels Statewide on the infrastructure level** - National CALLing Interoperability Channels (VHF-Lo, VHF-Hi, UHF and 700/800MHz).

- **24/7 monitoring of CALLing channels** – monitoring can be performed by the State, regional interoperability centers and counties. This ensures that public safety responders, no matter where they travel in the State, have contact with a dispatcher to request help or instructions.
- **Backhaul enhancements** - communications network connectivity/backhaul within and between consortiums/regions (microwave, fiber, etc.)
- **Regional Connectivity** – connectivity between counties' and/or regions' LMR systems for the purpose of expanding and enhancing communications infrastructure and public safety response capabilities.

Additional/Subsequent Interoperability Enhancements:

- Implementation of tactical channels (TAC-channels) on a statewide basis on the infrastructure
- Programming of CALLing and TACTical channels in subscriber equipment, upon DHSES OIEC review and approval of the programming template

Applicants for the 2022 SICG-Targeted Program must utilize non-proprietary, open standards-based technologies, and equipment.

Definitions:

Conventional Radio System: A system consisting of radio base stations at sufficient locations to cover a given area which are controlled by a radio console at a dispatch point which are connected to each other utilizing a backhaul of microwave, fiber, or leased telephone lines. Each channel on the radio requires either a single or pair of FCC licensed radio frequencies depending on configuration. This can be analog or P25 conventional.

Trunked Radio System: A smarter more complex system, which is similar to a conventional system, however there is a computer processor which manages a group of FCC licensed radio frequencies for the most efficient use for multiple channels or “talk groups”. The computer processor is called a core and also is where the administered talk groups are defined, subscriber units (mobile and portable radios) are authorized etc. These systems generally accommodate many more jurisdictions, agencies and units through its efficient computerized management of a group of frequencies compared to conventional systems and provide better security through administrative control of subscriber units/users permissions.

P25 System: A conventional or trunked radio system which meets the P25 Federal interoperability standards meaning radios/subscriber units from any other P25 system of a different manufacturer can operate on it and be given the suite of required basic fundamental features needed to communicate. It does not require all features of a system outside those designated in the standard to be shared with other manufacturers' equipment. Each brand has its own special features that only radios of their make can utilize, although basic communications functionality is shared among all manufacturers.

The Inter Radio Frequency (RF) Subsystem Interface (ISSI) is an interface that provides interoperability between RF Subsystems (RFSS) regardless of the system manufacturer. ISSI greatly amplifies the capabilities of P25 Land Mobile Radio (LMR) Systems by connecting radio systems and associated resources from partnering agencies while maintaining an appropriate level of local control. For more information refer to https://www.cisa.gov/sites/default/files/publications/ISSI_CSSI_Fact%20Sheet_FINAL_508C_060718.pdf.

3. Grant Performance Period

The period of performance for the 2022 SICG-Targeted Program is four (4) years from the execution of the contract, with the potential for extension. DHSES OIEC will assist counties with development of the project scope for the SICG Targeted Program.

4. Funding

The funding for this grant program is appropriated from the Public Safety Communications Account, established by New York State Finance Law Section 97-qq. For the 2022 SICG-Targeted Program, \$60 million has been appropriated ((FY2019-20-\$20 mil) + (FY2020-21-\$20 mil) + (FY2021-22-\$20 mil)), with the remaining \$2,427,798 of unexpended funds from the 2018 SICG-Targeted Program being added to the available funding.

\$62,427,798 is available for reimbursing county expenditures for the following purposes:

- Implementation of Interoperability base station on the infrastructure (LFIRE4D, VCALL10, UCALL40D, 7CALL50D/8CALL90D (please note: all CALLing channels must be implemented in a direct mode) and implementation of regional connectivity via radio system core or Inter Radio Frequency (RF) Subsystem Interface (ISSI);

- Implementation of Interoperability base stations on the infrastructure programmed with National Interoperability TACTical channels;
- New infrastructure and infrastructure improvements, as it relates to goals and objectives of this program;
- Technological updates and refresh of existing LMR systems, including equipment and software as it relates to goals and objectives of this program and to establish regional connectivity;
- Backhaul connectivity, as it related to goals and objectives of this program;
- Radio consoles and equipment necessary to monitor Interoperability channels at 911 centers; and/or
- Gateways and interconnection systems, such as ISSI, radio system core connectivity, to establish regional connectivity between disparate LMR systems

To expedite the interoperability development in New York State, DHSES reserves the right to make multiple public award announcements under this RFA, breaking it in several phases, depending on readiness of the applicant to start execution of the project and based on expeditious responses from applicants. DHSES reserves the right to determine how many announcement phases will be needed to expedite the overall process of closing gaps and meeting goals defined in the RFA.

It should be noted that all applications may be awarded under the multi-year Targeted grant program, pending acceptance of the award by an applicant and funding availability.

DHSES reserves the right to release additional Requests for Applications until all available funds are expended.

5. Award Distribution and Limitations

The State intends to provide meaningful and fair access to this grant program to as many eligible applicants as possible. However, in view of the limited funds available, it is necessary to place certain limits on the distribution of awards.

Therefore, awards from the 2022 SICG-Targeted Grant will be distributed from funds, as available, according to these parameters:

- 1) No award will be in an amount greater than \$6 million;
- 2) Only one application will be accepted from each County; and

3) Counties submitting multiple applications will be disqualified.
Applicants are advised to read the description of the program and fully complete the category requirements.

6. Standards and Guidelines

Eligible Applicants must comply with the following standards and guidelines, as applicable:

1) NYS SCIP

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

2) New York State Guidelines for Base Station Implementation of Interoperability and Common Channels in New York State

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

3) Channel Name and Use of Common Fire VHF Radio Frequency in New York

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

4) NYS Minimum Channel Programming of Interoperability and Common Channels for Public Safety Mobile and Portable Radios

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

5) NYS Interoperability Channel Naming: 45.88 MHz (LFIRE4D)

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

6) NYS 700MHz Public Safety National Interoperability Channel Plan Guideline

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

7) NYS Name and Use of 155.370 MHz in New York State (NYLAW1) Guideline

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

8) NYS Name and Use of Common EMS VHF Radio Channels in New York Guideline

<https://www.dhses.ny.gov/plans-policies-and-guidelines>

9) DHS OEC Guidelines for Encryption in Land Mobile Radio Systems

<https://www.cisa.gov/publication/encryption>

10)SAFECOM Guidance

<https://www.cisa.gov/publication/emergency-communications-grant-guidance-documents>

11)The Association of Public-Safety Communications Officials (APCO) Project 25 (P-25) for digital radio systems

SCIP, as well as DHSES/OIEC Grant Guidance for grant funding, requires that all interoperable communications equipment employ the use of APCO P-25 compliant equipment, a technology that allows the achievement of efficient emergency interoperable communications.

12)New York State 911 Standards (21 NYCRR Chapter LX), including adoption of a law enforcement jurisdictional protocol that is used for all 911 calls and all emergency calls received by any other means dispatched for service.

13)Organization for the Advancement of Structural Information Standards (OASIS)

For Data Standards refer to OASIS at www.oasis-open.org

14)National Plan for Migrating to IP-Enabled 911 Systems

National 911 Office website provides information on development of optimal 911 services. See https://www.911.gov/documents_tools.html.

15)National Emergency Number Association (NENA) Standards

NENA Standards related to NG-11 and PSAPs. See www.nena.org.

16)ANSI/APCO Public Safety Grade Site Hardening Requirements

APCO ANS 2.106.1-2019

<https://www.apcointl.org/~documents/standard/21061-2019-psg-site-hardening/?layout=default>

17)Alarm Monitoring Company to Emergency Communications Center (ECC) Computer - Aided Dispatch (CAD) Automated Secure Alarm Protocol (ASAP)

APCO/TMA ANS 2.101.3-2021

<https://www.apcointl.org/~documents/standard/21013-2021-asap-to-psap/?layout=default>

II. Eligibility

Any proposal that does not address the eligibility requirements listed below will be eliminated from further consideration.

To be eligible to apply for and receive grant funding, applicants must:

- Be a county government within New York State or New York City requesting funding for the benefit of the county as a single entity. Applications must be submitted by a county government. (The five boroughs which comprise New York City [Bronx, Kings, Queens, New York and Richmond] must apply as a single entity.)
- Be an active member of, or demonstrate a commitment to, at least one New York State Regional Interoperable Communications Consortium. The consortium must consist of two or more counties; be formed to promote multijurisdictional (two or more) and multidisciplinary (two or more) public safety communications and interoperability (e.g., law enforcement, fire service, emergency medical, emergency management, public health, public works, and communication centers); and support New York state agencies. If an applicant is not a current member of a consortium, the commitment to participate in a consortium must be in effect and certified within 120 days of notice of potential award. Applicant's failure to certify a consortium commitment will result in forfeiture of the award.
- Be a county that did not receive an award under 2018 SICG-Targeted grant program or a county that received an award under 2018 SICG-Targeted grant program and submitted vouchers for reimbursement in the amount of at least 50% of the award amount.
- Have established or will establish within 120 days of the potential notice of award, a single point of contact (the Interoperability Coordinator), to oversee the applicant's interoperability efforts and coordinate interoperability and communication projects. Applicants are expected to keep this information up to date and readily available to DHSES upon request.
- Affirmatively agree to accessibility for other jurisdictions and levels of government, including State agencies, to share communications systems to achieve further statewide cross-jurisdictional and intergovernmental interoperability goals and objectives. This assures the formation of strong cross-jurisdictional and

multigovernmental interoperability and system(s) accessibility across counties, regions, and State agencies. For example, in order to provide accessibility, applicants must reserve a space on newly built towers and/or reserve channels/talk groups for State public safety operations.

- Permit DHSES employees and authorized users to transmit on radio channels utilized by public safety radio systems established within the county in order to implement cooperative use of interoperable radio communications in times of emergency, assistance, or otherwise agreed upon cooperation. As an exception, law enforcement channels may be used under other special needs and circumstances. The applicant will provide programming information and reasonable assistance to DHSES to assist in fulfilling this requirement.
- Allow for other public safety/public service agencies (including State agencies and authorities) and jurisdictions in its region to operate on county's radio system(s) when required for incident response, regardless of the total percentage of system funding the applicant is receiving from the State. As part of this process, the applicant will cooperate with these agencies and jurisdictions in planning and integrating radios, programming, identifiers, and radio procedures.
- Dedicate funding (including amounts from any and all sources, such as county funding, this grant program, federal funding, etc.) to improve governance structure, develop Standard Operating Procedures (SOPs), and strengthen training and exercise programs to promote efficient interregional communications, interoperability, cooperation, and overall, first responder readiness. The State recognizes the significance of governance and leadership as a foundation of public safety interoperable communications. Therefore, establishing and/or formalizing governance structure, governance agreements, procedures, and other documents will build higher levels of interoperability across the State between multiple jurisdictions and agencies. Establishing training and exercise programs will assist in achieving a high level of readiness and preparedness of public safety officers.
- Ensure that new LMR trunked systems and equipment be public safety grade P-25 Phase 2 compliant. The applicant must agree that new LMR systems will be public safety grade operated as P-25 Phase 1 or Phase 2. All subscriber equipment purchased must support and contain all hardware and/or software options to operate P-25 Phase 1 at the time of purchase. Additionally, all subscriber equipment that operates on, or may operate on (through software options, programming, or other methods) trunking system(s) must contain Phase 2 hardware and/or software options at time of purchase.

- Note: this requirement does not preclude the limited expansion of existing conventional systems in analog mode, although subscriber equipment must still adhere to the requirements above. Also, as directed by guidelines published by OIEC and DHS's National Interoperability Field Operations Guide, VHF, UHF, and 800 MHz National Interoperability and State Common Channels equipment must meet the above requirements, regardless of how they will be operated in analog mode on those channels.
 - Exception: VHF "low band" (e.g., 30-50 MHz) equipment purchased as part of an existing system may be purchased and operated as analog only.
- Utilize Advanced Encryption Standard-256 if encryption is utilized.
- Implement and/or maintain interoperability channels on the infrastructure/system and program interoperability channels in public safety subscriber equipment. Interoperability base stations for VHF, UHF, 700, and 800 MHz National Interoperability and State Common Channels must operate in accordance with guidelines published by OIEC (<https://www.dhses.ny.gov/plans-policies-and-guidelines>).
- Input and maintain up-to-date information in CASM.
- Be National Incident Management System (NIMS) compliant.
- Include only those costs deemed permissible under the grant.
- Submit 2022 SICG-Targeted application by the method identified in the RFA.
- Submit 2022 SICG-Targeted application on time by the established deadline.
- Submit 2021 SICG-Formula application and be eligible for 2021 SICG-Formula award
- Utilize open-standard/vendor-neutral technologies and equipment.
- Comply with Minority-and-Women-Owned Business Enterprises (MWBE) and Equal Employment Opportunity (EEO) Requirements. DHSES recognizes its obligation under New York State Executive Law Article 15-A to promote opportunities for the participation of certified minority-and women-owned business enterprises, as

well as the employment of minority group members and women in the performance of DHSES contracts. All DHSES grant contracts require grant recipients to document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of grant contracts, as well as the employment of minority group members and women. Applicants must submit both a 1) Local Assistance MWBE Subcontractor/Supplier Utilization Proposal Form, and 2) MWBE Equal Employment Opportunity Staffing Plan after award announcement.

- Agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: 1) the nature and extent of any threats or hazards that may pose a risk to the recipient or subrecipient; and 2) the status of any corresponding recipient or subrecipient plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.
- Agree to attend and participate in any DHSES-sponsored conferences, training, workshops, or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.²

Failure to comply with any and all requirements in this section may result in the immediate suspension and/or revocation of the grant award.

² Pursuant to Article 26 of New York State Executive Law, DHSES is authorized to undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats and other natural and man-made disasters.

III. Authorized Program Expenditures

1. Permissible Costs

All permissible expenses must directly correlate to the Grant Goals and Objectives stated in this RFA. Permissible costs include, but are not limited to, the categories below. DHSES has sole discretion in determining which costs are permissible.

Equipment, Infrastructure, and Technology

- Land Mobile Radio System components (e.g. microwave, base stations, antennas, etc.), as it relates to the implementation of interoperability;
- Towers, as it relates to the implementation of interoperability;
- Upgrade of 911 radio equipment and consoles to allow continuous monitoring of National Interoperability channels, as it relates to the implementation of interoperability;
- Shelters, as it relates to the implementation of interoperability;
- Gateways, as it relates to the implementation of interoperability;
- Backup power, as it relates to the implementation of interoperability;
- Fiber and microwave connectivity (i.e. backhaul), as it relates to the implementation of interoperability;
- Tower site security, as it relates to the implementation of interoperability; and
- Other LMR related expenses, as it relates to the implementation of interoperability.

Planning, Administration, and Deployment Costs

- Services related to developing, designing, and implementing an interoperability network and interoperable system development; and
- Project management and administration costs associated with the development and deployment of National Interoperability channels implementation.

2. Non-Permissible Costs

- Proprietary technologies;
- Salaries, overtime, fringe, indirect, or travel expenses associated with existing or on-going operations;
- Paging receivers;
- Broadband;
- CAD systems and software;

- PSAP furniture, including dispatch furniture;
- Emergency Services IP network (ESInet);
- Debt service or local municipal bond funding;
- LMR maintenance;
- Recurring commercial service costs, such as cellular voice, data or leased time; and
- Out of State travel expenses to conferences, meetings, training sessions, etc.

IV. Application Format and Content

A. Format: Grant applications MUST be submitted via the automated E-Grants System operated by DHSES. The system allows an agency to complete an application electronically and submit it over the Internet using a secure portal. If upon reading this RFA you are interested in completing a grant application, and you have not previously been registered to use the DHSES E-Grants system, your agency will need to register and be assigned a user name and password. The Registration Request Form to use the E-Grants system is available at: <https://www.dhses.ny.gov/e-grants>.

A detailed tutorial on how to use the E-Grants system for SICG-Targeted Grant submission can be found on DHSES OIEC Grants webpage at the following Internet address <https://www.dhses.ny.gov/statewide-interoperable-communications-grant-sicg-program>. It will guide you in a step-by-step process through the E-Grants application submission.

B. Required Application Content: All applicants must complete the 2022 SICG-Targeted Grant Program Application Worksheet. The worksheet must be completed in its entirety, including the general information, applicant eligibility, and data aggregation sections of the application. **Incomplete applications will not be accepted.**

The Grant instructions and “Question and Answers” received during an application period are available on the DHSES OIEC website (<https://www.dhses.ny.gov/statewide-interoperable-communications-grant-sicg-program>) under the “2022 SICG-Targeted Grant” tab.

After the successful submission of an application, the E-Grants system will email a notification of receipt to the Signatory Point of Contact that is listed in the application. The Primary Point of Contact will receive a message

displayed on their screen that says that the project has been submitted. Please refer to the E-grants tutorial for more details on the process. in a step-by-step process through the E-Grants application submission that is posted along with the application materials at: (<https://www.dhSES.ny.gov/statewide-interoperable-communications-grant-sicg-program>) under the “2022 SICG-Targeted Grant” tab. .

- C. Budget Development and Budget Submission:** Due to the complexity of the SICG-Targeted Program, DHSES OIEC personnel will assist each county individually or regionally in the development of the project scope for this grant.

At the end of the application period DHSES OIEC will contact each applicant county individually to verify the data submitted in the application and start the development of the project scope.

V. Funding Distribution

Funding distribution is based on a two-tiered approach:

Tier 1 – Eligibility Requirements (pass/fail); and
Tier 2 – Interoperability Evaluation and Gap Analysis of interoperability infrastructure and coverage across the State.

VI. Application Evaluation

The following multi-tiered criteria will be used by DHSES to evaluate each application and to determine eligibility of applications and award distribution.

A. Tier 1 Criteria – Eligibility Requirements

Tier 1 criteria are rated either “yes” or “no” and serve as a baseline by DHSES to determine if applicants are eligible and have appropriately submitted all the required application materials. If any of the answers are “no,” the application will not be considered for funding.

In addition to the criteria listed in the 2022 SICG-Targeted Application document, the following factors will be taken into consideration:

1. Was the application submitted on time?
2. Was the application complete?

3. Did the application meet the eligibility requirements?

B. Tier 2 Criteria - Interoperability Evaluation and Gap Analysis.

Applications that meet the Tier 1 review will be included in the Tier 2 funding distribution. Tier 2 is based on specific factors, including verifiable and auditable information a county provides in its application.

Distribution of funding for the SICG-Targeted Program is based on overall interoperability evaluation and gap analysis. Interoperability evaluation is conducted utilizing a combination of the data submitted by the counties in 2020 SICG-Formula applications, 2022 SICG-Targeted applications, and direct communications with counties during data verification and validation process. Specifically, DHSES OIEC will evaluate the implementation of Interoperability (I/O) base stations on the infrastructure level. Three levels of implementation have been captured for all frequency bands: (1) I/O base stations implemented on the infrastructure level; (2) I/O base stations are in the process to be implemented; and (3) I/O base stations are not implemented on the infrastructure level and the implementation process has not begun.

There are four (4) frequency bands with pre-identified National I/O channels: Hi-VHF band, UHF band, 700MHz band, and 800MHz band. The roll-out of the SICG-Targeted Program with its intended purposes may be commenced in stages.

The program takes a two-pronged approach to accomplish interoperability across the state by setting primary and secondary goals.

Primary Goals:

The highest level one priority is given to counties without any I/O channels implemented on the infrastructure level and/or require radio system core connectivity or ISSI implementation. NY State Counties are operating predominantly in Hi-VHF spectrum band; hence second level of priority is given to implementation of VHF I/O channels and applicants that do not have it. In addition, there are several counties operating in UHF spectrum, which will be third level of priority. Forth level of priority is 700/800MHz spectrum.

- (1) Level 1 – applicants without any interoperability channels or require regional connectivity via radio core or ISSI
- (2) Level 2 – applicants without Hi-VHF I/O channels, VCALL10

- (3) Level 3 – applicants without UHF I/O channels, UCALL40
- (4) Level 4 – applicants without 700/800 MHz channels, 7CALL50/8CALL90

Secondary Goal:

Additional consideration will be given to applicants that buildout all but one interoperability band or build out all I/O channels but require infrastructure enhancements and regional connectivity. Working with those counties to complete the installation of the last available CALLing channel will allow us to accomplish buildout of interoperability channels in all bands on the regional basis and thus greatly improve regional interoperability. The secondary goal will be dependent on funding availability after addressing primary goals of this RFA.

Due to the complexity and specific nature of this grant, DHSES OIEC will assist counties individually or on a regional basis with development of their project scope.

C. Award Amount Determination and Results.

After evaluation process of applications is complete, the next step is determination of award amounts. It will involve meetings and/or conference calls with each applicant to discuss technical details and scope of work needed to close interoperability gaps and meet goals set by this grant program. Project Development Committee (PDC), which consist of subject matter experts and DHSES OIEC personnel, will be engaged in the next steps of the process.

1. OIEC will contact several applicant counties, starting with highest priority and as determined by ranking to set up a meeting or a conference call to discuss technical details and scope of work needed to close interoperability gaps and meet goals set by this grant program.
2. PDC/OIEC will provide engineering and technical details and requirements for implementation of I/O channels and establishing regional connectivity.
3. Applicant county will inventory existing infrastructure and determine the scope of work to implement I/O channels and establish regional connectivity.
4. OIEC will provide a Budget Form to an applicant, which applicant will fill-out and provide back to OIEC within 30 days for review and approval.
5. PDC/OIEC will review the Budget Form and project scope for eligibility and technical details and make a decision to either (a)approve, (b)request

revisions, or (c) deny the proposed scope of work. This is an iterative process, subject to OIEC review and discretion. No award shall exceed \$6 million total.

6. Applicants will be also assessed on the timeliness of submitted budget forms and readiness to start working on the implementation of the project.
7. Applicants will be placed on the award list in the order in which they submit final Budget Sheets and obtain final approval of DHSES OIEC.

VII. Timeline and Checklist of Required Documentation

- Applications are due to DHSES by **5:00PM EDT on May 11th, 2022.**
- Applications must be submitted via E-Grants. Applications that are not received by the due date will not be considered for funding.
- Complete applications must include answers to all questions listed in the application.
- County can attach documents to an application, if they would like to provide additional explanations of their projects.

VIII. Award of Funds and Vendor Responsibility

Final grant award determinations are made by DHSES. DHSES will issue award letters to successful applicants and enter into reimbursement-based grant contracts with awardees.

Following the announcement of the awards, each awardee county must submit their proposed budget to DHSES within 45 calendar days or risk forfeiture of its award.

By law, State contracting entities may only award contracts to responsible vendors. A responsible vendor must have:

- the integrity to justify the award of public dollars; and
- the capacity to perform the requirements of the contract fully.

Vendor Responsibility: The awardee county's vendors shall at all times during the contract term remain responsible. An awardee and/or its vendors must, if requested by the Commissioner of DHSES or his or her designee, present evidence of the

vendor's continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Suspension of Work for Non-Responsibility: The Commissioner of DHSES or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under a contract, at any time, when he or she discovers information that calls into question the responsibility of the awardee and its vendors. In the event of such suspension, the vendor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the awardee and the vendor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES or his or her designee issues a written notice authorizing the resumption of performance under the contract.

Termination for Non-Responsibility: Upon written notice to the vendor, and a reasonable opportunity to be heard by appropriate DHSES officials or staff, the contract may be terminated by the Commissioner of DHSES or his or her designee at the vendor's expense where the vendor is determined by the Commissioner of DHSES or his or her designee to be non-responsible. In such event, the Commissioner of DHSES or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for such breach.

IX. Administration of Grant Contracts

DHSES will negotiate and develop a grant contract with the awardee based on the contents of the submitted application and the intent of the grant program as outlined in this RFA. The grant contract is subject to approval by the NYS Office of the Attorney General and the Office of the State Comptroller before grant funding may be disbursed to reimburse project expenses.

The period of performance for 2022 SICG-Targeted Program is four (4) years from the origination of the contract, with the potential for extension. DHSES OIEC will assist applicants with development of the project scope for the SICG Targeted Program.

Although the contract format may vary, the contract will include standard terms and conditions included in DHSES grant contracts (available for review on the DHSES website at: <https://www.dhSES.ny.gov/grant-reporting-forms>)

A. Issuing Agency

This RFA is issued by DHSES, which is responsible for the requirements specified herein and for the evaluation of all applications.

B. Filing an Application

Grant applications MUST be submitted via the automated E-Grants System operated by DHSES. The system allows an agency to complete an application electronically and submit it over the Internet using a secure portal. If upon reading this RFA you are interested in completing a grant application, and you have not previously been registered to use the DHSES E-Grants system, your agency will need to register and be assigned a user name and password. The Registration Request Form to use the E-Grants system is available at: <https://www.dhses.ny.gov/e-grants>.

A detailed tutorial on how to use the E-Grants system for SICG-Targeted Grant submission can be found on DHSES OIEC Grants webpage at the following Internet address <https://www.dhses.ny.gov/statewide-interoperable-communications-grant-sicg-program>. It will guide you in a step-by-step process through the E-Grants application submission.

C. Reserved Rights

The issuance of this RFA and the submission of a response or the acceptance of such response by DHSES does not obligate DHSES in any manner. DHSES reserves the right to:

1. Reject any and all applications received in response to this RFA;
2. Withdraw the RFA at any time at DHSES' sole discretion;
3. Make an award under the RFA in whole or in part;
4. Disqualify any applicant whose conduct and/or application fails to conform to the requirements of the RFA;
5. Disqualify applicants due to untimely submission of any requested supporting documentation;
6. Seek clarifications and revisions of the applications;
7. Use application information obtained through site visits, management interviews and the State's investigation of an applicant's qualifications, experience, ability or financial standing, and any material or information submitted by the applicant in response to DHSES' request for clarifying information in the course of evaluation and/or selection under the RFA;

8. Prior to the application opening, direct applicants to submit application modifications addressing subsequent RFA amendments;
9. Prior to the application opening, amend the RFA specifications to correct errors or oversights, or to supply additional information, as it becomes available;
10. Make amendments and/or alter funding levels of any recipient based on any new information discovered that would have originally affected the scoring;
11. Waive or modify minor irregularities in applications received after prior notification to the applicant;
12. Adjust or correct cost figures with the concurrence of the applicant if errors exist and cannot be documented to the satisfaction of DHSES and the State Comptroller;
13. Change any of the scheduled dates;
14. Eliminate any mandatory, non-material specifications that cannot be complied with by all the prospective applicants;
15. Waive any requirements that are not material;
16. Negotiate with successful applicants within the scope of the RFA in the best interests of the State;
17. Conduct contract negotiations with the next responsible applicant, should DHSES be unsuccessful in negotiating with the selected applicant;
18. Utilize any and all ideas submitted in the applications received;
19. Unless otherwise specified in the RFA, every offer is firm and not revocable for a period of 60 days from the application opening;
20. Require clarification at any time during the application process and /or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of an applicant's proposal and/or to determine an applicant's compliance with the requirements of this RFA;
21. Award grants based on geographic or regional considerations to serve the best interests of the State;
22. Terminate, renew, amend or renegotiate contracts with recipients at the discretion of DHSES;
23. Periodically monitor the applicant's performance in all areas mentioned above, in addition to the activities in the contract;
24. Revoke funds awarded to an applicant, or enforce any available sanction against any applicant, who materially alters the activities or is in material noncompliance under the grant award, or who does not implement an approved project within 60 days of the final contract approval;
25. Not fund any application that fails to submit a clear and concise work plan and/or budget;

26. Consider all applications and documentation submitted as State agency records subject to the New York State Freedom of Information Law (Public Officers Law, Article 6). Any portion of the application that an applicant believes constitutes proprietary or critical infrastructure information entitled to confidential handling, as an exception to the Freedom of Information Law, must be clearly and specifically designated in the application;
27. Recipients and sub-recipients funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the recipient or sub-recipient; and (2) the status of any corresponding recipient or sub-recipient plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards;
28. Funded recipients and sub-recipients agree to attend and participate in any DHSES-sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract; and,
29. DHSES reserves the sole discretion to increase or decrease the total funding available for this program at any time, resulting in more or fewer applications funded under this RFA.

DHSES may exercise the foregoing rights at any time without notice and without liability to any responding applicant or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Applicant.

D. Terms of the Contract

Any resulting contract or agreement for more than \$50,000 from this RFA will be effective only upon approval by both the NYS Office of the Attorney General and the State Comptroller. Any resulting contract for \$50,000 and under from this RFA will be effective upon signature of both parties.

E. Payment and Reporting Requirements of Grant Recipients

1. Standard Cost Reimbursement Contract

Each successful applicant must enter into a standard cost reimbursement contract with DHSES. Such contract will include this RFA, the successful applicant's proposal, any attachments or exhibits, the standard clauses required by the NYS Attorney General for all State contracts, and any other attachments or exhibits required by DHSES. Although the contract format may vary, the contract will include standard terms, conditions, clauses, information, rights, and responsibilities as can be found on the DHSES website, including:

APPENDIX A-1 – Agency Specific Clauses

APPENDIX B – Budget

APPENDIX C – Payment and Reporting Schedule

APPENDIX D – Work plan/Special Conditions

For purposes of this RFA, these terms and conditions are incorporated by reference and the applicant must agree to the inclusion of all these terms and conditions in any resulting grant contracts as part of the application submission. Copies of the standard terms and conditions included in DHSES grant contracts are available for review on the DHSES website at: <https://www.dhSES.ny.gov/e-grants>. Payments will be made subject to proper documentation and compliance with reimbursement procedures and all other contractual requirements.

2. Procurements

Applicants must follow and comply with all procurement procedures under General Municipal Law 5-A and/or any other state regulations applicable to these funds and will be subject to monitoring by DHSES to ensure compliance.

Contracting with Small and Minority Firms, Women's Business Enterprises

Pursuant to New York State Executive Law Article 15-A, DHSES recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises (MWBE) and the employment of minority group members and women in the performance of DHSES contracts. Minority and women-owned business

enterprises can be readily identified on the directory of certified businesses at: <https://ny.newnycontracts.com/>.

For purposes of this solicitation, applicants and subcontractors are hereby notified that the State of New York has set an overall goal of **30% for MWBE participation** or more, **15% for Minority-Owned Business Enterprises (MBE)** participation and **15% for Women-Owned Business Enterprises (WBE)** participation, based on the current availability of qualified MBEs and WBEs for your project needs.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Applicant and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, gender identity or expression, military status, age, disability, predisposing genetic characteristic, familial status, marital status or domestic violence victim status, and shall also follow the requirements of Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Use of Service-Disabled Veteran-owned Business Enterprises in Contract Performance

Article 17-B of the Executive Law enacted in 2014 acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economics of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, Grant recipients are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the contract. Such partnering may be as vendors, contractors, subcontractors, suppliers, protégés, or other supporting roles. SDVOBs can be readily identified on the directory of certified businesses at <https://online.ogs.ny.gov/SDVOB/search>.

Applicants need to be aware that all authorized users of this contract will be strongly encouraged to the maximum extent practical and consistent with legal requirements of the applicable laws to use responsible and responsive SDVOBs in purchasing and utilizing commodities, services, and technology that are of equal quality and functionality to those that may be obtained from non-SDVOBs. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses consistent with current State Law. Utilizing SDVOBs in State contracts will help create

more private sector jobs, rebuild New York State's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its SDVOB partners. SDVOBs will promote the recipient's optimal performance under the contract, thereby fully benefiting the public-sector programs that are supported by associated public procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of SDVOBs by its contractors. The State, therefore, expects awardees to provide maximum assistance to SDVOBs in their contract performance. The potential participation by all kinds of SDVOBs will deliver great value to the State and its taxpayers.

For purposes of this solicitation, applicants and subrecipients are hereby notified the State of New York has set an overall goal of 6% for SDVOB participation or more.

Grant recipients will report on actual participation by each SDVOB during the term of the contract to DHSES per the policies and procedures set by DHSES. Applicants are reminded that they must continue to utilize small, minority, and women-owned businesses consistent with current State law. A business enterprise can be either a MWBE or a SDVOB for the purposes of achieving the set goals of MWBE and SDVOB participation, but not both.

Sexual Harassment Prevention

Applicants must submit a certification with their bid stating that Applicant has a policy addressing sexual harassment prevention and that applicant provides sexual harassment training to all its employees on an annual basis that meets the Department of Labor's model policy and training standards. Bids that do not contain this certification will not be considered for awards; provided, however, that if Applicant cannot make the certification, the Applicant may provide a statement with its bids detailing the reasons why the certification cannot be made.

Worker's Compensation and Disability Benefits Insurance Coverage

Applicants must provide evidence of appropriate workers' compensation and disability insurance coverage, or proof of a legal exemption, prior to being awarded a contract. Failure to do so will result in the rejection of the application.

Iran Divestment Act: The Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, added section 165-a to the State Finance Law

effective April 12, 2012. The Act is available at:
<https://ogs.ny.gov/system/files/documents/2021/12/iran-divestment-act-of-2012.pdf>

The Act imposes limitations on “persons” that are determined to be engaged in investment activities in the Iranian energy sector, as defined in the Act. Under the Act, the Commissioner of the Office of General Services (OGS) is required to develop and maintain a list of “persons” who are engaged in “investment activities in Iran.” Once an entity appears on the prohibited entities list, it will be considered a non-responsive bidder/offeree and prohibited from entering into contracts with the State or local governments. This list is available at: <https://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>.

By submitting a response to this RFA or by assuming the responsibility of a contract awarded hereunder, the applicant (or any assignee) certifies that it will not utilize on such contract any entity that is identified on the prohibited entities list.

During the term of the contract, should DHSES receive information that a person is in violation of the above-referenced certification, DHSES will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, DHSES shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the contractor in default.

DHSES reserves the right to reject any bid or request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

Vendor Responsibility

State Finance Law §163(9)(f) requires a State Agency to make a determination that an Applicant is responsible prior to awarding that Applicant a State contract which may be based on numerous factors, including, but not limited to the Applicants: (1) financial and organizational capacity; (2) legal authority to do business in this State; (3) integrity of the owners, officers, principals, members, and contract managers; and (4) past performance of the Applicant on prior government contracts. Thereafter, Recipients/Contractors shall at all times during the Contract term remain responsible. The

Recipients/Contractor agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. DHSES requires that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System, see the VendRep System Instructions available at: http://www.osc.state.ny.us/vendrep/info_vrsystem.htm or go directly to the VendRep system online at <https://onlineservices.osc.state.ny.us>. Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller's Help Desk at 866-370-4672 or 518-408-4672 or by email at ITServiceDesk@osc.ny.gov. Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/forms_vendor.htm or may contact the Office of the State Comptroller's Help Desk for a copy of the paper form. Applicants will also be required to complete and submit a Vendor Responsibility Questionnaire prior to contracting.

1) Suspension of Work for Non-Responsibility:

The Commissioner of DHSES or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, when he or she discovers information that calls into question the responsibility of the Recipient. In the event of such suspension, the Recipients/Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of DHSES or his or her designee issues a written notice authorizing the resumption of performance under the Contract.

2) Termination for Non-Responsibility:

Upon written notice to the Recipients/Contractor, and a reasonable opportunity to be heard by appropriate DHSES officials or staff, the Contract may be terminated by the Commissioner of DHSES or his or her designee at the Contractor's expense where the Recipients/Contractor is determined by the Commissioner of DHSES or

his or her designee to be non-responsible. In such event, the Commissioner of DHSES or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue legal or equitable remedies for breach. Sub-recipients shall at all times during the Contract term remain responsible. The Sub-recipient agrees, if requested by the Commissioner of DHSES, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

Satisfactory Progress

Satisfactory progress toward implementation includes, but is not limited to: executing contracts and submitting payment requests in a timely fashion; retaining consultants; or completing plans, designs, reports, or other tasks identified in the work program within the time allocated for their completion.

DHSES may recapture awarded funds if satisfactory progress is not being made on the implementation of a grant project.

F. General Specifications

By submitting the application, the Applicant attests that:

- 1) Applicant's signatory contact person has express authority to submit on behalf of the applicant's agency;
- 2) Submission of an application indicates the applicant's acceptance of all conditions and terms contained in this document, including Appendices A-1 and C, and all other terms and conditions of the award contract;
- 3) The application and any resulting grant, if awarded, must adhere to, and be in full compliance with any, resulting contract(s), and relevant federal and State policies and regulations or be subject to termination; and
- 4) Any not-for-profit recipients or subrecipients are required to be prequalified, prior to contract execution, by the State of New York upon application submission through the New York State Grants Gateway (<https://grantsgateway.ny.gov>).
- 5) If your organization is not currently doing business with NYS, you will need to submit a Substitute W-9 form to obtain a NYS Vendor ID. The form is available on the Office of the State Comptroller website at: http://www.osc.state.ny.us/vendor_management/forms.htm.
- 6) Contract Changes - Contracts with Recipients/Contractors may be executed, terminated, renewed, increased, reduced, extended, amended, or renegotiated at the discretion of the Commissioner of DHSES, in light of

a Recipient's/Contractor's performance, changes in project conditions, or otherwise.

- 7) Records – Recipients/Contractors must keep books, ledgers, receipts, work records, consultant agreements and inventory records pertinent to the project; and in a manner consistent with DHSES contractual provisions and mandated guidelines.
- 8) Liability - Nothing in the contract between DHSES and the Sub-recipients shall impose liability on the State of New York or DHSES for injury incurred during the performance of approved activities or caused by use of equipment purchased with grant funds.
- 9) Reports - A provider agency shall submit to the DHSES reports in a format and time schedule specified in the grant contract, which shall include a description of the program efforts undertaken during the report period and the current status of the project.
- 10) Tax Law Section 5-a Certification – In accordance with section 5–a of the Tax Law, sub-recipients will be required, prior to the approval of any contract awarded as a result of this RFA, to certify that it and its affiliates, subcontractors, and subcontractors' affiliates have registered with the New York State Tax Department for the purpose of collection and remittance of sales and use taxes. In order to trigger this certification requirement, a Sub-recipient or its affiliates, subcontractor, or subcontractors' affiliates must have made more than \$300,000 in sales of tangible personal property or taxable services to location within New York State and the contract must be valued in excess of \$15,000. Certification will take the form of a completed Tax Form ST-220.
- 11) Standard Contract Provisions - Grant contracts executed as a result of this RFA process will be subject to the standard clauses for New York State Contracts as referenced herein and as located at:
<https://ogs.ny.gov/procurement/appendix>
- 12) Compliance with Procurement Requirements - The applicant shall certify to DHSES that all applicable statutory and contractual procurement procedures were followed and complied with for all procurements.

G. Special Conditions

New York State Emergency Management Certification and Training Program

1. Participation in, and successful completion of, the New York State Emergency Management Certification and Training Program (EMC Training Program) is a mandatory requirement under this Contract and a condition of funding. The EMC Training Program will be made available to, and required for, DHSES-specified county and city government officials in order to ensure a consistent

emergency management preparedness and response strategy across the State. Attendee substitutions, except as expressly approved by DHSES, shall not be permitted or deemed to be in compliance with this requirement.

2. To fulfill the EMC Training Program requirement of the Contract and in order to be eligible for funding under this Contract, Contractors must arrange for DHSES-specified Contractor employees to receive and acknowledge receipt of EMC Training no later than 180 days after execution of this Contract. Copies of the training certificates for each required participant must be submitted to DHSES upon execution of the Contract, or, in the event that training is scheduled, but not yet complete, the Contractor will be required to submit a signed statement indicating the scheduled future dates of attendance, and no later than thirty (30) days after the training is complete, forward such training certificates to DHSES. Continued compliance with the EMC Training Program also requires an annual refresher training of one day per 365 day-cycle from the date of initial training for previously trained individuals if such person remains employed by the Contractor and fulfilling the same functions as he or she fulfilled during the initial training. Should a new employee be designated to serve in the DHSES-specified positions, then he or she must come into compliance with the EMC Training Program requirements not later than 180 days after taking office.
3. Contractors must commit to active participation in a DHSES Annual Capabilities Assessment as a condition of funding. Active participation includes making reasonable staff, records, information, and time resources available to DHSES to perform the Annual Capabilities Assessment and meet the objectives and goals of the program. Recipients must be aware that the process of conducting a DHSES Annual Risk Assessment is an ongoing process and requires a continued commitment on the part of the Contractor to ensure that it is effective.
4. All recipients and sub-recipients funded through this program agree to provide DHSES, upon request at any time during the life of the grant contract, such cooperation and information deemed necessary by DHSES to ascertain: (1) the nature and extent of any threats or hazards that may pose a risk to the recipients or sub-recipients; and (2) the status of any corresponding recipients or sub-recipients plans, capabilities, or other resources for preventing, protecting against, mitigating, responding to, and recovering from such threats or hazards.
5. Additionally, pursuant to Article 26 of the NYS Executive law, DHSES is authorized to undertake periodic drills and simulations designed to assess and prepare responses to terrorist acts or threats and other natural and man-made

disasters. Funded recipients and sub-recipients agree to attend and participate in any DHSES-sponsored conferences, training, workshops or meetings (excluding those identified by DHSES as voluntary) that may be conducted, by and at the request of DHSES, during the life of the grant contract.

6. Failure to comply with any of the requirements, as listed above, may result in sanctions up to and including the immediate suspension and/or revocation of the grant award.
7. Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made with 15 calendar days of notification by DHSES that the Bid submitted by the Bidder was not selected for award. An unsuccessful Bidder's written request for a debriefing shall be submitted to DHSES Director of Grants Program Administration. The debriefing shall be scheduled with 10 business days of receipt of the written request by DHSES or as soon as practicable under the circumstances.

X. Questions

Questions regarding the 2022 SICG-Targeted Program should be directed to the following email address: Grant.Info@dhSES.ny.gov. To the degree possible, each inquiry should cite the RFA section and paragraph to which it refers. Updates and frequently asked questions will be posted online at <https://www.dhSES.ny.gov/statewide-interoperable-communications-grant-sicg-program>. Please check the website frequently for updates.