

Member-Requested Participation Addendum (MPA)

This Addendum ("MPA") is entered into by State of Mississippi ("Member") and Lifestyles US Opco dba SXWELL USA, LLC a limited liability company with a principal address of 111 Wood Avenue South, Suite 210, Iselin, NJ 08830 ("Vendor") and the MMCAP Infuse, an agency of the State of Minnesota ("MMCAP Infuse"), regarding MMS18009 ("Agreement").

WHEREAS, Member and Vendor wish to amend the terms and conditions of the Agreement to address the matters of Member.

WHEREAS, MMCAP Infuse has sole approval authority to any changes to the Agreement, thus is a signatory to this MPA.

WHEREAS, Member, MMCAP Infuse, and Vendor do not intend to alter, amend, interfere, modify, or adjust the contractual relationship of MMCAP Infuse and Vendor.

THEREFORE, the parties agree as follows:

I. DEFINITIONS

- A. **Membership**: Means the joint power cooperative comprised of the MMCAP Infuse authorized states, departments, facilities, and other municipalities.
- B. **Facilities**: Means the authorized departments, facilities, and other municipalities approved by Member and MMCAP Infuse to access and use this MPA.

II. EFFECTIVE DATE AND TERM

- A. **Effective Date**: This MPA is effective on June 30, 2021 or the date all signatures have been obtained, whichever is later.
- B. **Termination**: This MPA terminates upon:
 - 1. Sixty (60) calendar days' written notice to the other parties; or
 - 2. The termination of the Agreement between MMCAP Infuse and the Vendor; or
 - 3. Written agreement executed by all parties.

III. SCOPE

- A. **Exhibit A**: Which is attached and incorporated herein, identifies the Agreement and all other documents to be incorporated into the contractual relationship between Member and Vendor.
- B. **Exhibit B**: Which is attached and incorporated herein identifies the language to be incorporated into the contractual relationships between Member and Vendor, as referenced on Exhibit A. In the event of any conflict between the terms of the Agreement and Exhibit B of this MPA, the terms of Exhibit B will supersede as between Member and Vendor. *MMCAP Infuse, the State of Minnesota, nor any other party of the Membership (except for the Facilities) are bound by the terms of Exhibit B.*

IV. GENERAL PROVISIONS

- A. **Assignment**: Except as affirmed in this MPA, the Member nor Vendor will assign, delegate, or transfer any rights or obligations under this MPA without the prior written consent of MMCAP Infuse.
- B. **Counterparts and Electronic Signature**: The MPA cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP, Member and Vendor expressly agree to conduct transactions under the MPA by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this MPA 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 MPA is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP Infuse in order for this MPA to be a transferable record, to ensure that MMCAP Infuse has control of the authoritative copy of such transferable record.

- C. **Amendments:** Any amendment or modification to this MPA must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP Infuse.
- D. **Jurisdiction and Venue:** This MPA, except for the contents of Exhibit B, will be governed by the laws of Minnesota. Venue for all legal proceedings involving MMCAP Infuse arising out of this MPA, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. All disputes between Member and Vendor will be governed as agreed upon in the Agreement.

IN WITNESS WHEREOF, the undersigned parties have caused this MPA to be signed on their behalf intending to be bound thereby.

BY AND BETWEEN:

FOR THE MEMBER:
STATE OF MISSISSIPPI

Signature: 
Printed: Ross Campbell
Title: Director, DPTFM
Date: 6/11/21

VENDOR: LIFESTYLES US OPCO DBA SXWELL
USA, LLC



Signature: _____
Printed: Elizabeth Kramer
Title: Specialist, Sales Operations and Analytics
Date: 06/09/2021

IN AN APPROVAL CAPACITY ONLY:

State of Minnesota for MMCAP Infuse

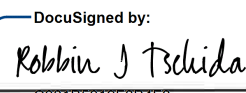
In accordance with Minn. Stat. § 16C.03, subd. 3

DocuSigned by:
Signature: 
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Printed: James Babbitt Date: 6/14/2021

Minnesota Commissioner of Administration

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

DocuSigned by:
Signature: 
C081B5019F8B4F8...
Printed: Robbin J Tschida

Date: 6/14/2021

EXHIBIT A

Agreement and other Applicable Legal Documents

1. Agreement MMS18009
2. Mississippi Procurement Manual (www.dfa.ms.gov)

EXHIBIT B**Language Modification of the Agreement**

The following terms and conditions are entered into between Vendor and the Member and are added to the documents identified on Exhibit A. Neither MMCAP Infuse, the State of Minnesota, nor the Membership, except for the Member (and applicable Facilities), are bound by the terms within this Exhibit.

Additional Terms:

1. **PRECEDENCE:** The MPA will take precedence over the Vendor's other documents, and should ambiguities, conflicts, or questions of interpretation of these documents arise, they shall be resolved first by reference to this MPA and Agreement.
2. **E-PAYMENT:** Vendor agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. The Member agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the Member within forty-five (45) days of receipt of invoice. Mississippi Code Annotated § 31-7-301 et seq.
3. **APPLICABLE LAW:** In regards to disputes between the Member and Vendor, the MPA shall be governed by and construed in accordance with the laws of the Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the Mississippi. Vendor shall comply with applicable federal, state, and local laws and regulations.
4. **ANTI-ASSIGNMENT/SUBCONTRACTING:** Vendor acknowledges that it was selected by the Member to perform the services required hereunder based, in part, upon Vendor's special skills and expertise. No assignment, subcontract, or other instance of a transfer of this agreement shall be deemed in any way to provide for the incurrence of any obligation of the Member in addition to the total fixed price agreed upon in this agreement. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the Vendor and/or Member.
5. **COMPLIANCE WITH LAWS:** Vendor understands that the Member is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Vendor agrees during the term of the agreement that Vendor will strictly adhere to this policy in its employment practices and provision of services. Vendor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, Member, and local laws and regulations, as now existing and as may be amended or modified.
6. **TRANSPARENCY:** This MPA, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Annotated §§ 25-61-1 et seq., and Mississippi Code Annotated § 79-23-1. In addition, this MPA is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed MPA is required to be posted to the Department of Finance and Administration's independent agency MPA website for public access at <http://www.transparency.mississippi.gov>. Information identified by Vendor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.
7. **E-VERIFICATION:** If applicable, Vendor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Mississippi Code Annotated §§ 71-11-1 et seq. The term "employee" as used herein means any person that is hired to perform work within the state of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor agrees to maintain records of such compliance. Upon request of the Member and after approval of the Social Security Administration or Department of Homeland Security when required, Vendor agrees to provide a copy of each such verification. Vendor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this MPA may subject Vendor to the following:
 - A. termination of this MPA for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;

- B. the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or,
 - C. both. In the event of such cancellations/termination, Vendor would also be liable for any additional costs incurred by the Member due to MPA cancellation or loss of license or permit to do business in the Member.
8. **INDEPENDENT CONTRACTOR STATUS:** Vendor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for the Member. Nothing contained herein shall be deemed or construed by the Member, Vendor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the Member and Vendor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the Member or Vendor hereunder creates, or shall be deemed to create a relationship other than the independent relationship of the Member and Vendor. Vendor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the Member. Neither Vendor nor its employees shall, under any circumstances, be considered servants, agents, or employees of the Member and the Member shall be at no time legally responsible for any negligence or other wrongdoing by Vendor, its servants, agents, or employees. The Member shall not withhold from the contract payments to Vendor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Vendor. Further, the Member shall not provide to Vendor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the Member for its employees.
9. **STOP WORK ORDER**
- A. **Order to Stop Work:** The Member Chief Procurement Officer, may, by written order to Vendor at any time, and without notice to any surety, require Vendor to stop all or any part of the work called for by this MPA. This order shall be for a specified period not exceeding 90 days after the order is delivered to Vendor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, Vendor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Member Chief Procurement Officer shall either:
 - i. cancel the stop work order; or
 - ii. terminate the work covered by such order.
 - B. **Cancellation or Expiration of the Order:** If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, Vendor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Vendor price, or both, and the contract shall be modified in writing accordingly, if:
 - i. the stop work order results in an increase in the time required for, or in Vendor's properly allocable to, the performance of any part of this MPA; and
 - ii. Vendor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Member Chief Procurement Officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this MPA.
 - C. **Termination of Stopped Work:** If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.
10. **RECOVERY OF MONEY:** Whenever, under the MPA, any sum of money shall be recoverable from or payable by Vendor to the Member, the same amount may be deducted from any sum due to Vendor under the MPA or under any other contract between Vendor and Member State. The rights of the Member are in addition and without prejudice to any other right the Member may have to claim the amount of any loss or damage suffered by the Member on account of the acts or omissions of Vendor.
11. **PROCUREMENT REGULATIONS:** In respects to the relationship between the Member and Vendor, this MPA shall be governed by the applicable provisions of the *Mississippi Procurement Manual* (referenced in Exhibit A) a copy of which is available online at www.dfa.ms.gov
12. **REPRESENTATION REGARDING GRATUITIES:** The Vendor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations.
13. **TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION:** It is expressly understood that Mississippi law requires that the provisions of this MPA which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the MPA shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.