



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

Nutricia North America, Inc.
MMCAP Infuse Agreement: MMS2100553
Prepared on July 7, 2021

PREFIX A

Definitions and Acronyms

Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** Means three percent (3%) of Contract Pricing for 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):** AmerisourceBergen Drug Corporation, Cardinal Health, McKesson Medical-Surgical and Morris & Dickson Co., LLC.
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. **Non-Fixed Pricing:** Means all Products identified as such on **Attachment A** or any subsequent amendment to this Agreement.
6. **Contract(ed) Items:**
 - A. **Products:** Means all products offered by the Vendor in this Agreement, which is identified in **Attachment A-1 (Nutricia product line) and Attachment A-2 (Real Food Blends product line)**.
7. **Days:** (Not required to be capitalized) Unless otherwise specified in this Agreement, all references to days will be calendar days.
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:** Credit Application.
13. **Order Form:** Means the document or electronic platform Member utilizes to obtain Contracted Items.
14. **Products:** Means all products offered by the Vendor in this Agreement, which are identified in **Attachment A**.
15. **State:** Means one of the recognized fifty (50) states of the United States of America.

AGREEMENT FOR MMCAP INFUSE NO. MMS210053

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 Nutricia North America, Inc., a corporation with an address of 77 Upper Rock Circle, Suite 303, Rockville, MD 20850 ("**Vendor**").

Agreement Term:

1. **Effective Date:** August 1, 2021, or the date MMCAP Infuse obtains all required signatures as required under Minnesota Statute, whichever is later.
2. **Expiration Date:** June 30, 2025
3. The Agreement Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

AGREEMENT COMPONENTS

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

1. **Prefix A:** Definitions
2. **Attachment A:** Products and Pricing
 - a. **Attachment A-1:** Nutricia product line
 - b. **Attachment A-2:** Real Food Blends product line
3. **Attachment B:** Further Discounts (if applicable)
4. **Attachment C:** Credit Application
5. **Attachment D:** Required Reporting for Direct Sales
6. **Attachment E:** MN Statutory Language
7. **Attachment F:** Vendor's Product Return Policy

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**.
- 1.3 **Non-Fixed Pricing, 30 Day Notice.** All Non-Fixed Pricing requires notice of increases be submitted to MMCAP Infuse at least thirty (30) days before the requested increases may take effect. After three hundred sixty-five (365) calendar days after the Effective Date of the Agreement, Vendor may increase the Contract Pricing for Products up to three percent (3%). Each time the Vendor increases the Contract Pricing, the Vendor must wait another three hundred sixty-five (365) days to increase any Contract Pricing to any Products. During the Term of the Agreement, any increase to the Contract Pricing will be limited to three percent (3%). 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. Vendor may submit price reductions but must notify MMCAP Infuse before they can take effect.
 - A. With MMCAP Infuse approval, the time requirements may be waived if the Vendor can establish a force majeure condition.
- 1.4 **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.
- 1.5 **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.
- 1.6 **Competitive Pricing.** If MMCAP Infuse is made aware and determines during the Agreement Term Vendor is offering pricing to another equivalent Government Unit purchasing a comparable volume of products which is not comparable to the Contract Pricing received by MMCAP, Vendor will have thirty (30) days to work with MMCAP Infuse to amend this Agreement to provide MMCAP Infuse the comparable Contract Pricing.
- 1.7 **Member Fees.** In the event a Member requires a fee, assessment, and/or additional costs in addition to the Contract Pricing; those fee, assessment, and/or additional costs must be added on top of the Contract Pricing and/or an adjustment to the discounts must be made so Vendor does not absorb the fee. Vendor must not pay a Member levied fee without first collecting the fee through increased Contract Pricing for the applicable Member. The fees will be set aside and paid to the Member as detailed in a form provided and approved by MMCAP Infuse.

- 1.8 **Value-Added Programs.** Members must be offered any programs normally offered to the Vendor's other state customers (excluding federal government customers), of comparable size and function with comparable contract terms and who order similar quantities of comparable products, giving consideration to market and all other factors that Vendor may legally rely upon in making its pricing decisions (e.g., rebates, tiered pricing, continuing education courses, marketing information, etc.) at the same or lower cost as that offered to other state customers.
- 1.9 **Product Dating.** All Products supplied to Authorized Wholesalers and directly to Members by Vendor must have an expiration date of at least six months later than the delivery date unless the unique stability characteristics of the product require a shorter dating period. However, all Products supplied must still be usable on the date received by the MMCAP Member. Vendor will notify Member of the shorter shelf-life and Member will give consent, prior to delivery. If the shelf-life results in product being non-returnable according to, at the time, Vendor's Product Return Policy, the Vendor will notify Member at the time of order.
- 1.10 **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 1.5, Vendor must send confirmation of mutually agreed upon amendment changes, including but not limited to additions/deletions, NDC changes, Product removals, etc., to the Authorized Wholesalers within seven (7) 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. Any of the applicable: NDC Number, UPC Number, Item Number/SKU
 - 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 annotations, the Vendor has fifteen (15) days to object to MMCAP Infuse counter 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. Once the amendment terms have been mutually agreed upon, Vendor must countersign the amendments drafted by MMCAP Infuse within fifteen (15) days of the date tendered in order to be to be incorporated into the Agreement.

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 either through the Vendor directly or through the Authorized Wholesalers. Direct sales to Members are further discussed in *Article III*.
 - 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 **Product Identification:**
- A. All prescription Products must have an 11-digit NDC code that is registered with First DataBank, Inc. All non-prescription Products that do not have an 11-digit NDC code registered with First DataBank, must have an NDC-like substitute code created as follows:
 - i. If NDC codes are not applicable, 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 is required to report Products to Authorized Wholesalers using the same product identifier formats it provides MMCAP Infuse. The NDCs or NDC-like substitute codes must clearly identify the package size

they are assigned to. For example, if a product has an NDC code for each individual container within a case and another NDC for the case, the Vendor must clearly provide that information to MMCAP Infuse and the Authorized Wholesalers.

- C. Vendor must provide MMCAP Infuse with any additional product identifiers that it provides to Authorized Wholesalers outside of NDC codes or NDC-like substitute codes, such as UPCs, GTINs, Item Numbers or SKUs.

2.3 **Product Outages.** It is the responsibility of the Vendor to maintain sufficient inventory levels for all Products to meet the foreseeable needs of the Members, whether it is direct sales to the Members or through Authorized Wholesalers. The Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.

- A. **Immediate Notification:** Vendor or Vendor's ordering system will provide notice within twenty-four (24) hours to MMCAP Infuse and its Members of any Products covered by this Agreement that the Vendor has placed on backorder. Once the Product becomes available, orders are released and fulfilled automatically unless the Member advises otherwise. Vendor's backorder notification will include:

- i. Members ordering directly will be notified at the time of ordering if a particular product is not available and will be given the option to place the order for the product that will remain in back order status;
- ii. For extended back orders, support will be provided to find an appropriate course of action; and
- iii. Member can contact Vendor's Customer Service to obtain details regarding the order and shipping ETA of when the product will become available.

- B. **Substitution:** If Members consents, Vendor may offer like-kind Products at the same or lower price as the out of stock product. If no acceptable substitution can be offered, the Member may purchase the same or equivalent Product from an alternative MMCAP Infuse vendor, or if unavailable through an alternative MMCAP Infuse vendor, Member may purchase an alternative equivalent Product on the open market, including retail.

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 forty-five (45) days prior. In the event Vendor removes a Product, the Vendor will honor Contract Pricing until the Authorized Wholesalers' inventories are depleted or a mutually agreed upon removal date.

2.5 **Products Returned to the Vendor.** Vendor will accept returns in accordance with applicable laws, regulations, and Vendor's Product Return Policy. Vendor's Product Return Policy is attached and incorporated as **Attachment F**.

2.6 **Product Recalls. If any Product covered by this Agreement requires modification, is removed, or recalled by the Vendor,** then Vendor will promptly notify MMCAP Infuse and the affected Members within three (3) days. Vendor agrees to comply with any process mandated by the FDA, or any other regulatory body if applicable, and will address the recall with each Member. Members will not incur costs for Product returns related to recalls Vendor will issue credit for recalled Product.

2.7 **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 forty-eight (48) 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.

ARTICLE III **PAYMENT, DIRECT ORDERS, AND DELIVERY**

3.1 **Conditions of Payment.** All Contract Items provided by the Vendor under this Agreement must be performed in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for work performed in violation of federal, state, or local law.

3.2 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT), credit card, or paper checks as a payment method and Member will initiate this process with its financial institution.

3.3 **Federal Funds.** Payments under this Agreement may be made from federal funds. The Vendor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Vendor's failure to comply with federal requirements.

3.4 **Orders.** As a condition for purchasing under this Agreement, purchasers must be Members in good standing with MMCAP Infuse. Vendor may use their own Order Forms. To the extent that the terms of any Order Form(s) conflict with the terms of this Agreement, the terms of this Agreement supersede. Each Member will be responsible for payment for Contracted Items to the Vendor and MMCAP Infuse will not be liable for any unpaid invoice of any Member. Vendor agrees to invoice the Members as established in this Agreement.

- A. The use of obtaining a Contracted Item from the Order Form constitutes a binding contract. All Products furnished will be subject to inspection and acceptance by the ordering entity after delivery. No substitutions or cancellations are permitted without written approval of the Member. Back orders, failure to meet delivery requirements, or failures to meet specifications in the Order Form and/or the Agreement authorizes the ordering entity to cancel the order, or any portion of it.

- B. To order products on **Attachment A-1**, customer service can be contacted Monday through Friday, from 8:30 a.m. to 5:00 p.m. EST via phone at 1-800-605-0410, via fax at 973-734-0029 or via email at

orders@medicalfood.com. To order products on **Attachment A-2**, customer service can be contacted at 1-888-484-9495, Monday through Friday, from 9 a.m. to 5 p.m. CST, or via email at orders@realfoodblends.com.

3.5 Termination of Individual Orders. In the case of direct orders, Member may terminate, immediately or as identified by Member, individual Order Forms, in whole or in part, which have yet to ship, upon written notice to Vendor upon the occurrence of any of the following events:

- A. The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contracted Items to be purchased 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 Contract Items under the Order Form are prohibited, or the Member is prohibited from paying for the Contracted Items from the planned funding source; or
- C. Vendor commits any material breach of this Agreement or Order Form.

Upon receipt of written notice of termination, Vendor will stop performance under the Order Form as directed by the Member. If a standing Order Form is terminated or if product had already shipped before Member termination of order, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.

3.6 Direct Order Terms and Conditions.

- A. Terms of Sale via Order Form: Vendor reserves the right to extend or deny terms to Members which order directly from Vendor based on an assessment of the Member's financial health and ability to pay. Terms will only be granted after completion of a credit application, attached and incorporated as **Attachment C**, by the Member and approval by Vendor's Credit Department. Members who have not purchased from Vendor for a continuous six (6) month period may be subject to credit review, prior to processing an order.
 - i. Unless otherwise agreed to between Vendor and the Member, payment for the invoices shall be received by Vendor from Member within thirty (30) days from receipt of Vendor's invoice.
 - ii. Deductions that are taken without prior notice to Vendor of a complaint with the order will be classified as invalid and Member will be expected to repay. Vendor reserves the right to suspend further shipments for invalid claims not repaid. 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.
 - iii. Vendor may, without prejudice to any other rights of Vendor, charge interest on any overdue payment, as permitted by law and computed on a monthly basis, from the due date until all outstanding amounts are paid in full.
 - iv. Member must notify Vendor of any complaint with respect to the invoice through its Customer Service Department (1-800-365-7354) or via email at customerservice@nutricia.com or NutriciaNA.CustomerService@nutricia.com within thirty (30) days after the date of the invoice. Thereafter, a Member shall be deemed to have approved the invoice.
 - v. Members filing complaints regarding invoices must provide complete documentation. Claims prepared by a third party (outside audit firm) must be thoroughly reviewed and approved by the Member before submitting to Vendor. Vendor requires a minimum of sixty (60) days from the date of receipt of the claim to research the claim and approve or deny it for payment prior to the Member taking any action. If the claim is deemed valid, the parties shall mutually agree to the method of payment for reimbursement. If a claim is deemed invalid and a deduction is taken for that claim, this deduction will be in violation of Vendor's terms of sale. Vendor reserves the right to suspend further shipments of Vendor's Products in the event a Member takes unauthorized deductions for these types of charges until such claims are repaid by the Member.
- B. Traceability. When applicable, Members shall have such systems and procedures to ensure satisfaction of traceability requirements for the Products under the Federal Food, Drug, and Cosmetic Act 21 U.S.C. Section 301 et seq.
- C. Interference with Markings. Members shall not alter, obscure, remove, conceal or otherwise interfere with any markings, warnings, instructions or information placed by Vendor on the Product or with its labeling and packing. Members will use their best efforts to ensure that retail customers are notified of this term and comply fully with it.
- D. Warranties. Vendor warrants that the Products provided to Members comply with Vendor's applicable product specifications for such Products. Other than any warranties expressly set out in this Contract, Vendor explicitly disclaims to the fullest extent permitted by law any and all warranties, conditions or other terms (including without limitation the warranty of fitness for a particular purpose) that may be implied by United States law or the law of any U.S. state or territory.
- E. Limitation of Liability. IN NO EVENT SHALL VENDOR OWE TO AUTHORIZED WHOLESALERS OR MEMBERS, AND AUTHORIZED WHOLESALERS AND MEMBERS WAIVE ANY RIGHT TO RECOVER HEREUNDER OR AT LAW OR EQUITY, ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS, DAMAGE, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, ECONOMIC LOSS, LOSS OF GOODWILL, DAMAGE TO REPUTATION, LOST SALES, LOST MARGIN), ECONOMIC HARDSHIP, OR DAMAGE TO TRADE RELATIONS OR RELATIONSHIPS

HOWEVER CAUSED, WHETHER BY THE MEMBER'S SOLE OR CONCURRENT NEGLIGENCE OR OTHERWISE, THE MEMBER SHALL BE RESPONSIBLE FOR THE BREACH OF MEMBER OBLIGATIONS. www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx

- F. **BREACH OF MEMBER OBLIGATIONS.** If Member is in default of performance of its obligations towards Vendor and fails to provide to Vendor adequate assurance of Member's performance before the date of scheduled delivery; or if Member becomes insolvent or unable to pay its debts as they mature, or goes into liquidation or any bankruptcy proceeding shall be instituted by or against Member or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Member, or if Member enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then Vendor may by notice in writing forthwith, without prejudice to any of its other rights:
- i. Demand return and take repossession of any delivered Product which has not been paid for and all costs relating to the recovery of the Product shall be for the account of Member; and/or
 - ii. Suspend its performance or terminate Vendor's confirmation for pending delivery of Product unless Member makes such payment for Product on a cash in advance basis or provides adequate assurance of such payment for Product to Vendor.

In the event of suspension and/or termination pursuant to this policy, all outstanding claims of Vendor shall become due and payable immediately with respect to the Product delivered to Member and not repossessed by Vendor.

- G. **COMPLIANCE WITH LAWS.** Members shall comply with all applicable federal and state employment and other laws, government regulations and orders as it relates to Products provided under this Agreement. Members agree that they shall be solely responsible, as applicable, for compliance with the federal False Claims Act, the federal Health Insurance Portability and Accountability Act ("HIPAA"), the Federal Food, Drug, and Cosmetic Act, any and all applicable safety and health laws, standards and regulations, and any applicable environmental laws and regulations. Vendor represents that it does not need and should not receive any Protected Health Information, as that term is defined in the HIPAA. If any terms of this policy are determined by any court or by the OIG of the Department of Health and Human Services to be contrary to any such statutes or regulations, the parties agree to promptly and in good faith confer and resolve any issues so as to make the performance of this policy consistent with all applicable statutes and regulations.

- 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 Contracted Items 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 Products:** All damaged Products will be addressed in accordance with Vendor's Return Policy, attached hereto (see **Attachment F**).
- D. **Lost Products:** All lost Products will be reported to Vendor's customer service department. Vendor will issue credit within ten (10) days of notification of lost Product; alternatively re-shipment of missing Product will occur immediately after notification.
- E. **No Minimum Order Requirements:** During the Agreement, there will be no minimum order requirements or extra charges assessed to orders, regardless of order size or payment amount.
- F. **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 <http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

- 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/UNSPSC 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.
- 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.

ARTICLE IV

TERMINATION, CANCELLATION, AND REMEDIES

- 4.1 **Cancellation.** MMCAP Infuse may cancel this Agreement any time, without cause, upon ninety (90) days' written notice to the Vendor. In the event of such cancellation, the Vendor will be entitled to payment for work or services satisfactorily performed or Products supplied through the Agreement cancellation date.
- 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 Contracted Items covered here. Termination must be by written or electronic mail notice to the Vendor. 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. MMCAP Infuse is not obligated to pay for any Contracted Items, purchased directly from Vendor, 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 directly purchased Contracted Items satisfactorily performed to the extent that funds are available. This provision shall only apply to those orders placed directly with Vendor and shall not apply for orders placed with Authorized Wholesalers.
- B. For direct 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 Contracted Items. This provision shall not apply for orders placed by a Member through an Authorized Wholesaler.
- 4.4 **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.
- 4.5 **Breach.** In the event of a breach of this Agreement, the Vendor, MMCAP Infuse and Members reserve the right to pursue any other remedy available by law. Vendors may be removed from the Vendors list; suspended; or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.
- 4.6 **Failure to Perform.** Upon failure to perform the following items in the time and manner as set forth herein, the following fees shall be paid by Vendor:
- A. **Reports.** In the event that any report and/or data provided by the Vendor, pursuant to the terms of this Agreement, is not received according to schedule, contains incorrect data, incomplete data, or no data, or is more than a minor defect or causes harm to MMCAP Infuse's ability to conduct business or its governmental purpose, and Vendor does not correct such defect within sixty (60) days of notice, Vendor will pay the following to MMCAP Infuse: \$25/day, until resolved.

- B. **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: \$25/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. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.
- D. **No Waiver.** This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE V MEMBERSHIP

- 5.1 **Onboard, Transition, and Implementation.** If the Vendor requires additional paperwork for Members to acquire the Contracted Items, 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**. Vendor is responsible for making Authorized Wholesalers aware that the paperwork on **Attachment C** must be collected from Member prior to Contract Pricing being attached. Vendor must communicate back to MMCAP Infuse any inability or failure to agree on such a process with the Authorized Wholesaler.
- 5.2 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership. MMCAP Infuse reserves the right to add and remove Members during the Agreement Term.
 - A. **New Members.** The Vendor must allow new Members to access 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.
- 5.3 **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.
- 5.4 **Member Attachment:** Vendor will ensure Members are attached to the Agreement for all Contracted Item purchases made by Member. Upon request of MMCAP Infuse, Vendor must verify only the Membership has access to the Contract Pricing and Contracted Items. Failure to do may result in immediate termination.
- 5.5 **Non-Solicitation.** During the term of this Agreement, Vendor will not solicit any Members or those known to the Vendor to be 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.
- 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 Contract Pricing. 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.
- 5.8 **MPA.** In order to use this Agreement, some Members require jurisdiction-specific paperwork or contract language. Vendor may be required to review an MMCAP Infuse MPA, as an addendum to this Agreement to provide for laws specific to a state or local jurisdiction. If these circumstances exist, the Vendor will work with MMCAP Infuse and Member to prepare an MPA to set forth the additional or altered terms and conditions. An MPA must clearly apply only to the requesting location and will not affect the rights of the other Membership, nor will it modify, derogate, or otherwise diminish the rights and obligations set forth herein, except in regard to the applicable named Member. When the specific terms are agreeable to the Vendor and the Member, the MPA will be presented by MMCAP Infuse to each party for execution. No other mechanism of modifying or "attaching to" the Agreement is authorized.

Vendor is not required to agree to any additional terms; however, by not agreeing to the MPA, Vendor may be precluded from doing business with that Member. No verbal or written instructions from Members, or any of their staff or officials, to change any provision of this Agreement will be accepted by Vendor without the prior written approval of MMCAP Infuse.

ARTICLE VI AGREEMENT MANAGEMENT

- 6.1 **Primary Account Representative.** Vendor will assign a primary account representative to MMCAP Infuse for this Agreement and must provide a minimum of seventy-two (72) hours advanced notice to MMCAP Infuse if that person is reassigned. The primary account representative will be responsible for:
- A. Proper maintenance and management of the Agreement, including timely execution of all amendments.
 - B. Timely response to all MMCAP Infuse inquiries
 - C. Performance of the business review as described in Paragraph 6.2.
 - D. Personnel Changes. Vendor will provide MMCAP Infuse with written advance notice of changes to the Primary Account Representative. In the event that an employee is removed pursuant to a written request from MMCAP Infuse, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.
- 6.2 **Business Reviews.** Vendor will perform at least one business review with MMCAP Infuse annually. The review will be at a time and location that is mutually agreeable to Vendor and MMCAP Infuse and at a minimum address: a review of sales to members, pricing and contract terms, administrative fees and reporting, supply issues, customer issues, and any other necessary information.

ARTICLE VII WARRANTS, COVENANTS, AND DUTIES OF VENDOR

- 7.1 **Covenant of Laws.** Vendor shall comply with all state and federal laws, as applicable to each Member, in the performance of this Agreement.
- 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.** Vendor must comply with applicable FDA requirements for medical foods, including the Current Good Manufacturing Practice regulations (21 CFR part 110), Registration of Food Facilities regulations (21 CFR part 1 subpart H) and, if applicable, regulations specific to the product formulation, processing and labeling.
- 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.
- 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 prompt 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' 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 gross 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.

This clause will not be construed to bar any legal remedies the Vendor may have for MMCAP Infuse's failure to fulfill its obligations under this Agreement. <http://www.state.mn.us/MMCAP/Contracts/Default.aspx>

- 7.7 **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.

ARTICLE VIII

ADMINISTRATIVE FEE AND REPORTING

- 8.1 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on the following purchases of Products made by Members with the Vendor or through an Authorized Wholesaler or a direct purchase by Member, as of August 1, 2021 (minus any credits):

- A. For indirect purchases, which are sales made through an Authorized Wholesaler, Vendor will pay 3%;
- B. For direct purchases, which are sales made direct from Vendor to MMCAP Infuse Members that are purchasing under this Agreement, Vendor will pay 3%;
- C. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar month, but no later than forty-five (45) calendar days after the end of the calendar month. The Vendor will submit a check payable to:

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

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

- 8.2 **Reporting.** Vendor must provide Administrative Fee data to MMCAP Infuse within thirty (30) days after the end of each calendar month. The Vendor must submit a monthly (A) 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 the 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.

- A. Administrative Fee Data Report fields:

- i. MMCAP Infuse Assigned Authorized Wholesaler Number (Cardinal Health=0301, AmerisourceBergen=0401, Morris & Dickson=0701, McKesson Medical-Surgical MN Supply = 1005/ McKesson Medical Supply = 1055)
- ii. MMCAP Infuse Assigned Manufacturer Number (Nutricia North America = 1099)
- 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 Member
- 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 Infuse Member State
- xiii. Product's NDC (Use all 11 digits (00076888888)) or NDC-like substitute, per Paragraph 2.2.
- 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)

- B. Sales Data Usage Reports:

Vendor will supply to MMCAP Infuse monthly sales data on or before the thirtieth (30th) day of the subsequent calendar month. The report must include Contracted Item dollar spend amount sorted in

descending order and grouped by the Contracted Item category. Also, the report MUST include the information set forth on **Attachment D**.
<http://www.mmcapsystem.com/mn.us/MMCAP/Contracts/Default.aspx>

ARTICLE IX

INTELLECTUAL PROPERTY

- 9.1 **MMCAP Infuse Ownership.** MMCAP Infuse owns all rights, title, and interest in MMCAP Infuse customer data, sales transaction data, DEA/HIN information (subject to third-party rights), Contract Pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP Infuse grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's primary contact; (B) release any of the above data to product manufacturers, when necessary for the performance of this Agreement or as required by Vendor's agreements with such product manufacturers; (C) to release any of the above data to other MMCAP Infuse approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IQVIA and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP Infuse-identifiable data. Any MMCAP Infuse identifiable data provided hereunder to a third party must identify the data as MMCAP Infuse data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP Infuse or a Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.
- 9.2 **Vendor Ownership.** If the parties wish to create any proprietary designs or work product, the parties shall enter a separate written agreement setting forth their respective rights, duties and obligations with respect to any proprietary designs which they contract to develop.
- 9.3 **Pre-Existing Intellectual Property.** MMCAP Infuse and Vendor will each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. The Vendor grants Minnesota a perpetual, irrevocable, non-exclusive, royalty free license for Vendor's pre-existing intellectual property that are incorporated in the products, materials, equipment, deliverables, or services that are purchased through the Agreement for the term of the Agreement. The aforementioned license is solely for use by Members, and their agents related to an internal business or governmental purposes. Vendor owns the entire right, title and interest in and to its trademarks, designs, patents, copyrights and other intellectual property, whether registered or not ("IP"), and Members shall acquire no ownership rights in or to Vendor's IP by virtue of using this Agreement or otherwise and all use by Members of Vendor's IP shall inure to the benefit of Vendor. Members shall not, directly or indirectly, contest or aid in contesting Vendor's ownership of Vendor's IP or the validity of the Vendor's IP. All uses of IP are subject to Vendor's approval. Members shall submit proposed uses to Vendor for written approval prior to actual use. Members shall comply with all instructions issued by the Vendor regarding use of the Vendor's IP.
- 9.4 **Vendor Obligations.** The Vendor must perform all acts, and take all steps necessary to ensure that all intellectual property rights created for MMCAP Infuse or Member are the sole property of MMCAP Infuse or Member, and that neither Vendor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Vendor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities.
- 9.5 **Intellectual Property Indemnification.** The Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless MMCAP Infuse, at the Vendor's expense, from any action or claim brought against MMCAP Infuse to the extent that it is based on a claim of an infringement upon the intellectual property rights of others. The Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, reasonable 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, either procure for MMCAP Infuse the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to the Vendor, upon written request of the Vendor, and at the Vendor's expense.
- 9.6 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP Infuse as a sponsoring or endorsing agency and must not be released without prior written approval from the parties' authorized representatives. 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. This Paragraph is not meant to apply to Vendor's pre-existing customers as of the date of execution of this Agreement.

- B. Endorsement. The Vendor must not claim that MMCAP Infuse, the State of Minnesota, or any Member State endorses its products or services. <https://www.mn.us/MMCAP/Contracts/Default.aspx>

ARTICLE X INSURANCE

- 10.1 **Notice.** The Vendor is required to submit Certificates of Insurance acceptable to MMCAP Infuse as evidence of insurance coverage requirements prior to commencing work under the Agreement. Vendor will not commence work under the Agreement until they have obtained all the insurance described below and MMCAP Infuse has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the Agreement. The failure of MMCAP Infuse to obtain a Certificate of Insurance, for the policies required under this Agreement or renewals thereof, or failure of the insurance company to notify MMCAP Infuse of the cancellation of policies required under this Agreement shall not constitute a waiver by MMCAP Infuse to the Vendor to provide such insurance. MMCAP Infuse reserves the right to immediately terminate the Agreement if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor. All insurance policies must be open to inspection by MMCAP Infuse and copies of policies must be submitted to MMCAP Infuse. The Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.
- 10.2 **Additional Insurance Conditions.**
- A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP Infuse with respect to any claim arising out of Vendor's performance under this Agreement;
 - B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify MMCAP Infuse within five (5) business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to MMCAP Infuse;
 - C. Vendor is responsible for payment of Agreement related insurance premiums and deductibles;
 - D. If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
 - E. Vendor's policy(ies) shall include legal defense fees in addition to its liability policy limits;
 - F. Vendor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and
 - G. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.
- 10.3 **Coverage.** Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies:
- A. Workers' Compensation Insurance: Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:
 - i. \$100,000 – Bodily Injury by Disease per employee
 - ii. \$500,000 – Bodily Injury by Disease aggregate
 - 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 – Products/Completed Operations
 - iv. The following coverages shall be included:
 - a. Premises and Operations Bodily Injury and Property Damage
 - b. Personal and Advertising Injury
 - c. Blanket Contractual Liability
 - d. Products and Completed Operations Liability
 - e. MMCAP Infuse named as an Additional Insured, to the extent permitted by law

**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 nationwide overnight carrier, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.
- 11.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the Minnesota, MMCAP Infuse, and/or the Minnesota Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Agreement. This clause extends to the Membership as it relates to business conducted with and sales a Member.
- A. **Invoice and Pricing Audit.** MMCAP Infuse and Members served by this Agreement may periodically audit validity of invoice pricing. Such audits may be conducted no more than annually, only during ordinary business hours and upon reasonable notice.
- B. **Costs.** Vendor, MMCAP Infuse, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.
- 11.3 **Assignment.** The Vendor may neither assign nor transfer any rights or obligations under this Agreement , except to a parent or affiliate, without the prior consent of MMCAP Infuse and a fully executed assignment agreement.
- 11.4 **Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved this Agreement, or their successors in office.
- 11.5 **Order of Precedence.** Vendor agrees that applicable federal and state law will supersede this Agreement, however this Agreement will take precedence over all other the terms, covenants, conditions, commitments, stipulations, Order Forms, website use of terms, Offer Letters, and other legal documents MMCAP Infuse, Vendor, and/or Member may use in the performance of this Agreement. If the provisions of this Agreement are inconsistent, or are modified, diminished, or derogated with any of the terms and provisions of the aforementioned legal documents in this Paragraph, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.
- 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.

[End of Agreement, Signature Page Follows]

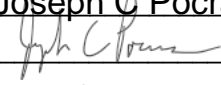
Accurate as of July 21, 2021

VENDOR: Nutricia North America, 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.

STATE OF MINNESOTA FOR MMCA**INFUSE**

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

Name: Joseph C PocrassSignature: Title: VP of FinanceDate: July 16, 2021

Name:

Signature:

Date:

DocuSigned by:

Michelle Korpela

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7/20/2021

Michelle Korpela

COMMISSIONER OF ADMINISTRATION

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

Name:

Signature:

Date:

DocuSigned by:

Jennifer Vanderplaats

Jennifer Vanderplaats

CD63E8188C004D1...

7/21/2021**[Signature Page]**

Accurate as of July 21, 2021

The **ATTACHMENT B** version

<http://www.mmd.administrator.com/MMD/Contacts/Default.aspx>
Further Discounts or Adjustments

Not Applicable



ATTACHMENT C

Accurate as of July 21, 2021

The most current version

<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>

CREDIT APPLICATION

Date:

Business Account

Legal Business Name:

DBA Name:

Billing Address:

City: State: Zip:

Ship to Address (If Different From Above):

City: State: Zip:

Estimated Annual Sales: Number of Employees:

Estimated Monthly Purchases from Nutricia: How Long in Business:

Email Address for Invoices:

Payment Method

☐ Credit Card ☐ Terms

Accounts Payable Contact First Name: Last Name:

Phone: Fax: Email:

Purchasing Contact First Name: Last Name:

Phone: Fax: Email:

Business Information

☐ Proprietorship ☐ Partnership ☐ Corporation ☐ LLC ☐ Other:

FEIN (Federal Tax Identification No.):or SS#:

Principal Owner(s) or Officers Name:

Address:

Title: Phone Number:

Dun and Bradstreet #: NPI #:

Business Type (Please check one):

☐ Pharmacy ☐ Wholesaler ☐ Hospital ☐ State ☐ Other:

Are you a member of a Group Purchasing Organization (GPO)? ☐ Yes ☐ No

If yes, please provide the name of the Group Purchasing Organization (GPO):

Sales Tax Exemption Certificate: ☐ Yes (if yes, enclose a signed certificate or copy) ☐ No



NUTRICIA CREDIT APPLICATION

References

Primary Nutritional Supplier Trade Reference

Name:

Street Address:

City:

State: Zip:

Contact Name:

Phone: Fax:

Primary Nutritional Supplier Trade Reference

Name:

Street Address:

City:

State: Zip:

Contact Name:

Phone: Fax:

Should credit availability be granted by Nutricia North America, all decisions with respect to the extension or continuation of credit shall be at the sole discretion of Nutricia North America. Nutricia North America may terminate any credit availability within its sole discretion.

The preceding information is for the purpose of obtaining credit and is warranted to be true. I/We hereby authorize Nutricia North America to investigate all references and customary credit information sources including consumer credit reporting repositories (see Consent to Obtain Consumer Credit Report below) regarding my/our credit and financial responsibility for the purpose of obtaining credit and for periodic review for the purpose of maintaining the credit relationship.

CREDIT TERMS: All invoices are due NET 30 DAYS from the date of the invoice. All amounts due for purchases from Nutricia North America are payable at P.O. Box 7247, Lockbox 7531 Philadelphia, PA. 19170-7531. A service charge of one-and-one-half percent (1 ½%) per month, or eighteen percent (18%) per annum may be assessed on delinquent invoices but not to at any time exceed the highest legal rate of interest legally allowed.

VENUE: It is further understood that this agreement is entered into in the State of Maryland, Montgomery County and is governed by the laws of the State of Maryland.

CHANGE OF OWNERSHIP: I/We understand that we must notify Nutricia North America in writing and by certified mail of any change in ownership, the name of the business or structure of the business under which credit is established.

COLLECTION AND ATTORNEY'S FEES: In the event of default, and if this account is turned over to an agency and/or attorney for collection, the undersigned agrees to pay all reasonable attorney's fees, and/or cost of collection whether or not suit is filed.

CERTIFICATE OF USE: I/We certify that this request is for the extension of credit for business purposes only and not for the extension of credit for personal, family or household purposes.

AUTHORITY OF SIGNATURE AND TITLE: The person executing this agreement has the authority to bind the customer and is authorized by the customer to enter into the credit application terms and conditions.

.....
Authorizing Signature.....
Position.....
Print Name.....
Date

ECOA Notice: The federal Equal Credit Opportunity Act prohibits creditors from discrimination against Credit Applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the Applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this credit is the Federal Trade Commission, Division of Credit Practices, 6th and Pennsylvania Avenue NW, Washington, D.C. 20580.

Submit Completed application along with a copy of your Controlled Substance Registration Certificate, Resale Certificate or Uniform Sales, Use Tax Certificate, W-9 and ACH banking information:

Nutricia North America – New Accounts

P.O. Box 117

Gaithersburg, MD. 20884-0117

Fax: 301-795-2302

Email: O:\d\{\^!&^ãæ||O\}~d&æ\{

Accurate as of July 21, 2021

The most current version

<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>**ATTACHMENT D****Reporting Requirements****Table 1: Required Data Field for Sales Data Report (Direct sales)**

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP Infuse-assigned Member ID or may be left blank
B	MMCAP Infuse Member Name
C	Vendor Distribution Center Code or may be left blank
D	Vendor-assigned Account number for MMCAP Infuse Member (this should be the ship-to account number)
E	Invoice Number
F	Invoice Line Number or may be left blank
G	Purchase Order Number or may be left blank
H	Invoice date (MMDDYYYY)
I	Buyer name or equivalent of buyer ID for person submitting the invoices (if available) or may be left blank
J	Vendor's SKU item number
K	NDC or NDC-like substitute of purchased Product as may be stored in First DataBank, Inc. or may be left blank
L	Label Name/Product Description
M	Unit Dose (Required for pharmaceutical Products) or may be left blank
N	Pack Size
O	Unit= Case
P	Case Size
Q	Dose (Required for pharmaceutical Products). or may be left blank
R	Strength (Required for pharmaceutical Products) or may be left blank
S	Route (Required for pharmaceutical Products) or may be left blank.
T	Unit Price (99999.9999)
U	Quantity Ordered (not Vendor repackaged or re-bundled quantity)(99999.9999). If unavailable, may duplicate (V) Quantity Shipped
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. If 340B/PHS not applicable, may default to 1= contract item.
Y	Bill to Address 1

Accurate as of July 21, 2021

Z	Bill to City The most current version
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	
AH	MMCAP Infuse Contract Number (MMS2100553)
AI	Admin Fee
AJ	Credit Indicator (C for credit) or may be left blank
AK	MMCAP- Infuse Assigned Wholesaler Code (Cardinal Health=0301, AmerisourceBergen=0401, Morris & Dickson=0701, McKesson Medical-Surgical MN Supply = 1005/ McKesson Medical Supply = 1055)
AL	Manufacturer Name (MFG Name)
AM	Class of Trade or may be left blank
AN	340b Purchase or may be left blank
AO	Category = Nutritionals or may be left blank
AP	Manufacturer Part Number/ SKU
AQ	List Price or may be left blank
AR	UNSPSC Code (XXXXXXXX) or may left blank
AS	UNSPSC Description or may be left blank
AT	GLN or may be left blank
AU	GTIN or may be left blank

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).

NUTRICIA RETURN POLICY

Customers shall follow the below procedure when requesting a product return:

- Contact the Customer Service Department (1-800-365-7354) to obtain a Return Merchandise Authorization (RMA) Number. The Company will not accept any product returns without prior approval and an RMA number. When you call, please have the purchase order or invoice number available along with; product name, item number, lot code number, expiration date, quantity and reason for return.
- In the event that shortages, errors, damages, or quality issues are noticed at time of delivery, it must be noted on the delivery paperwork and must be reported to Nutricia North America Customer Service within forty-eight (48) hours of delivery. All requests for an RMA number must be made within this same period.
- All product returns must meet the following conditions:
 - Product has been purchased directly from the Company.
 - Product has an expiration date greater than three (3) months when it arrives back to the Company.
 - Product must be unopened, in good condition and within the original master case. (Exception, products sold in single unit).
 - Product case(s) / carton(s) must be free of any markings, writing, labels or stickers.
 - Product must be returned in an outer shipping box which contains sufficient packing material.
 - Return product lot number must be the same as the original purchase order lot number.
 - The Return Merchandise Authorization (RMA) number must be written and visible on the outer shipping box for all packages.
 - Returned product may not be packaged with packing peanuts. Product cannot be exposed to packing peanuts.
- In the event that Product is returned without an RMA number marked on the outer shipping box or in violation of any of the other provisions of this Sales Policy, Company reserves the right to not issue a credit.
- Customer is responsible for all returned product shipping charges back to the Company, except in the case of shortages, errors, damages, or quality issues reported within forty-eight (48) hours of delivery.
- When a discounted product is returned and a restocking fee applies, restocking fee and credit will be applied to the **discounted** purchase only.
- A 20% restocking fee will be charged for all product returns, except in the case of shortages, errors, damages, or quality issues reported within forty-eight (48) hours of delivery.
- **The Company does not accept returns from indirect purchasers.** All indirect purchasers must return product to the vendor where the product was purchased to receive credit.
- **Product must be received by Company warehouse within thirty (30) days of RMA issuance.** Credit will be issued upon receipt, verification and inspection of all returned product.
- Please allow fourteen (14) business days for credit processing from receipt of the product(s) at the Company warehouse.

The terms and conditions in this Product Return Policy shall supersede any conflicting terms and conditions.

If the Customer does not notify the Company in accordance with the Product Return Policy, the Customer shall not be entitled to return the Goods, the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with this Policy.

Where any return of Goods is notified to the Company and authorized in accordance with the Product Return Policy, the Company shall be entitled to replace the Goods free of charge, or, at the Company's sole discretion, to refund to the Customer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer.

Where an invalid claim is made in respect of any of the Goods, which results in the Customer's return of Goods to the Company that do not conform to the requirements of the Product Return Policy, the Customer shall be liable for the full purchase price.