



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

Comprehensive Drug Testing, Inc.

MMS2000330

Prepared on June 23, 2020

Program Manager: Emilio Graulau

PREFIX A**DEFINITIONS & ACRONYMS**

Are attached and incorporated into the Agreement

Definitions

1. **Administrative Fee:** Means three percent (3%) of Contract Pricing for a Contracted Item
2. **Agreement, Contract, or Vendor Contract:** Means the resulting agreement that is reached between MMCAP and the Vendor.
3. **Authorized Representative:**
 - A. **MMCAP Infuse:** 112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155, Emilio Graulau or their successor or designee, and has the responsibility to monitor the Vendor's performance and the authority to accept the services provided under this Agreement. If the services are satisfactory, MMCAP's Authorized Representative will certify acceptance on each invoice submitted for payment.
 - B. **Vendor:** Comprehensive Drug Testing, Inc. (CDT), at the following: 230 Commerce Ste 100, Irvine, CA 92602, Art McGill, (714) 852-5200, art.mcgill@cdtsolutions.com or their successor or designee. If the Vendor's Authorized Representative changes at any time during this Agreement, the Vendor must immediately notify MMCAP.
4. **Contract Pricing:** Means the price that the Vendor has agreed to provide the Contracted Items to MMCAP and its Membership as set forth on **Attachment A** and any subsequent amendment to this Agreement.
5. **Contracted Items:**
 - A. **Product(s):** Means to all products offered by the Vendor in **Attachment A: Contract Pricing** and incorporated into this Agreement.
 - B. **Services:** Means any offering provided by the Vendor, related to the testing processes covered in this Agreement.
6. **Days:** Unless otherwise specified in this Agreement, all references to days will be calendar days.
7. **Donor:** A person who provides bodily samples, in order to be tested for drugs and/or alcohol.
8. **Government Unit:** Any entity as defined by Minnesota Statute 471.59, except for agencies of the United States (federal).
9. **Facility:** Means the authorized departments, facilities, and other municipalities approved by Member and MMCAP Infuse to access and use this Agreement.
10. **Member:** Means an approved MMCAP Infuse State or other Government Unit that has executed a membership application and Member agreement with MMCAP Infuse.
11. **Membership:** Means the joint power cooperative comprised of the MMCAP Infuse authorized States, Facilities, and other Government Units.
12. **Product(s):** Means to all products offered by the Vendor in **Attachment A: Contract Pricing** and incorporated into this Agreement.
13. **Services:** Means any offering provided by the Vendor, related to the testing processes covered in this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Acronyms

1. "ASD" refers to Alcohol Screening Device.
2. "BAT" refers to trained Breath Alcohol Technicians.
3. "CCF" refers to Chain of Custody Form.
4. "C/TPA" refers to a Consortia/Third Party Administrator.
5. "DER" refers to Designated Employer Representative.
6. "DOT" refers to the United States Department of Transportation.
7. "EAP" refers to Employee Assistance Program.
8. "EBT" refers to an Evidential Breath Testing device.
9. "eCCF" refers to electronic Chain of Custody Form.
10. "FAA" refers to the Federal Aviation Administration.
11. "FMCSA" refers to the Federal Motor Carrier Safety Administration.
12. "FRA" refers to the Federal Railroad Administration.
13. "FTA" refers to the Federal Transit Administration.
14. "GPO" refers to Group Purchasing Organization.
15. "MRO" refers to Medical Review Officer.
16. "NHTSA" refers to the National Highway Traffic Safety Administration.
17. "ODAPC" refers to the Office of Drug and Alcohol Policy and Compliance.
18. "OTETA" refers to the Omnibus Transportation Employee Testing Act of 1991.
19. "PHMSA" refers to the Pipeline & Hazardous Materials Administration.
20. "SAMHSA" refers to the Substance Abuse and Mental Health Services Administration.
21. "SAP" refers to Substance Abuse Professional.
22. "STT" refers to a Screening Test Technician.
23. "USCG" refers to the United States Coast Guard.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

PREFIX B**SCOPE OF WORK FOR SERVICES**

is attached and incorporated to this Agreement

1. Testing Types

- A. Vendor must follow testing procedures and requirements as set forth by the DOT and Members.
- B. Vendor is required to provide the following under this Agreement.
 - i. Pre-employment/Pre-placement testing
 - ii. Random Testing
 - a. Random test selection must be conducted in accordance with DOT regulations as specified by each DOT Mode, and/or in accordance with Member agencies' requirements nationwide (for the State of Minnesota DOT, no less than fifty percent (50%) of the driver pool for each participating employer will be selected for drug testing, and no less than ten percent (10%) of the same pool will be selected for alcohol testing). Responder shall use a scientifically valid method of determining the randomly selected employees, so that each employee has an equal chance of being selected for each testing period. Additional specifics on random testing may be required by Members, and Vendor shall comply with them.
 - b. Random selection lists shall be generated in a timely fashion, to allow the Member agency the ability to comply with Member's specific DOT agency regulations, and at the appropriate rate, to ensure that minimum annual random testing percentages are met.
 - c. The C/TPA shall ensure that user agencies are provided the option to have results reported to the user agency's DER in all the following ways:
 - 1. Via a secure, password protected website;
 - 2. via a secure and confidential electronic mail system;
 - 3. via a secure and confidential fax machine.
 - iii. Post-accident Testing
 - iv. Reasonable Suspicion Testing
 - v. Return-to-duty Testing
 - vi. Follow-up Testing
- C. Testing may occur at a Member authorized site, or at an authorized site away from the work location.
 - i. Vendor must meet the methodology as established by the DOT, and the Codes of Federal Regulation (CFRs) of all its agencies (FAA 14 CFR Part 120; FMCSA 49 CFR Part 382; FRA 49 CFR Part 219; FTA 49 CFR Part 655; PHMSA 49 CFR Part 199; USCG 46 CFR Part 4 and 46 CFR Part 16, which is now under the Department of Homeland Security).

Members may establish a work order process, in order to request Contracted Items. Contracted Item requested for through the work order process, are subject to all of the provisions of this master Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

2. Requirements for Drugs Testing

DOT drugs testing cutoffs as established by ODAPC. These may change, as prescribed by the DOT, and be amended into the Agreement. Vendor is responsible to conduct testing, according to the latest cutoffs, as set forth by the DOT Part 40.

DOT Rule 49 CFR Part 40 Section 40.87 (Subpart F §40.87) Drug Testing Laboratories Cutoffs				
Matrice	Initial Test Analyte	Confirmatory Test Analyte	Initial Test Cutoff Concentration	Confirmatory Test Cutoff Concentration
Urine	Amphetamines	Amphetamine Methamphetamine Methylenedioxymethamphetamine (MDMA) Methyldioxyamphetamine (MDA) Methylenedioxymethylamphetamine (MDEA)	500 ng/ml 500 ng/ml 500 ng/ml 500 ng/ml 500 ng/ml	250 ng/ml 250 ng/ml 250 ng/ml 250 ng/ml 250 ng/ml
	Cocaine Metabolite	Benzoylecggonine	150 ng/ml	100 ng/ml
	Marijuana Metabolites (THCA)	THCA	50 ng/ml	15 ng/ml
	Opioids	Codeine Morphine Hydrocone Hydromorphone Oxycodone Oxymorphone 6-Acetylmorphine	2000 ng/ml 2000 ng/ml 300 ng/ml 300 ng/ml 100 ng/ml 100 ng/ml 10 ng/ml	2000 ng/ml 2000 ng/ml 100 ng/ml 100 ng/ml 100 ng/ml 100 ng/ml 10 ng/ml
	Phencyclidine	Phencyclidine	25 ng/ml	25 ng/ml

- A. Vendor must conduct drug testing, following the methodology listed below:
 - i. Vendor will take security measures to prevent unauthorized access that could compromise the integrity of the collection process or the specimen.
 - ii. Chain of custody procedures will be followed by authorized collection site personnel.
 - iii. No unauthorized personnel will be permitted in any part of the designated collection site where urine specimens are collected or stored.
 - iv. The procedures for collection of a specimen shall allow individual privacy, unless there is reason to believe that an individual may alter or substitute the specimen provided.
 - v. Precautions will be taken to ensure that a urine specimen is not adulterated or diluted during the collection procedure, and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected.
 - vi. Collection control will be maintained by collection site personnel, to the maximum extent possible, keeping the individual's specimen bottle in sight throughout the collection process.
 - vii. Transportation of the sample to the laboratory shall follow chain of custody procedures.
 - viii. Failure to cooperate in the collection procedures by the employee shall be noted on the drug testing custody and control form by the collection site personnel.
 - ix. A Split Sample is required at the time of collection. A single void of 45ml is used. 30ml is used for the primary bottle and 15ml is poured into the secondary bottle. Both specimens are stored at the laboratory. The donor has 72 hours, after notification by the MRO, to request the split sample tested. The testing will be done at a second laboratory. Action taken by the MRO, the employer, the Vendor, and other required actions for the first confirmed positive, cannot be stayed or postponed pending the second result.

An employee who is unable to provide the required minimum amount of specimen will be required to consume up to 40 ounces of liquids during a three-hour period. If after three hours the employee is still unable to provide the required specimen, the testing effort will cease, and the employee will be referred to a licensed physician to determine if a medical basis exists for the failure to supply the required minimum sample. If there is no medical basis, the failure to supply an adequate amount of urine shall be determined as a refusal to test on behalf of the employee.

An employee who has a test reported by the MRO as a negative dilute, will be directed to take another test immediately.

3. Requirements for Alcohol Testing

DOT alcohol testing cutoffs as established by ODAPC. These may change, as prescribed by the DOT, and be amended into the Agreement.

DOT Part 40 Alcohol Testing Cutoffs		
Matrix	Test	Cutoff
Breath	Alcohol	.02% BAC or greater; violation of policy at .04% BAC or greater

A. Vendor must conduct alcohol testing, following the indications below

- i. Alcohol testing must be conducted by technicians who are trained BATs or STTs, through the use of a saliva device, and a non-evidential breath test device/ASD or EBT, with devices that are listed on the NHTSA Conforming Products Lists (CPL), that meet the requirements for confirmation testing, and ASDs, as listed by the DOT, as approved to conduct testing in bodily fluids.
- ii. A breath alcohol testing form must be used in the testing process.
- iii. A screening test must be conducted and, if a positive result (a level of 0.02% or greater, as established by ODAPC), a confirmation test must be conducted not less than fifteen (15) minutes after, nor more than thirty (30) minutes after the screening test.

An employee who is unable to supply an adequate amount of breath shall be sent, as soon as practical, to a licensed physician of the employer's choice. The physician shall decide (with written documentation) as to whether there was a medical condition that could have caused the failure to provide an adequate amount of breath. If the physician determines there was a medical condition, the employee's failure to supply an adequate amount of breath shall not be considered a refusal to test. If the physician is unable to make the determination that medical reason exists, the failure to supply an adequate amount of breath shall be deemed a refusal to test by the employee.

4. Additional Vendor Requirements

In addition to the requirements within this Scope of Work, Vendor is required to meet the following:

- A. Develop and maintain a system, including structure and process, for drug and alcohol testing in all categories required by OTETA.
- B. Obtain required information and complete tasks required, to comply with OTETA, except for those specifically associated with the SAP, as described by OTETA.
- C. Work with the DER at each Member agency, to implement Member's drugs and alcohol testing program.
- D. Provide test results to agency's DER.
- E. Conduct and process post-accident tests within the time limitations set forth in the applicable regulation;
- F. Provide, in conformance with OTETA requirements, the services of an MRO, who must be a licensed physician, and certified by one of the following:
 - i. The American Association of Medical Review Officers;
 - ii. the American Society of Addiction Medicine;
 - iii. the American College of Occupational and Environmental Medicine; or
 - iv. the Medical Review Officer Certification Council.
- G. Provide documented chain of custody process with applicable forms (CCFs and eCCFs).
- H. Appear when requested by Members, at administrative hearings, for the purpose of providing testimony, including employees and subcontractors of Vendor;
- I. Invoice Members and their identified MMCAP participating facilities bill-to addresses, for Services rendered on behalf of that agency.
- J. Submit reports during business reviews, providing details on process and results for each category of testing, as required by law. The documents must comply with OTETA requirements.
- K. Provide training when requested by an agency, on any proposed PC-based application to be used for the collection, storage, and security of records. All records will become the property of the State of Minnesota and/or Members, upon the execution of the Agreement.
- L. Provide secured electronic notification of tests results, or any other media, as required by Members, to each agency's DER identified by Members;
- M. Upon request, consult with DER regarding the federal regulations, trends and changes in drug and alcohol testing;

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

- N. Upon request, provide assistance to DER with training required under federal regulations;
- O. Upon request, provide Reasonable Suspicion training;
- P. Perform all the Services identified in *Schedule A: Pricing*, of this Agreement

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

PREFIX C**Vendor's Statement of Capability of Services**

CDT is a Third-Party Administrator (**TPA**) based in Irvine, California. For more than thirty (30) years, CDT has been providing drug and alcohol testing services, delivery, and a reporting system that ensures the required DOT chain-of-custody regulations are met. CDT's programs adhere to the strict guidelines of the Department of Health and Human Services (DHHS), as well as the Department of Transportation (DOT) regulations (49 CFR Part 40), with an emphasis on review of the specimen collection process and Medical Review Officer (MRO) services. CDT provides testing services for state and local governments, government agencies, private companies, and professional sports leagues.

CDT has more than thirty (30) years of experience with safety-sensitive employees of state and local governments, state and local agencies, and private companies. CDT manages programs that require stringent procedures and administrative program management, ensuring that these high-profile programs withstand scrutiny of every detail. For our clients that are covered by DOT regulations, CDT ensures that all aspects of our US DOT drug and alcohol testing program adhere to the strict guidelines in accordance with the 49 CFR Part 40 regulations (as amended) including the DOT's chain of custody process.

CDT currently provides drug and alcohol testing administration and management services to more than over 400 clients nationwide, manages more than 230 employee pools, and on average completes approximately 65,000 drug tests and 12,000 alcohol tests annually.

The hands-on management approach CDT provides to clients starts with the strict management of the Chain of Custody (COC) collection process and proper use of the Federal Custody Control Form (CCF). The attention to detail at the beginning of the employee drug and alcohol testing program provides the mechanism for accurate and controlled specimen collections, breath alcohol tests, alternative testing, MRO review, follow-up and program/result reporting to our clientele.

Today, CDT offers two Certified Substance Abuse Program Administrators (C-SAPA), as certified by CCDAPP, as well as others with additional training from DATIA, SAPAA, and other industry groups.

CDT will provide all services for each agency, FMCSA, PHMSA, FTA, USCG, FRA and FAA, and each test type required by Department of Transportation: Pre-Employment, Random, Post Accident, Return to Duty, Follow-Up and Reasonable Suspicion.

CDT currently service many different client bases, from school bus drivers and various government agencies, to construction and corrections agencies.

CDT can provide numerous testing options, from on-site mobile collections at the work site or office to convenient clinic locations for employees. CDT offers company pool maintenance, random selection, on-line resulting, and a 24/7 emergency phone line for after-hours needs to name a few.

CDT services offered including the following:

- MRO Services – through our MRO partners
- Regulation/policy review and guidance or training – including both in-person and online Reasonable Suspicion Supervisor Training
- Legal consultation – through CDT or our referral network of industry expert attorneys
- Technical expert testimony
- Litigation assistance
- Reasonable suspicion training – both in-person and online
- Mock audits
- SAP
- Background checks/screening
- Data access
- Testing services through our laboratory partners
- Collection supplies through our distribution partners
- Collections through our collection partners

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

CDT is a member of DATIA, SAPAA, and NDASA. In addition, CDT is a certified small business by the state of California, as well as a designated woman-owned business by the state of California. CDT staff and partners have numerous certifications from industry organizations. Examples of CDT staff and partner certifications include:

- Certified breath alcohol technicians (four on staff, plus collection network)
- Certified DOT specimen collectors (four on staff, plus collection network)
- DATIA continuing education certificates (more than 10)
- SAPAA continuing education certificates (more than 10)
- C-SAPA certified persons (two staff and partners)
- NDASA continuing education certificates (three in year one)
- Accredited and certified MROs (four accredited by the various organizations)
- Accredited and certified laboratories (four SAMSHA labs, as well as multiple HHS, state, CLIA and CMS accredited labs)

Certifications are available separately, due to file size limitations.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

AGREEMENT FOR MMCAP CONTRACT NO. MMS2000330

THIS Agreement ("Agreement" or "Contract") is entered into as of the Effective Date by and between the State of Minnesota acting through its Commissioner of Administration ("Minnesota" or "State") on behalf of the MMCAP Infuse ("MMCAP" or "MMCAP Infuse") and Comprehensive Drug Testing, Inc., a corporation with an address of 230 Commerce #100, Irvine, CA 92620 ("Vendor").

Contract Term:

- A. **Effective Date:** August 1, 2020, or the date MMCAP obtains all required signatures as required under Minnesota Statute, whichever is later.
- B. **Expiration Date:** July 31, 2022, or until all obligations have been satisfactorily fulfilled as determined by MMCAP, whichever occurs first.
- C. The Contract Term may be extended upon mutual agreement of MMCAP Infuse and Vendor.

AGREEMENT COMPONENTS

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

1. **Prefix A:** Definitions & Acronyms
2. **Prefix B:** Scope of Work for Services
3. **Prefix C:** Vendor's Statement of Capability for Services
4. **Attachment A:** Pricing
5. **Attachment B:** Stock Outage and Backorder Policy
6. **Attachment C:** Shipping Policy
7. **Attachment D:** Vendor's Return Policy
8. **Attachment E:** Vendor's Recall Policy
9. **Attachment F:** Vendor's Dispute Resolution Policy
10. **Attachment G:** Implementation and Transition Plan
11. **Attachment H:** Required Reporting
12. **Attachment I:** Business Interruption Plan
13. **Attachment J:** Minnesota Statutory Language

ARTICLE I
PRICING AND PRODUCTS

- 1.1 **Fixed Pricing.** Pricing for Contracted Items are listed **Attachment A** and will remain in effect during the initial two-year term of this Contract.
 - A. **Price Increases.** 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 must wait at least two (2) years from the Effective Date before it can submit a price increase. Price increases will only be accepted with (i) at least thirty (30) days' written notice; (ii) a force majeure condition can be established; (iii) and is approved by the MMCAP Infuse.
- 1.2 **Member Fees.** In the event a Member requires a fee be added to the Agreement price (e.g., member levied procurement fee or system use fee), that fee must be added on top of the Contract Pricing and Vendor may not absorb the fee. Vendor must not pay a member levied fee without first collecting the fee through increased service costs. The fees will be set aside and paid to the Member as detailed in the specific MPA.
- 1.3 **Competitive Pricing.** If MMCAP Infuse is made aware and determines during the Contract Term, Vendor is offering better Contract Pricing and/or Contracted Items to another or Government Unit, Vendor will have ten (10) days to work with MMCAP Infuse to amend this Agreement to provide MMCAP Infuse the same Contract Pricing and/or Contracted Items.
- 1.4 **Product Outages.** Vendor Product outages will be considered a failure to perform by the Vendor. In addition to the policy in **Attachment B**, the Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage. If there are any conflicts between this Paragraph and **Attachment B**, this paragraph supersedes and controls.
 - A. **Immediate Notification:** Vendor's ordering system will provide prompt notice to the MMCAP and its Members of any Products covered by this Agreement that the Vendor has placed on backorder. Vendor's backorder notification will include:
 - i. the Products placed on backorder status;
 - ii. the expected timeline of the backorder;
 - iii. the reason for the stock outage was caused; and
 - iv. how the Vendor intends to resolve the backorder situation.
 - B. **Direct Shipment:** If there are Products subject to a backorder that are deemed critical by MMCAP or a Member, and the Products are available from the supplier, the Vendor will make best efforts to have the

manufacturer of the Product, ship directly (drop shipped) to the Member via next day delivery. Any Products that are drop shipped to Member from the Vendor's supplier may be charged any additional fees or shipping charges. Upon request, Vendor will provide shipping options and costs to the Member.

ARTICLE II **PAYMENT AND DELIVERY**

2.1 **Conditions of Payment.** All services provided by the Vendor under this Agreement must be performed to the satisfaction of MMCAP and the Member, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment for work found by MMCAP to be unsatisfactory or performed in violation of federal, state, or local law.

2.2 **Payment Method.** Vendor will accept Electronic Funds Transfer (EFT) as a payment method and Member will initiate this process with its bank.

2.3 **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.

2.4 **Shipment of Products.** In addition to the policy in **Attachment C**, the Vendor agrees to utilize the following process. If there are any conflicts between this Article and **Attachment C**, this Article supersedes and controls. Vendor must distribute and deliver the Products covered under this Contract to the nationwide MMCAP participating facilities, 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 MMCAP participating facility without the prior written approval by the Member and MMCAP. Delivery under this Agreement shall be FOB Destination, freight prepaid and allowed to the MMCAP Member, 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 upon request.

- 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 (if applicable):** Vendor will only ship hazardous materials as allowed by the appropriate government regulations.
- C. **Damaged Products:** All damaged Products will be reported to Vendor's customer service department and applicable credits will be issued within ten (10) business days from date of notification of the damaged item.
- D. **Lost Products:** All lost Products will be reported to Vendor's customer service department. Vendor will issue credit within ten (10) business days of notification of lost Product; alternatively, re-shipment of missing Product will occur immediately after notification.
- E. **No Minimum Order Requirements:** During the term of this Agreement, there shall 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 has been inadequately packaged, the Member will notify Vendor's customer service department to log the complaint. Any costs associated with the return of special Product due to improper packaging or transport, will be at the expense of the Vendor.

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

- A. **Invoice Fields:** At a minimum, Vendor's invoice will contain the following fields:
 - i. Member name and Vendor-assigned account number for the Member;
 - ii. Invoice line number and Member's purchase order number (Member must provide a purchase order number at the time of order for this to appear on Vendor's invoice);
 - iii. Bill to and ship to address;
 - iv. Invoice date;
 - v. Vendor's SKU item number, Contracted Item name/description and packaging as associated with NDC number (if applicable to this Agreement);

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

- vi. Unit price, quantity ordered, quantity shipped, extension (unit price multiplied by the quantity shipped), and total invoice price; and
- vii. Applicable omit codes (e.g., manufacturer backorder, manufacturer discontinued, etc.).
- B. **Invoice Rounding:** Vendor agrees to round down if the third digit after the decimal is four (4) or less. Vendor agrees that any rounding will occur at the Member invoice unit price.
- C. **Invoice Disputes:** Member will notify Vendor of any known dispute with an invoice within fifteen (15) calendar days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the Member appropriately and provide a corrected invoice. Where the above is prohibited by a Member state's applicable law(s), the Vendor shall comply with requirements of that State's law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Agreement pricing within thirty (30) calendar days of notice of the dispute. This clause will in no way be deemed a limitation on the parties, as it relates to the future auditing and/or correction of invoices.
 - i. In the event that applicable state law mandates set-off by a Member, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.

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

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

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

2.8 **Products Returned to the Vendor.** Vendor's return policy is set forth on **Attachment D**. Vendor will accept returns in accordance with applicable laws, regulations, and normal business practices.

2.9 **Product Recalls.** Vendor's Recall Procedures/Policies are set forth in **Attachment E**. If there are any conflicts between this Paragraph and **Attachment E** this Paragraph supersedes and controls. If any Product covered by this Agreement requires modification, is removed, or recalled by the Vendor, then Vendor will promptly notify MMCAP and the affected Members within three (3) business 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.

ARTICLE III TERMINATION, CANCELLATION, AND REMEDIES

3.1 **Cancellation without cause.** MMCAP or the Vendor may cancel this Agreement any time, without cause, upon sixty (60) days' written notice to the Vendor. In the event of such a cancellation, the Vendor will be entitled to payment by the Membership, determined on a pro rata basis, for services satisfactorily performed.

3.2 **Termination for cause.** Either party may terminate this Agreement at any time, for cause, upon no less than sixty (60) days' written notice to the other party. Upon notice of termination, the noticed party shall have thirty (30) days to cure any defects.

3.3 **Termination for insufficient funding.** MMCAP 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 services covered here. Termination must be by written or fax notice to the Vendor. MMCAP is not obligated to pay for any services that are provided after notice and effective date of termination. However, the vendor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Minnesota will not be assessed any penalty, 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 must provide the Vendor notice of the lack of funding within a reasonable time of MMCAP receiving that notice.

3.4 **Force Majeure.** Parties hereto will not be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party. Force majeure will not apply to the extent that the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party claiming excuse of performance under this provision must provide the other party prompt written notice of the failure to perform, take commercially reasonable efforts to mitigate the damages caused to all parties, and take all necessary steps to bring about performance as soon as practicable.

3.5 **Breach.** In the event of a breach of this Agreement, MMCAP and Members reserve the right to pursue any other remedy available by law. Vendors may be removed from the Vendor's list, suspended, or debarred from receiving a contract for failure to comply with terms and conditions of the Agreement.

3.6 **Failure to Perform.** Upon failure to perform the following services 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, and is more than a minor defect or causes harm to MMCAP's ability to conduct business or its governmental purpose, or Vendor will pay the following fee to MMCAP: \$500/day, until resolved.
- B. **Inventory Management and Management of Products.** If a Contracted Item is not loaded, stocked, viewable, with accurate pricing by all Members, as required pursuant to this Agreement and within the timelines set forth herein, Vendor will credit to the Member submitting the request an amount equal to two and one-half percent (2.5%) of previous quarter's total purchases. Vendor will credit to the Member within thirty (30) days of the Member's notice.
- C. **Member Onboarding:** If Vendor does not provide Contract Pricing to a Member and overcharges Member, upon MMCAP Infuse notifying Vendor a Member is not receiving Contract Pricing in accordance to this Agreement, Vendor will have thirty (30) days to process credits in the amount of the over-payments made by Member.
- D. **Delivery Delays.** Deliveries shall be made by the Vendor in accordance with the time schedules in Schedule E or as otherwise agreed upon by the Vendor and Member. Where delivery is delayed, Vendor will credit to the Member a fee of sixty dollars (\$60.00) per order not delivered within sixty (60) minutes of the delivery time scheduled, and for each day the delivery is not received, payable as a credit to the Member within fourteen (14) calendar days of the original delivery date. Vendor shall not be responsible for paying the aforementioned fee for delays outside of its control.
- E. **Invoices.** Where Vendor submits subsequent invoices for any fees not related directly to product cost, Vendor shall reference the original invoice number or purchase order number. Vendor shall credit to the Member the amount of sixty dollars (\$60.00) for each subsequent invoice for fees not related directly to product cost submitted that fails to meet the above requirement.
- F. **Application of Fees.** The application of fees herein shall not excuse Vendor's performance obligations as set forth in this Agreement, nor will it waive any rights of MMCAP or Members to seek any and all available legal and equitable remedies. Vendor acknowledges that the fees set forth above are not penalties, but rather seek to make MMCAP and Members whole for any failure of performance by the Vendor, as based upon good faith estimates as agreed to by the parties.

3.7 **Dispute Resolution.** Vendor and Members will handle dispute resolution for unresolved issues using the following procedure.

- A. **Notification.** Parties shall promptly notify each other and MMCAP Infuse of any known dispute and work in good faith to resolve such dispute within thirty (30) days. Vendor and Member will use **Attachment F** as guidance, however it is not binding.
- B. **Escalation.** If parties are unable to resolve the issue in a timely manner, as specified above, either the Member or Vendor may escalate to MMCAP Infuse. When escalated to MMCAP Infuse, a teleconference will be scheduled with MMCAP Infuse and the Vendor to review the dispute and develop a proposed resolution and plan of action.
- C. **Performance while Dispute is Pending.** Notwithstanding the existence of a dispute the Vendor must continue without delay to carry out all of their responsibilities under the Agreement that are not affected by the dispute. If the Vendor fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP Infuse and/or Members as a result of such failure to proceed shall be borne by the Vendor.
- D. **No Waiver.** This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

ARTICLE IV

MEMBERSHIP

4.1 **Membership Listing.** MMCAP Infuse will provide Vendor a complete listing of the Membership, MMCAP reserves the right to add and remove Members during the Contract Term.

A. **New Members.** The Vendor must allow new Members to access to the Agreement. As new Members are added, MMCAP will provide Vendor with monthly e-mail notices announcing a new Membership list has been posted.

4.2 **Non-Solicitation.** During the term of this Agreement, Vendor will not solicit any Members or prospective MMCAP 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's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a participating facility that may include some products and services covered by this Agreement.

4.3 **Purchase Orders.** As a condition for purchasing under this Agreement, purchasers must be Members in good standing with MMCAP. Members may use their own forms for purchase orders. To the extent that the terms of any form conflict with the terms of this Agreement, the terms of this Agreement supersede. Each Member will be responsible for payment for services and provided to that Member by Vendor and MMCAP will not be liable for any unpaid invoice of any Member or Facility. Vendor agrees to invoice the Member for services provided as specified in **Attachment A**.

A. A purchase order constitutes a binding contract. All commodities 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 purchase order and/or the Agreement authorizes the ordering entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the Vendor

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

A. The Member fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the purchase order;

B. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of goods under the purchase order is prohibited or the Member is prohibited from paying for such goods from the planned funding source; or

C. Vendor commits any material breach of this Agreement or a purchase order.

Upon receipt of written notice of termination, Vendor will stop performance under the purchase order as directed by the MMCAP Member. Termination of a standing purchase order does not extinguish or prejudice the Member's right to enforce such purchase order with respect to Vendor's breach of any warranty or any defect in or default of Vendor's performance under such purchase order that has not been cured, including any right of the Member to indemnification by Vendor or enforcement of a warranty. If a standing purchase order is terminated, the Member must pay Vendor in accordance with the terms of this Agreement for goods delivered and accepted by the Member.

4.5 **Jurisdiction and Venue of Purchase Orders.** Upon completion of the Dispute Resolution process outlined in Article III of this Contract, and solely with the prior written consent of MMCAP 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 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.

4.6 **Verification of Authorized Members.** Upon request of MMCAP, Vendor must verify that it provides services and pricing under this Agreement only to Members.

4.7 **Member Eligibility.** Vendor will inform any prospective new MMCAP business account, it must complete forms with MMCAP before it can access the pricing and benefits of this Agreement.

4.8 **Extraneous Agreements.** The Vendor shall not enter into any additional agreement, with any Member, arising from this agreement for similar services, or amend this agreement in any way, without the written authorization of MMCAP.

4.9 **MPA.** In order to use this Agreement, Members require jurisdiction-specific paperwork or contract language. Vendor may be required to review an MMCAP MPA, as an addendum to this Agreement to provide for laws specific to a state or local jurisdiction. If these circumstances exist, the Vendor must work with MMCAP 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 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. Vendor will immediately report any such requests to the MMCAP Authorized Representative who will issue approval or denial in writing.

ARTICLE V **CONTRACT MANAGEMENT AND TRANSITIONS**

5.1 MMCAP Contract Transition and Implementation. In completing the transition of this Agreement, Vendor will work with MMCAP and Members to determine the appropriate steps and schedule for the transition. Vendor's procedure for implementing and transitioning Members to this Agreement is set forth on **Attachment G**.

- A. **Vendor Required Documentation.** Vendors will provide written notification to new and existing MMCAP Members, about the Vendor's required documentation and instructions, to enable the Member to transition to the Agreement.
- B. **Start-Up Inventory.** Vendor must have all Contracted Items loaded in its ordering system and have adequate Product supply available to order before the Effective Date.
- C. **Product Samples and/or Demonstration Models.** Upon request from a Member, the Vendor agrees to provide Product samples and/or demonstration models to any Member at no cost. Upon request from Member, the Vendor will also provide training on the Products covered by the Agreement.

5.2 Management of Contract Products and Services

- A. **Price Loading Requirements:** Vendor will be responsible for processing file updates, or the files sent to the Vendor by MMCAP, which specify pricing for Products and Services.
 - i. Vendor will load and make viewable in its ordering system, all data lines from the contract file update notifications, on a date agreed upon between the Vendor and MMCAP.
- B. **Product Additions/Deletions:** Vendor will make reasonable efforts to keep MMCAP informed of any updates or changes to Products.
- C. **Product Substitution:** The intent of this Agreement is to provide Products included on **Attachment A: Pricing**, and not Product substitutes. However, if a Product is not available at the time of order placement, Vendor will work with MMCAP and Member to determine if there is a satisfactory substitution. Vendor will only substitute Products with Member's and MMCAP's approval.

5.3 Vendor Reporting: Required reports found in **Attachment H**

5.4 Administrative Fee. In consideration for the administrative support and other services provided by MMCAP Infuse in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on all purchases of Contracted Items made by Members with the Vendor.

- A. The payment of the Administrative Fees is intended to be in compliance with the Medicare and Medicaid Patient Protection Act of 1987 (Anti-Kickback Statute) and 42 U.S.C. §1320a-7b(b)(3)(A) and the "Safe Harbor" regulations regarding discounts or other reductions in price set forth at 42 C.F.R. §1001.952(h) and GPOs set forth at 42 C.F.R. §1001.952(j). Vendor will not pay an Administrative Fee on the same purchase to more than one GPO, nor will Vendor split an Administrative Fee on any item between such groups
- B. Vendor must provide Administrative Fee data to MMCAP Infuse within ten (10) business days after the end of each calendar month. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar month, but no later than thirty (30) calendar days after the end of the calendar month. The Vendor will submit a check payable to "State of Minnesota, MMCAP Infuse Program."
- C. Vendor shall not be required to pay the Administrative Fees on tax amounts, returns, or other shipments for which Vendor did not collect payment.

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

6.1 Covenant of Laws. Vendor shall comply with all state and federal laws, as applicable to each Member State, in the performance of this Agreement.

6.2 Required Licenses, Permits, and Registration. Vendor shall have in place prior to the start of the Agreement, and must maintain for the life of the Contract, all current licenses, permits and registrations required by state and federal agencies. Vendor must make such documentation available upon request by MMCAP.

6.3 **Business Interruption Plan.** Vendor must have an emergency preparedness and business continuity plan (**Attachment I**). Vendor will work with each requesting Member, to develop a pre-selected list of Products to be shipped in the event of a national or regional emergency.

6.4 **Federal Health Care Program Exclusion.** Vendor represents that it, its directors, officers, and employees are not (A) sanctioned individuals or companies and have not been listed by any federal agency as barred, excluded, or otherwise ineligible for participation in federally funded health care programs as defined in 42 U.S.C. Sec. 1320a-7b(f) (**Federal Healthcare Programs**); (B) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (C) are not under investigation or otherwise aware of any circumstances which may result in such Vendor being excluded participation in Federal Healthcare Programs. Vendor agrees not to enter into a subcontract with any individuals or companies that have been sanctioned, debarred or excluded from participation in any Federal Healthcare Programs. Vendor agrees to indemnify, hold harmless and defend the State of Minnesota, MMCAP, and Members from any claims, demands or damages which the State of Minnesota, MMCAP, and its Members may suffer as a result of Vendor's breach.

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

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

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

A. Intentional, willful, or negligent acts or omissions;

B. Fraud and or deceit;

C. Actions that give rise to strict liability;

D. Breach of contract;

E. Breach of warranty;

F. Violations of federal, state, or local laws, orders, and/or policies;

G. Employees or subcontractors' criminal and civil claims; and/or

H. Failure to pay fees, charges, expenses, taxes, or other debts to third-parties.

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

6.8 **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/or Minnesota tax identification number, already provided to the Minnesota, to federal and state agencies, and state personnel involved in the payment of 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.

ARTICLE VII WARRANTS, COVENANTS, AND DUTIES OF MMCAP

7.1 **GPO Representation.** MMCAP represents and warrants that it is a "group purchasing organization" as that term is defined under 42 C.F.R. Section 1001.952(j) and that it shall comply with all applicable federal and state laws, rules and regulations, including, but not limited to, the provisions set forth in 42 U.S.C. Section 1320a-7b and the "safe harbor regulations" set forth in 42 C.F.R. Section 1001.952.

7.2 **DEA License/HIN.** Vendor shall not require a Members to have a DEA number in order to obtain products unless making orders for controlled substances. Member facilities will have HIN numbers assigned by MMCAP.

7.3 **Administrative Fee.** In consideration for the administrative support and other services provided by MMCAP in connection to this Agreement, the Vendor agrees to pay an Administrative Fee on all purchases of products and services made by Members with the Vendor.

- A. The payment of the Administrative Fees is intended to be in compliance with the Medicare and Medicaid Patient Protection Act of 1987 (Anti-Kickback Statute) and 42 U.S.C. §1320a-7b(b)(3)(A) and the "Safe Harbor" regulations regarding discounts or other reductions in price set forth at 42 C.F.R. §1001.952(h) and GPOs set forth at 42 C.F.R. §1001.952(j). Vendor will not pay an Administrative Fee on the same purchase to more than one GPO, nor will Vendor split an Administrative Fee on any item between such groups
- B. Vendor must provide Administrative Fee data to MMCAP within ten (10) business days after the end of each calendar month. The Administrative Fee must be paid as soon as is reasonable after the end of each calendar month, but no later than thirty (30) calendar days after the end of the calendar month. The Vendor will submit a check payable to "State of Minnesota, MMCAP Program."
- C. Vendor shall not be required to pay the Administrative Fees on tax amounts or returns or other shipments for which Vendor did not collect payment.

ARTICLE VIII INTELLECTUAL PROPERTY

8.1 **MMCAP Ownership.** MMCAP owns all rights, title, and interest in MMCAP customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP grants to Vendor an unlimited, non-revocable, nontransferable, fully paid license, for the term of this Agreement, to: (A) release state specific data to a Member's state 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-approved third parties, when necessary for the performance of this Agreement; (D) to provide Member purchase data to aggregators, including IMS Health and NDC Health, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party; and (E) to provide Member purchase data to other group purchasing organizations of which the Member is also a member, provided such data will not include MMCAP-identifiable data. Any MMCAP identifiable data provided hereunder to a third party must identify the data as MMCAP data and subject to Minnesota Statutes, Chapter 13. To the extent permitted by law, Vendor hereby agrees that in the event that MMCAP or a Member requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.

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

8.3 **Pre-Existing Intellectual Property.** MMCAP and Vendor will each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. Vendor grants to Minnesota an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, non-transferable license to use and modify any pre-existing Vendor intellectual property, including marketing materials and materials contained in solicitation responses provided by Vendor to MMCAP or a Member. The aforementioned license is solely for use by MMCAP Members, and their agents related to an internal business or governmental purposes.

8.4 **Intellectual Property Warranty and Indemnification.** Except as otherwise set forth below, Vendor warrants that any materials, software, or products produced by Vendor will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify Vendor. Vendor, at its own expense, will indemnify, defend to the extent permitted by the Minnesota Attorney General's Office, and hold harmless MMCAP against any loss, cost, expense, or liability (including reasonable legal fees) arising out of such a claim, whether or not such claim is successful against MMCAP.

- A. If such a claim has occurred, or in the Vendor's opinion is likely to occur, the Vendor will either procure for MMCAP the right to continue using the materials or products or replacement or modified materials or products. 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.

B. In the event of a third party claim of infringement by any material, software or product provided by Vendor or utilized by Vendor in the performance of this Agreement, but produced by a third party, Vendor's indemnification obligations set forth in this Article shall apply to the extent that the third party's indemnification obligation to the Vendor is available to MMCAP or Vendor will assist MMCAP in tender of such claim directly to the manufacturer of such material, software or product.

8.5 **Publicity and Endorsement.** Any publicity regarding the subject matter of this Agreement must identify MMCAP as the sponsoring agency and must not be released without prior written approval from MMCAP's Authorized

Representative. 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 MMCAP Member must be approved by MMCAP. Violation of this may be cause for immediate cancellation of this Agreement and/or MMCAP may reject any proposal submitted by the Vendor in any subsequent solicitations for service contract awards.
- B. Endorsement. The Vendor must not claim that MMCAP, the State of Minnesota, or any Member State endorses its products or services, nor may MMCAP claim that the Vendor endorses its products or services.

ARTICLE IX

INSURANCE

Vendor will not commence work under the Agreement until they have obtained all the insurance described below and MMCAP has approved such insurance. Vendor will maintain such insurance in force and effect throughout the term of the Agreement.

9.1 Policies. 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 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. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate
 - iii. \$2,000,000 – 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 named as an Additional Insured, to the extent permitted by law

- C. Network Security and Privacy Liability Insurance, Including Ransomware (or equivalent): Vendor will maintain insurance to cover claims which may arise from failure of Vendor's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data including but not limited to confidential or private information, transmission of a computer virus or denial of service. Insurance minimum limits are as follows:
 - i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate

- D. Professional/ Technical, Errors and Omissions, and or Miscellaneous Liability Insurance: This policy will provide coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to the Vendor's services required under the Agreement. Insurance minimum limits are as follows:
 - i. \$2,000,000 – per occurrence
 - ii. \$2,000,000 – annual aggregate

- E. Commercial Automobile Liability Insurance: Vendor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from

operations under this Contract, and in case any work is subcontracted the Vendor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance minimum limits are as follows:

- i. \$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage
- ii. Included: Owned, Hired, and Non-owned Automobile

9.2 **Deductibles.** Any deductible will be the sole responsibility of the Vendor and my not exceed \$50,000 without written approval of MMCAP. If the Vendor desires authority from MMCAP to have a deductible in a higher amount, the Vendor will make a request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that MMCAP can ascertain the ability of the Vendor to cover the deductible from its own resources.

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

9.4 **Additional Requirements.**

- A. Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Agreement;
- B. If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor agrees to notify MMCAP 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;
- 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 shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A-(minus); Financial Size Category (FSC) VII or better, and authorized to do business in Minnesota; and
- G. An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Agreement.

9.5 **Failure by Vendor.** MMCAP 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 Minnesota, and copies of policies must be submitted to MMCAP's Authorized Representative upon written request.

9.6 **Submission.** The WHOLESALER is required to submit Certificates of Insurance acceptable to MMCAP as evidence of insurance coverage requirements prior to commencing work under the Agreement.

ARTICLE X
GENERAL TERMS

10.1 **Notices.** If one party is required to provide legal notice or notice under the terms of the Agreement to the other, such notice will be in writing and will be effective upon dispatch. Delivery shall be by certified United States mail, or by email or facsimile transmission provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes.

10.2 **Audits.** Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State, MMCAP, and/or the State 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 and Members served by this Agreement may periodically audit Members to determine the validity of invoice pricing. Such audits may be conducted only during ordinary business hours and upon reasonable notice.
- B. **Costs.** Vendor, MMCAP, and Members shall each be responsible for its own costs associated with any audit, including costs related to the production of records and/or other documents requested by the other party.

10.3 **Personnel Changes.** Vendor will notify MMCAP of changes in the Vendor's key personnel, in advance and in writing. Any employee of Vendor, who, in the opinion of MMCAP, is unacceptable, will be removed from the project upon written notice to the Vendor. In the event that an employee is removed pursuant to a written request from MMCAP's authorized representative, the Vendor will have ten (10) business days in which to fill the role with an acceptable employee.

10.4 **Assignment.** The Vendor may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of MMCAP and a fully executed assignment agreement.

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

10.6 **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, 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 with any of the terms and provisions of the aforementioned legal documents in this section, this Agreement will supersede and govern. MMCAP Infuse does not agree to or bound by any additional terms and conditions between the Vendor and Member.

10.7 **Counterparts and Electronic Signature.** The Agreement cannot be executed in counterparts and will not be enforceable until MMCAP has obtained all required signatures. If requested by MMCAP 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 will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this Agreement is an electronic record or transferable record.

10.8 **Severability.** If any provision of the Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions. If the remainder of the Agreement is capable of performance, it will not be affected by such declaration or finding, and will be fully performed.

10.9 **Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

10.10 **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. Except to the extent that the provisions of this Agreement are clearly inconsistent therewith, this Agreement will be governed by the Minn. Stat. § 336, the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent this Agreement entails delivery or performance of services, such services will be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

VENDOR: Comprehensive Drug Testing, Inc

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

Name: Art McGill
 Signature: Cetha O. McGill
 Title: VP
 Date: 6/25/2020

STATE OF MINNESOTA FOR MMCAP INFUSE

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

Name: James Losinski
 Signature: James Losinski
 Date: 0CAAB984AFAD40F 6/26/2020

COMMISSIONER OF ADMINISTRATION

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

Name: Sara Turnbow
 Signature: Sara Turnbow
 Date: 694A6F1D2CF64DE 6/26/2020

ATTACHMENT A**PRICING**

DOT Drug & Alcohol Testing								
Matrice	Test	Item Description	Unit of Measure	Product ID	Pricing	Discount 10 Calendar Days (%)	Discount 20 Calendar Days (%)	Discount 30 Calendar Days (%)
Urine 5 Panel	Amphetamines	Amphetamine	Entire 5 Panel	CDT-DOT-Panel	\$15.00	0	0	0
		Methamphetamine						
		Methylenedioxymethamphetamine (MDMA)						
		Methyldioxyamphetamine (MDA)						
		Methylenedioxymethylamphetamine (MDEA)						
	Cocaine Metabolite	Benzoylecggonine						
		THCA						
	Opioids	Codeine						
		Morphine						
		Hydrocone						
		Hydromorphone						
		Oxycodone						
		Oxymorphone						
		6-Acetylmorphine						
Breath	Phencyclidine	Phencyclidine	Each	CDT-BAT	\$35.00			

Services Pricing						
Description	Product ID	Unit of Measure	Pricing	Discount 10 Calendar Days (%)	Discount 20 Calendar Days (%)	Discount 30 Calendar Days (%)
MRO Services (per test review)	CDT-MRO	Per result	\$6.00	0	0	0
Sample collection – collection site	CDT-STND	Per collection	\$40.00			
Sample collection – mobile collection	CDT-MOB	Per collection	\$110.00			
Breath Alcohol – collection site	CDT-BATAH	Per collection	\$45.00			
Breath Alcohol – mobile collection	CDT-BATM	Per collection	\$55.00			
Split specimen Fee	CDT-SPLIT	Per test	\$100			
Regulatory policy review	CDT-POL	Per hour	\$150/hour			
Legal consultation	CDT-LEG	Per hour	\$250/hour			
Technical Expert Testimony	CDT-TEST	Per hour	\$250/hour			
Technical Expert Testimony, travel expenses	CDT-TESTT	Per event	Pass through			
Litigation Package	CDT-LIT	Per copy	\$275			
Reasonable Suspicion Supervisor Training – online	CDT-RSSPO	Per person	\$30			

Reasonable Suspicion Supervisor Training – in-person	CDT-RSSP	Per hour	\$350			
Reasonable Suspicion Supervisor Training – in-person travel expenses	CDT-RSSPT	Per event	Pass through			
Mock Audits	CDT-MOCK	Per audit	\$500			
SAP	CDT-SAP	Per referral	\$25.00			
Random Pool Draws and Management	CDT-RAN	Per pool	\$250			
Test Scheduling	CDT-SCH	Per test	\$5.00			

Products Pricing							
Matrice	Description	Product ID	Unit of Measure	Pricing	Discount 10 Calendar Days (%)	Discount 20 Calendar Days (%)	Discount 30 Calendar Days (%)
Alcohol	Q.E.D. Saliva Alcohol Test, Semi-quantitative, DOT Approved	Oral-QED	Box	\$10.00	0	0	0
	Alco-Screen Saliva Alcohol Test Strip, CLIA-Waived, DOT Approved	Oral-AlcoScreen	Box	\$3.00			
	AlcoMate Kit – AL 7000 F Kit, DOT Approved	AL7000	Each	\$200			
	AlcoHAWK PT500 Digital Alcohol Detector, DOT Approved	Breath-PT500	Each	\$225			
Urine							

Fees						
Description	Product ID	Unit of Measure	Pricing	Discount 10 Calendar Days (%)	Discount 20 Calendar Days (%)	Discount 30 Calendar Days (%)
Sample collection – collection site, after hours fee	CDT-AH	Per collection	\$15.00	0	0	0
Sample collection – collection site, weekend/holiday hours fee	CDT-HWK	Per collection	\$35.00			
Sample collection – mobile collection, after hours fee	CDT-MAH	Per collection	\$15.00			
Sample collection – mobile collection, weekend/holiday hours fee	CDT-MHWK	Per collection	\$15.00			
Sample collection – mobile collection, wait time fee	CDT-MWT	Per event	\$35/hour			
Sample collection – mobile collection, mileage fee	CDT-MIL	Per event	IRS reimbursement			
Breath Alcohol – mobile collection fee	CDT-BATM	Per collection	\$10.00			
Breath Alcohol – mobile collection, wait time fee	CDT-MWT	Per event	\$35/hour			
Breath Alcohol – mobile collection, mileage fee	CDT-MIL	Per event	IRS reimbursement			
Background Check/Screening – Basic, exclusive of access fees	CDT-BACK	Per person	\$35.00			
Background Check/Screening – Extensive, exclusive of access fees	CDT-BACKE	Per person	\$65.00			
Employee verification, exclusive of access fees	CDT-EMPV	Per employer	\$15.00			

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT B

Stock Outage and Backorder Policy

Confirm BioSciences Stock Outage and Backorder Policy is that if a product is stocked out, customer will be notified within 24 hours and can either place the product on backorder or switch to an alternate item of same or better value. Customer approval required for alternate products.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT C

Shipping Policy

Confirm BioSciences Shipping Policy is that all orders will ship same-day if received by 1pm PST. If there are any extenuating circumstances or delays the customer will be notified. Unless otherwise noted, shipping will be FOB Destination, Prepaid and Allowed, per section 2.4, Article II.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT D
Vendor's Return Policy

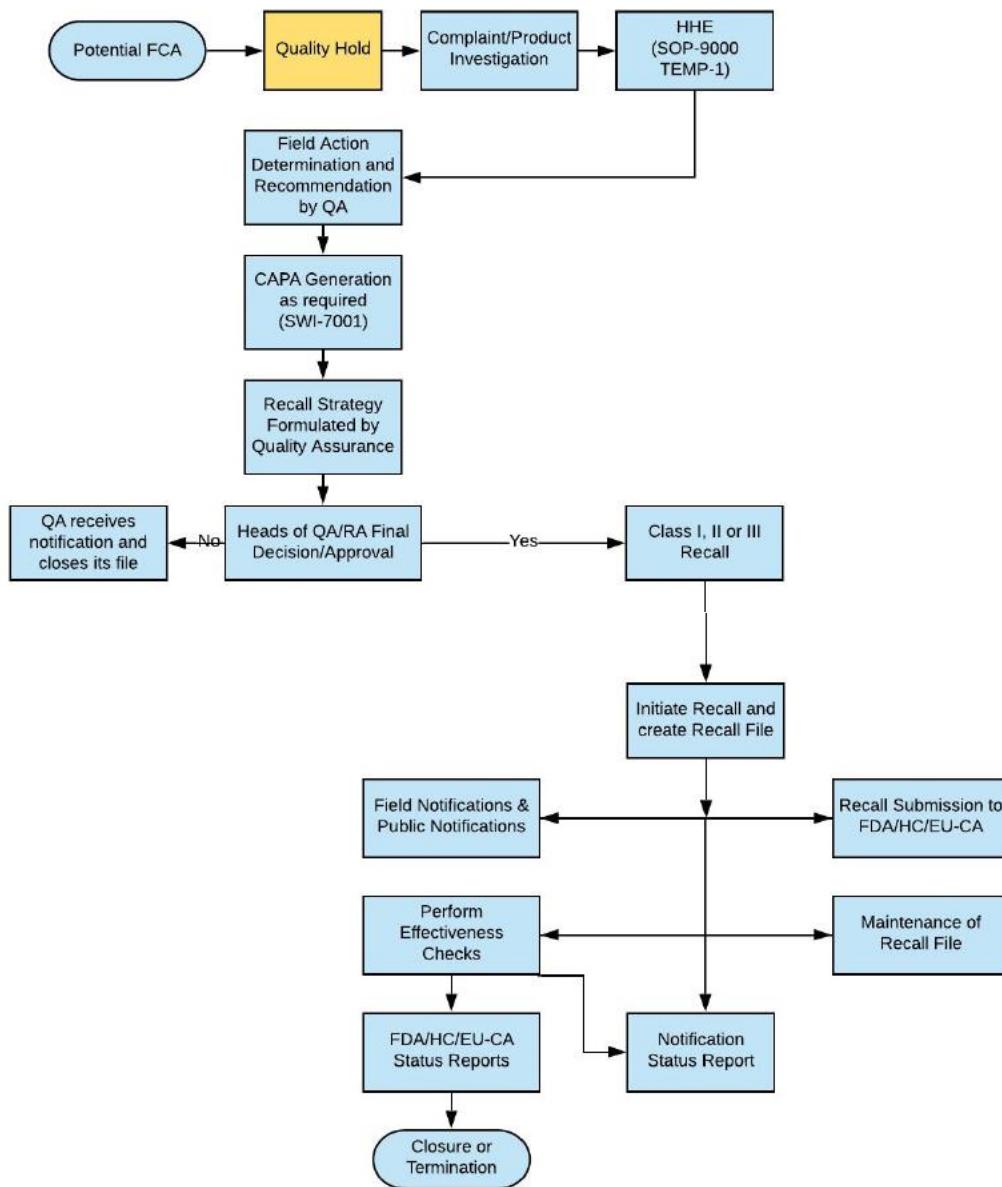
Confirm BioSciences Return Policy is that all product returns require an RMA from Confirm BioSciences, Inc. Product must be in the original condition. Return requests must be made within thirty (30) days since the date products are received. Customer is responsible for return shipping fees. A 25% restocking fee applies to any approved returned product. *Should products be damaged or defective upon receipt we will endure all shipping cost.

For more information, the following link outlines the Terms & Conditions: <https://www.confirmbiosciences.com/terms-and-conditions/>

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT E
Vendor's Recall Policy

Confirm BioSciences Recall Policy is an in-depth manual for addressing product correction or removal, as directed by the regulations set forth by the U.S. Food and Drug Administration (FDA) in 21 CFR, Parts 7, 806 and 810, as well as the regulations and requirements applicable to the European Union, Canada. The Policy outlines the responsible parties for each step in the process, including: Quality Assurance; Customer Service; Medical Advisor; and other employees. Below is a procedure overview:



The full policy is available upon request.

ATTACHMENT F
Vendor's Dispute Resolution Policy

In the event a dispute arises, CDT is able to have executive team involvement and would expect to review the dispute within 24 hours of notice, in the hopes of discussing with client within 48 hours.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT G
Implementation and Transition Plan

At CDT we have a marketing plan and an onboarding plan,; but these are client specific, and applying them one-size fits all to the Members of the MMCAP most likely is not appropriate. Each Member will have its own nuances to be addressed.

For this instance, we would plan to do the following:

- Coordinate our marketing message and Member outreach with MMCAP to ensure MMCAP is aware of what we intend to communicate to Members, welcoming any feedback MMCAP has to offer
- Let MMCAP know what Members we are contacting and when, so MMCAP is aware of who we are reaching out to in the Membership
- Keep MMCAP informed of ongoing discussions, recognizing MMCAP may not need to be part of those ongoing discussions
- Make MMCAP aware of new clients for CDT

When new customers are being onboarded:

- CDT starts with an onboarding interview, focusing on how a client's current process works, what the pain points are, what works well that would like to be continued and other similar topics
- Introduction to CDT staff that are primary points of contact and backup points of contact
- Introduction and training, if applicable, on CDT systems so client is aware of how to leverage CDT's platforms
 - Depth of systems training dependent on CDT services desired by client
- Client preferences dictate onboarding process
 - Clients that want CDT to handle drug testing "soup to nuts" will have an onboarding process that covers "soup to nuts"
 - Clients that want CDT to handle one aspect (i.e. MRO services) will have an onboarding process that addresses the one aspect
 - CDT open to MMCAP participating in the entire process, as long as the client has no objections
 - If clients do object, CDT willing to provide MMCAP with the same onboarding process as a generic client
- MMCAP participation at its own willingness and discretion; not required by CDT
- Upon execution of Agreement and award to CDT:
 - Expect to initiate reaching out to Members within 10 days of award
 - Upon contracting with Members, as CDT sets up and registers Members in CDT's system, CDT will also register each Member's Member ID in the CDT system, ensuring a seamless and easy way to tie the Member back to MMCAP
 - MMCAP SAEs are welcome partners to CDT, and CDT would be interested in reaching out and leveraging their services and expertise

ATTACHMENT H
Required Reporting

1. Reporting Requirements

Vendor must provide all of the following reports to the recipients as directed below. All reports must be available in an electronic Microsoft Excel file format, and contain the required information fields. Vendor will work with MMCAP during the transition and implementation period of this Contract, to ensure the Vendor's required reports meet the reporting requirements of this Contract. If customized reports are requested by Members, these will be furnished, as mutually agreeable between the Member, MMCAP, and the Vendor.

1.1. Reporting Tools

- a. Vendor must provide online electronic access to all MMCAP participating facilities. Upon request, Vendor will provide access to related Member to obtain purchasing data.
- b. Vendor will provide MMCAP online access to Contracted Items and Pricing. Electronic access will provide a system for reporting each individual Member's purchases, as well as reports on select groups of facilities. Users must be able to manipulate the data, in order to build reports based on each MMCAP participating facility's or Member state's individual need, and/or ability to transfer data into spreadsheets in a Microsoft Office compatible format.
- c. At a minimum, Vendor will provide the following on-line reporting tools:
 - Purchase Summary Report - ranks items by sales value, over a designated period of time;
 - manufacturer backorder reporting;
- d. Vendor will set up a user login on Vendor's online reporting system for each Member state and MMCAP, with all Member accounts for reporting purposes at no cost.

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

1.2. Monthly Sales Data Usage and Administrative Fee Data Reports

All reports indicated in this section, must be available in both paper copy and in an electronic Microsoft Excel file format, and contain the required information fields set forth below. Vendor will work with MMCAP during the transition and implementation period of this Contract, to ensure the Vendor submits the required reports in a format and content, mutually agreeable to both parties. If requested by an MMCAP participating facility, Member state or MMCAP, the requested report must be customized to report data specific to the requesting entity.

a. Monthly Sales Data Usage Reports for the MMCAP Office

Vendor will supply to MMCAP, accurate monthly sales data no later than ten (10) business days, of the subsequent calendar month. The report must include Product and Services, and dollar spend amount sorted in descending order, and grouped by Product and Services category. Also, the report must include the information set forth below, for every transaction between the Vendor and the Member:

- The table details the required record layout, in a fixed record format.
Vendor will pay an Administrative Fee on Products and only those Services that incur fees.

b. Administrative Fee Data Report

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

The monthly *Administrative Fee Data Report* must contain the fields set forth below, as those fields apply to this Contract. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to mn.mmcap@state.mn.us and mmcap_infuse.adminfee@state.mn.us, on or before ten (10) business days of the subsequent calendar month. Failure to comply with this provision, may constitute breach of this Contract. In the event the Vendor is delinquent in any undisputed Administrative Fees, MMCAP reserves the right to terminate this Contract, as set forth in *Contract Terms, Section 3*, and to reject any proposal submitted by the Vendor in any subsequent solicitations for drugs and alcohol testing Products and Services. Vendor will pay an Administrative Fee on Products and only those Services that incur fees.

Table 2

Excel Column	Required Data Field Full Name for Sales Data Report
A	MMCAP-assigned facility ID
B	MMCAP Facility Name
C	Vendor Distribution Center Code
D	Vendor-assigned Account number for the MMCAP Facility (this should be the ship-to account number).
E	Invoice Number
F	Invoice Line Number
G	Purchase Order Number
H	Invoice date (mmddyyyy)
I	Buyer name or equivalent of buyer ID for person submitting the invoices (if available)
J	Vendor's (distributor) SKU item number
K	NDC of purchased Product in 5-4-2 format as stored in First DataBank, Inc. (Required for pharmaceutical Products)
L	Label Name/Product Description
M	Unit Dose (Required for pharmaceutical Products)
N	Pack Size
O	Unit
P	Case Size
Q	Dose (Required for pharmaceutical Products)
R	Strength (Required for pharmaceutical Products)
S	Route (Required for pharmaceutical Products)
T	Unit price (99999.9999)
U	Quantity ordered (not Vendor repackaged or re-bundled quantity) (999999.9999)
V	Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
W	Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
X	Type of transaction (MMCAP Contract purchase, other Contract purchase (340B,PHS), not on Contract purchase) 1=core item, 2=non-core, 3=not on Contract
Y	Bill to Address 1
Z	Bill to City
AA	Bill to State (2 alpha postal code)
AB	Bill to Zip (standard 5-4 format, no dash necessary)
AC	Ship to Address 1
AD	Ship to City
AE	Ship to State (2 alpha postal code)
AF	Ship to Zip (standard 5-4 format, no dash necessary)
AG	Service Fee (9999.9999)
AH	MMCAP Contract Number (MMSxxxx)
AI	Admin fee (9999.9999)
AJ	Credit Indicator (C for credit)
AK	MMCAP Assigned Wholesaler Code (Codes will be assigned to PPV's during implementation period of the Contract)
AL	Manufacture Name (MFG Name)
AM	Class of Trade
AN	340b Purchase
AO	Category
AP	Manufacturer Part Number
AQ	List Price
AR	UNSPSC Code (XXXXXXXX)
AS	UNSPSC Description

1.3. Sales Data Usage Report for the MMCAP Participating Facilities and Member State Contacts

Upon request from an MMCAP participating facility or Member State Contacts, Vendor will provide a *Sales Data Usage Report* within ten (10) business days from the date of the request. The report data will provide a summary of a Member's total usage by Product and dollar spend amount, sorted in descending order, and grouped by Product category for a specified date range. Upon request by the MMCAP participating facility and/or Member State Contacts, the following reports must be made available through Vendor's custom reporting tools. Vendor must be able to supply to the MMCAP participating facilities, accurate reports with the following information:

- a. Monthly, quarterly, and annual reports, detailing total purchases (payment amount and units) by individual Product, (clearly identified via SKU and UNSPSC Code if applicable) sorted in descending dollar order. Units must correspond to the packaging.
- b. List of discontinued Products and new Products.
- c. Any other reports required by law.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT I

Business Interruption Plan

In addition to our existing Business Interruption Plan, CDT will also prioritize customer service and support, order fulfillment, and customer communication. Our network of collection sites serves to mitigate the impact of any business interruption. In the event an interruption can be projected (i.e. forecasted natural disaster), Members can submit orders early and in advance for contingency purposes.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

ATTACHMENT J**MINNESOTA STATUTORY LANGUAGE**

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

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

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).