



State of Minnesota Emergency Contract

SWIFT Contract No.: 185135/185136

This Emergency Contract (Contract) is between the State of Minnesota, acting through its Commissioner of Health ("State"), Vault Medical Services, PA, located at 22 W. 23rd Street, 5th Floor, New York, NY 10010 ("Vault"), and Infinity BiologiX LLC, located at Nelson Biological Laboratories, 604 Alison Road, Piscataway, New Jersey 08854 ("Infinity" or "IBX"). Vault and Infinity will be referred to collectively as "Contractor" or "Contractors," which may be used interchangeably.

Recitals

1. State is empowered to enter into this Emergency Contract under Minn. Stat. § 12.36.
2. State is in need of a COVID-19 molecular testing program, which provides saliva-based collection and analysis at a Minnesota-based laboratory facility. The testing program shall provide for on-site collection, which may be Vault-managed or State-managed as mutually agreed between Vault and State, as well as self-collection and mail-in methods for receiving Samples.
3. Contractors desire to establish and provide a Testing program to State for on-site collection and laboratory testing of Samples.
4. Terms of art specific to this Agreement are set forth in Section 1 of Exhibit A and apply uniformly to the body and all exhibits to this Agreement.

Contract

1. Term of Contract

- 1.1. Effective date: October 21, 2020, or the date State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. Contractors have been notified by State's Authorized Representative that they are authorized under Minn. Stat. § 12.36, to begin work as set forth in this Contract prior to it being fully executed. Contractors and State will use all reasonable diligence to ensure prompt execution of this Contract.
- 1.2. Expiration date: September 1, 2021, or until all obligations have been fulfilled, whichever occurs first. The contract may be extended by mutual agreement of all parties for up to an additional 36 months through one or more duly executed amendments. Upon expiration of the Contract, Contractors will be entitled to payment, determined pursuant to the payment structure as set forth in Section 4.2.3, for services or goods satisfactorily performed or delivered, including but not limited to services or goods in progress being rendered at the time of expiration of the Contract. Contractor shall complete testing of all Specimens and be compensated for same for which a test code has been used notwithstanding the cancellation notice but shall not, unless directed otherwise by State, register/process any new test codes after the date of any such cancellation notice. Contractors must continue to process insurance reimbursements for all Tests

completed during this process. Contractors will be obligated to use reasonable efforts to mitigate the costs and expenses associated with winding down their operations under this Agreement and to re-use such reagents and components of unused Tests. Contractors will have a maximum of sixty (60) days after the effective date of the termination of this Contract to provide State with any and all invoices for services incurred prior to the termination of this Contract. For a cost to be considered to have been incurred by Contractors, performance or delivery must occur during the covered period. State will have 90 days from the date of a cost being incurred to provide payment to Contractors. Applicable invoices must include costs and expenses associated with Specimen testing as well as costs associated with winding down of operations. Potential costs of winding down operations for which Contractors may seek reimbursement from State are set forth in Exhibit E. For clarity, Contractors are not obligated to seek all costs of winding down operations that are included in Exhibit E and submission of such costs for reimbursement shall be at the discretion of the Contractors.

- 1.3. Survival of terms: The following clauses survive the expiration or cancellation of this Contract: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue, Indemnification, Limitation of Liability; and Data Disclosure. Any other Contract term that states it shall survive, shall survive.
2. **Duties** - Vault Responsibilities; Infinity's Responsibilities; Subcontractors' Responsibilities; State Responsibilities.
 - 2.1. Vault is responsible for developing and implementing a saliva Specimen collection method, that can be administered at an individual's home or at a collection site, with results reporting provided directly to the Patient, as well as applicable health authorities;
 - 2.2. Infinity is responsible for lab analysis and Specimen processing as set forth in Exhibit A.
 - 2.3. Contractors, who are not State employees, will provide deliverables as detailed in Exhibit A, which is attached and incorporated into this agreement by reference.
 - 2.4. Contractors may enter into subcontracting relationships with third party vendors. While subcontracting is permissible, Contractors will remain responsible for the quality and completion of deliverables stated herein, and for compliance with applicable law, regulations, and policies, such as, but not limited to, the Health Insurance Portability and Accountability Act and the Minnesota Health Records Act.
 - 2.5. Forecasting
 - 2.5.1. State's Rolling Forecast. On the first Monday occurring at least three (3) days after the effective date of this Contract, State must provide Contractors with a non-binding rolling forecast of State's anticipated need for Tests that will take place during the following six weeks ("State's Rolling Forecast"). State will provide Contractors with an updated State's Rolling Forecast each Monday, or as otherwise agreed by State and Contractors. For the avoidance of doubt, State's Rolling Forecast will not include Testing not otherwise serving the general public (e.g., Testing utilized by private entities).
 - 2.5.2. Contractor's Rolling Forecast. On the first Monday occurring at least three (3) days after the effective date of this Contract, Contractors must provide State with a rolling estimate of its weekly capacity for the Minnesota Lab and any applicable Specimen collection

operations and an estimate of the expected demand for Tests for Minnesotans by third parties (which shall not be included in State's Rolling Forecast) for the following six weeks ("Contractor's Rolling Forecast"). Contractors will provide State with an updated Contractor's Rolling Forecast each Monday, or as otherwise agreed by State and the Contractors.

- 2.5.3. Forecasting Conference. The parties will designate individuals to confer on Tuesday or Wednesday of each week to discuss State's Rolling Forecast and Contractors' Rolling Forecast in order for the parties to plan for and coordinate capacity and demand for each week of the forecasts.
- 2.5.4. Week₀ State Forecast. Based on the discussions at the weekly forecasting conference between State and Contractors, State will provide Contractors with a final forecast of its anticipated need for Tests for the following week by the close of business each Thursday ("Week₀ Forecast").
- 2.5.5. Wind-Down Forecasts. At such time as the Contractors have provided Testing Services which would cause only Five Million Dollars (\$5,000,000) of State funding to potentially remain, given an accounting of such services rendered, or in the event of a termination under Exhibit C, Sections 3.1, 3.2, and 3.4, State and Contractors will work together to adjust State's Rolling Forecast to allow for the reasonable wind-down of Testing at the Lab in order minimize, to the extent possible, reagents, components of test kits, and other consumables that will be remaining and unusable at the expiration of this Contract.

2.6. Test Processing

- 2.6.1. Ramp-Up Period. On the date on which the Minnesota Lab receives its CLIA certification and commences operations, the Lab will have the capacity to provide 20,000 Tests per day, provided, however, that Contractors and Minnesota will need to plan and coordinate an appropriate ramp-up in the first four weeks that the Lab is operating (to ensure adequate staffing, etc.). During this ramp-up period, Infinity may redirect Tests that it cannot process at its Minnesota Lab to its New Jersey lab, but will not be held in breach of this Contract in the event that the Turn Around Time for such tests exceed the 48-hour Turn Around Time set forth in Exhibit A, Section 5.4.1.
- 2.6.2. Capacity Increase. If demand for Testing in the State of Minnesota requires and the parties agree, Infinity will increase the capacity of the Lab in order to provide up to 30,000 Tests per day, provided that in the period in which Infinity is working to increase the Lab's capacity, Infinity may use its New Jersey lab to process Tests that exceed 20,000 per day and will not be held in breach of this Contract in the event that the Turn Around Time for such Tests exceeds the 48 hour Turn Around Time set forth in Exhibit A, Section 5.4.1.

2.7. Forecasting Shortfalls

- 2.7.1. The number of Tests processed by the Contractors (for the purposes of this Section 2.7, "processed" shall refer to the number of Specimens collected under this Contract and then analyzed and processed by Infinity) under this Contract for the week of the Week₀ Forecast shall be not less than seventy-five percent (75%) of the total Tests forecast for that week and not greater than one hundred twenty-five percent (125%) of the total

Tests forecast for that week, provided, however, that in the event that the number of Tests actually submitted to be processed by Contractors for such week exceeds one hundred twenty-five percent (125%), Contractors will use reasonable efforts to process such tests, including through use of Infinity's New Jersey lab, but will not be held in breach of this Contract in the event that the Turn Around Time for such tests exceeds the 48 hour timeframe set forth in Exhibit A, Section 5.4.1.

- 2.7.2. If the amount of Tests sent directly by State and processed by Contractors for the week of the Week₀ Forecast is less than seventy-five percent (75%) of the total State Tests forecast for that week, Contractors will invoice State for the shortfall of Tests at the Total Inclusive Price of a Test for the shortfall tests. If time permits, Contractors will give State the opportunity to distribute Test kits to make up the difference in unused capacity. In the event that the number of Tests actually submitted to Contractors for three (3) consecutive weeks is less than 5% of the amount forecast for such weeks in State's Rolling Forecast, then Contractors may exercise their termination rights under Exhibit C, Section 3.2 or may elect to process all of State's Tests at Infinity's New Jersey lab.

3. **Time**—Contractors must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

4. **Consideration and Payment**

- 4.1. **Consideration.** State will pay for performance by Contractors under this Contract as follows:

- 4.1.1. **Compensation.** Contractors will be paid in accordance with the breakdown of costs as set forth in Exhibit B, which is attached and incorporated into this agreement by reference and in accordance with this Section 4 and Section 2.5.
- 4.1.2. **Total obligation.** The total obligation of State for all compensation and reimbursements to Contractors under this Contract will not exceed \$24,660,000.00.

4.2. **Payment**

- 4.2.1. **Prepayment for Equipment.** State will pay Infinity and Vault, as such costs are applicable to each Contractor, up to a total of \$4,700,000 to provide for the purchase and installation of equipment in the laboratory, initial lease payments of laboratory office space through December 30, 2020, necessary permitting, and buildout of laboratory space upon the provision of an accounting or other documentation for the costs of the above items, and costs associated with set-up of collection sites by Vault as set-forth in Section 8.5. Infinity will own the Lab equipment purchased under this Section 4.2.1 at the expiration or earlier termination of this Contract. Any remaining funding will be reallocated to payment for testing completed at the request of State in accordance with terms in Section 4.2.3.
- 4.2.2. **Compensation.** Contractors will be compensated for Tests by health insurance payers, State, or both. Contractors will use reasonable efforts to seek reimbursement from health insurance payers for all tests conducted under this Contract, including Health Resources and Services Administration (HRSA) funding when Individuals are uninsured. In the event that Contractors receive only a portion of the Total Inclusive Price of a Test

from insurance payers, State will make up the difference, up to the Total Inclusive Price of a Test, as provided below.

- a. Contractors shall submit a claim to the applicable payer or HRSA in an acceptable format such that the payer or HRSA can adjudicate the claim. In the event Contractors' claim is denied, in part or in whole, Contractors are only required to submit one request for **final adjudication**, and will provide information as reasonably requested by State regarding the adjudication.

4.2.3. **Tests Paid for by Insurance, HRSA.** Contractors will bill, or cause to be billed, Individual's insurance or HRSA for Tests. State understands and agrees that IBX's price and Vault's price for Tests are the prices set forth in the chart below. In the event that either Vault or IBX individually receives from an Individual's insurance provider, or HRSA, an amount less than each such Contractors' respective stated price, State will pay IBX, Vault, or both, as the case may be, the amount equal to such deficit incurred by such party or parties. For clarity, in no event is State required to pay IBX and Vault collectively more than the total price below for each Test.

<u>Type of Specimen Collection</u>	<u>IBX Price</u>	<u>Vault Price</u>	<u>Total Price</u>
Test Specimen is collected at Patient's home or other location, remotely using audio-visual real-time supervision with Vault Personnel outside of a Vault managed or State managed collection site	\$60.04	\$60.95	\$120.99
Test Specimen is collected at a Vault managed collection site	\$60.04	\$44.75	\$104.79
Test Specimen is collected at a State managed collection site	\$60.04	\$27.04.	\$87.08
Tests designated by State for which State will directly pay for Testing and Contractors will not seek insurance reimbursement (modality to be used is currently at-home only).	\$63.09	\$54.27	\$117.36

- a. If applicable laws or regulations, including those governing Medicare and Medicaid, prohibits State from paying, or Contractors from receiving, additional funds after reimbursement for a Test is made, the tests in question are excluded from receiving further compensation from State under this agreement.
- b. For any Tests designated by State for which State will directly pay for Testing and Contractors will not seek insurance reimbursement, Contractors and State will create a

mutually agreed process for identification of designated Tests so that Contractors can remove such tests from insurance reimbursement workflow.

- c. In the event that the CMS issues or amends any rules reducing the reimbursement rate for Tests conducted under this Contract, the parties will meet and discuss changes, if any, to the IBX Price, Vault Price and Total Price as set forth in this Section 4.2.3.
- 4.3. In the event that, as of December 30, 2020, there remain activated test codes but unused Tests are outstanding with Minnesotans, State and Contractor shall in good faith negotiate a settlement agreement for any monetary shortfall incurred by Contractors related to such unused Tests and Test Services.
- 4.4. Within thirty (30) business days after the end of a calendar month, Contractors shall invoice State through an invoicing process to be mutually agreed by Contractors and State, an amount equal to the difference between number of "Invoiceable Tests" multiplied by the Total Inclusive Price of a Test less the aggregate reimbursement amount Contractor (and if applicable, its subcontractor) received from insurance payers and HRSA for the Tests for which the payment determination has been made. The aggregate monthly invoiced amount shall take into account insurance and HRSA reimbursements recouped by each Contractor above and below Contractor's individual price as set forth in the chart in Section 4.2.3, however such monthly invoiced amount will not, collectively between the Contractors, exceed the Total Inclusive Price of a Test, provided, however, that in the event that such aggregate monthly amount which would be invoiced to State, exceeds the number of "Invoiceable Tests" multiplied by the Total inclusive Price of a Test, then no amounts shall be invoiced to and payable by State for such month. For purposes of this Section, "Invoiceable Test" means Tests that have been reimbursed by insurance or HRSA or, for those tests requiring a request for final adjudication, when such final adjudication has been decided.
- 4.5. **Total obligation.** The current total obligation of State for all compensation and reimbursements to Contractors under this Contract, excluding any potential amendments, will not exceed \$24,660,000.00. State shall provide Contractors with an accounting of State's remaining total funding obligation no more than five (5) business days after Contractors submit an invoice to State pursuant to Section 4.4. In the event State's total obligation funding is exhausted (provided, that the Contingency Budget will remain to reimburse Contractors for Contractors' estimated wind-down costs as described in Exhibit C, Sections 3.1, 3.2, and 3.4), Contractor has the unilateral right to cease or suspend performance of Tests or Test Services under the Contract or terminate the Contract pursuant to Exhibit C, Section 3.2, provided that Contractors may resume performance of Tests in the event that State makes available sufficient additional funding.
- 4.6. **Payments.** State will promptly pay Contractors after Contractors present an invoice(s) as set forth in Section 4.4, provided that the State will in no event make payment later than 30 days after receipt of an invoice from either Contractor.
- 4.7. **Reporting.** In addition to invoices as set forth in Section 4.4, the state requests the following reporting as outlined in Section 9.2 of Exhibit A.
- 4.8. **Retainage.** Under Minn. Stat. § 16C.08, subd. 2 (10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by State's agency head. The balance due will be paid when State's agency head determines that Contractor has satisfactorily fulfilled all the terms of this Contract.

5. **Conditions of payment.** All services provided by Contractors under this Contract must be performed in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. Contractors will not receive payment for work found by State to be unsatisfactory or performed in violation of federal, state, or local law.

6. **Authorized Representative**

State's Authorized Representative is Daniel Huff, Daniel.Huff@state.mn.us, or his successor as identified by State in writing, and he has the responsibility to monitor the Contractors' performance and the authority to accept the services provided under this Contract. If the services are satisfactory, State's Authorized Representative will certify acceptance on each invoice submitted for payment.

Vault's Authorized Representatives is Alexander Pastuszak, M.D., Ph.D., Vice President, Chief Clinical Officer at the following business address and telephone number: 22 W. 23rd Street, 5th Floor, New York, NY 10010, (212) 880-5494 , or successor.

Infinity's Authorized Representatives is Robin Grimwood, President and COO at the following business address and telephone number: 145 Bevier Road Piscataway, NJ 08854-8009, (848) 445-0225, or successor.

If either of the Contractors' Authorized Representatives changes at any time during this Contract, the Contractors must immediately notify State.

7. **Exhibits**

The following documents are attached and incorporated into this contract:

Exhibit A: Duties

Exhibit B: Pricing

Exhibit C: Contract Terms

Exhibit D: Insurance Requirements

Exhibit E: Potential Wind-Down Costs

[Signature page to follow]

1. State Encumbrance Verification

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Print name: Seth Rasmussen

Signature: Seth Rasmussen Digitally signed by Seth Rasmussen
Date: 2020.11.03 10:20:31 -06'00'


Title: Buyer 2 Date: 11/3/2020

SWIFT Contract No.: 185135/185136

2. Contractor

Contractor certifies that the appropriate person(s) have executed the Contract on behalf of Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: Alexander Pastuszak

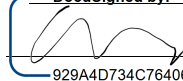
Signature: 

Title: Chief Clinical Officer Date: 11/3/2020

2. Contractor

Contractor certifies that the appropriate person(s) have executed the Contract on behalf of Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Print name: Andy Brooks

Signature: 

Title: CEO Date: 11/4/2020

Distribution:

Minnesota Department of Health
Minnesota Department of Administration
Minnesota Department of Management and Budget
Vault Medical Services, PA
Infinity Biologix
State's Authorized Representative

3. Minnesota Department of Health

With delegated authority

Print name: Virginia Davis

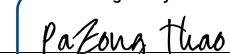
Signature: 

Title: COVID-19 Finance Manager Date: 11/4/2020

4. Commissioner of Management and Budget

As delegated to The Office of State Procurement

Print name: PaZong Thao

Signature: 

Title: Contracts Specialist Date: 11/4/2020

Admin ID 69199

Exhibit A: Duties

1. Definitions

- **“Test” or “Testing”** means the Infinity TaqPath SARS-CoV-2 assay intended for the qualitative detection of nucleic acid from SARS-CoV-2 in oropharyngeal (throat) swab, nasopharyngeal swab, anterior nasal swab, mid-turbinate nasal swab, and saliva Specimens from individuals and for the purposes of pricing and billing shall include Test Services. If Contractors develop and receive regulatory approval for a multiplex or simultaneous assay for Influenza A and B, or other infectious diseases, the term “Test” and other terms may be modified or expanded by mutual agreement of the Parties to reflect the agreed-upon expansion.
- **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC § 1320d through d-8, as amended, including federal privacy regulations and security standards.
- **“Individual”** means any person residing or temporarily living in the State of Minnesota. This includes any individual member of a federally recognized Indian tribe located within the territorial boundaries of the State of Minnesota.
- **“Lab”** means the laboratory facility, including equipment and personnel, established in Minnesota by Infinity for the purposes of Testing, pursuant to this Contract.
- **“MHRA”** means the Minnesota Health Records Act, codified at Minn. Stat. § 144.291, et. seq.
- **“Patient”** means any Individual who has requested a Specimen collection kit and as a result, entered PHI into Vault’s IT system.
- **“Protected Health Information (PHI)”** has the same meaning as in 45 CFR § 160.103 and means individually identifiable health information held or transmitted by Contractors or their business associate, in any form or media, whether electronic, paper or oral.
- **“Sample” or “Specimen”** means any amount of bodily fluid, mucus or genetic material taken from a patient for the purposes of conducting a test to determine whether that person is infected with SARS-CoV-2 or other disease as may be applicable. The terms may be used interchangeably.
- **“Test Services”** means complete end-to-end testing experience for a Patient, including but not limited to virtual and telehealth portals, clinical and non-clinical activities and staff, on-site Specimen collection implemented at locations operated by Vault and designated by State, logistics of Sample collection, lab processing of Sample by Infinity, and resulting to Patients and to the Minnesota Department of Health.
- **“Total Inclusive Price of a Test”** means the total price associated with conducting a Test, including Patient registration (online or telephonic (through telephone access to the internet)), clinical and non-clinical activities and staff, Specimen collection in person or using real-time audio-visual communication technology, medical courier or UPS next day shipping to/from, Specimen processing in Lab (unless Infinity’s New Jersey laboratory is utilized pursuant to Section 2.5 of this Agreement), electronic or telephonic resulting, and all required patient record maintenance and safeguarding. In other words, the price of providing “test services” to a single Patient. If a multiplex Test becomes available, an additional charge may be added to any Tests that include more than the Infinity TaqPath SARS-CoV-2 assay.

- **“Turn Around Time”** means the number of hours from the time a Specimen arrives at the laboratory and is accessioned until the Patient is provided with a result. For Specimens that arrive at the laboratory when the laboratory is closed for processing Specimens, such Specimens will be deemed accessioned at the time that the laboratory next opens. For example, if a Specimen arrives at the laboratory after the laboratory closes for the day (e.g., at 5:01pm), that Specimen will be accessioned as of the time that the laboratory opens the following day (e.g., 6:00am).

2. General Statement of Duties for Collection Sites

Vault shall operate up to ten (10) Specimen collection sites, at least five days per week, as described in Section 8 and provide training and support for other means of mass Specimen collection.

3. Mail Order Testing. Vault shall create a mail order (e.g., at-home testing) testing program for categories of Patients prioritized by State for testing, that includes the following:

- 3.1 Each Individual will visit Vault's website and begin the testing workflow for Testing;
- 3.2 Each Individual will enter their PHI;
- 3.3 In accordance with Infinity's EUA for the Test, a Test will be shipped via UPS overnight (next day delivery) to each Patient's provided address, (in the event additional shipping mechanisms are contemplated, Vault shall apprise State of such mechanisms);
- 3.4 Upon receipt of the Test, the Patient will read the information card packaged in the Test and follow instructions to join a one-on-one Zoom video waiting room;
- 3.5 Each Patient will interact via Zoom with Vault Personnel (as defined below) who will greet the Patient, verify the Patient's identity, validate the serial number of the empty Saliva Collection Device, supervise the saliva collection, supervise sealing the test tube with the preservative cap and re-packing the Specimen into the pre-paid overnight clinic-pak to Infinity provided as part of the Test;
- 3.6 Each Patient will deliver the clinic-pak into overnight shipper's mail drop for delivery to Infinity for Specimen processing and analysis;
- 3.7 Vault will provide links to nearby UPS or USPS shipping locations; and
- 3.8 Vault will promptly notify Patient upon Vault's receipt of the test results from Infinity. Patients shall have the option to receive results either by encrypted process or if desired and affirmatively selected during testing workflow on Vault website, by unencrypted email. Patients will be notified individually via email by Vault with one (1) of four (4) possible test results: positive, negative, inconclusive, or rejected.

4. Molecular Analysis Lab Implementation

4.1 Equipment Costs of Molecular Analysis Lab

- 4.1.1 Infinity will set up a molecular analysis lab in the State of Minnesota, at a location mutually agreed upon by the parties. Infinity will be responsible for the lease, or sublease (as applicable) and related insurance. State will provide funding for the portion of the lease occurring in calendar year 2020 as well as associated buildout costs and equipment to operate the lab, as a means of facilitating lab start up and defraying the per test cost. The

equipment costs of the molecular analysis lab include, but are not limited to lab space, biosafety cabinet(s), printers, barcode scanners, label printers, computers, servers, -80 degree Celsius freezers, robotics, and testing instrumentation.

4.1.2 The total equipment costs include transportation, sales and all other applicable taxes, validation, warranty, and installation of all equipment.

4.2 Maintenance: Infinity will be responsible for standard maintenance and repairs not covered by warranty as well as initiating any warranty claims with the manufacturer.

4.3 Lab Occupancy

4.3.1 Infinity will be responsible for establishing a Lab lease (and licensing or storage agreement, as needed) and for the payment of utilities, including broadband internet as well as any special assessments the lab may be subject to, such as sewer and water access charges.

4.3.2 Additionally, Infinity is responsible for the upkeep of the Lab space, per the lease agreement, and for services, such as, but not limited to janitorial services, including biohazard disposal, badging/secure entry system, and other employee benefits such as parking.

5. Test Analysis and Lab Operations.

5.1 Infinity must make available for review the following within the first 14 days of Contract execution for review and approval by State's Authorized Representative: Lab set up plan, milestones of set-up process, credentials required of new hires, supervision/oversight plan and policies, and quality protocols.

5.2 Laboratory requirements:

5.2.1 CLIA Certification before opening date, which will be no later than October 20, 2020. Time is of the essence and an earlier opening date is desirable, if feasible.

5.2.2 Lab will have the capacity to process 20,000 Specimens per day in accordance with the terms set forth in Section 2.6.1.

5.2.3 Lab will be specifically designed to process the Test, as well as multiplex or simultaneous assay for Influenza A and B if and when available. Serological capacity is not requested at this time.

5.2.4 State may inspect the Lab (via CLIA compliance officers from the Minnesota Department of Health) at least once per month for the first three months after the Lab comes online. Depending on the results of the inspections during that time, State may alter the frequency of inspections upon prior written notice to Infinity. State may also perform unannounced inspections at any time for the duration of this contract.

- a) If Lab fails inspection by State or if Infinity lets its CLIA certification for the Lab fall out of good standing, Infinity will have seven calendar days to remediate the problems or submit a correction plan deemed acceptable by CLIA and will also submit the approved correction plan to State's Authorized Representative or their designee.

- b) In the event that Infinity fails to remediate any problem or to submit a correction plan deemed acceptable by CLIA as set forth in Section 5.2.4(a), State will have the right to stop use of any services within this Contract.
- c) In the event that Infinity is not operating the Lab for whatever reason (except due to force majeure), Infinity will redirect all collected Specimens and ongoing collections to Infinity's New Jersey lab and will process such redirected Specimens at no additional cost to State.
 - i. If Samples are redirected to Infinity's New Jersey lab, all reasonably requested Quality Assurance documentation will be made available to State by Infinity within 14 calendar days of State's written request.
 - ii. Infinity will notify State's Authorized Representative before it redirects any Samples to its New Jersey lab.
 - iii. If Samples cannot be sent to Infinity's New Jersey lab because of a force majeure event or otherwise (and the Minnesota Lab remains unable to process Samples), Contractors will communicate with State as soon as reasonably possible about the situation. Contractors must, to the extent reasonably possible under the circumstances, work with State to identify a third party laboratory to process samples (subject to Contractors and the third party laboratory obtaining necessary regulatory approvals and consents), notify affected Patients within a reasonable time about any delays in processing their Samples, or take any other action as the State and Contractors mutually agree upon.

5.2.5 In connection with the operation of Lab, Infinity will provide:

- a) All reagents, consumables, Specimen collection kits/cartridges, labels, collection devices, other necessary chemicals and items for collecting and processing Specimens;
- b) All Lab staffing required to perform the services under this Contract;
- c) All Lab IT software systems and applicable interfacing to Vault software; and
- d) Funding for and coordination of any maintenance or repair work needed for equipment used in the Lab, including making any appropriate warranty claims with manufacturer.

5.2.6 State will have the ability to submit for testing collected Samples of saliva, as well as nasopharyngeal, oropharyngeal, and mid-turbinate nares swabs, and in addition to bronchoalveolar lavage Samples in accordance with the Infinity Emergency Use Authorization from the federal Food and Drug Administration.

5.2.7 Infinity will notify State's Authorized Representative whenever Lab capacity increases or decreases by more than 1,000 Samples per day, whether the result of staffing changes, instrumentation additions or breakdowns, supply shortages, or other factors. Infinity and State will work together to resolve reductions in Lab capacity that are a result of factors

outside Infinity's control, such as supply redirection by the federal government or other events that could not reasonably be anticipated.

- 5.2.8 Pooled Testing: Pooled testing data and protocols are not currently broadly available and are considered investigational. In the event that the parties wish to pursue pooled testing, the parties will mutually agree upon an amendment to this Contract for such pooled testing.

5.3 Laboratory/Collection Site Personnel Requirements

5.3.1 [Intentionally omitted]

5.3.2 [Intentionally omitted]

5.3.3 All personnel costs for both the Lab and the collection sites will be included in the Total Inclusive Price of a Test.

5.3.4 [Intentionally omitted]

5.3.5 All Lab personnel (contractors and employees), including Technical Supervisors, conducting Test clinical laboratory activities must comply with and meet all accreditation and regulatory requirements for the applicable positions held.

5.3.6 Infinity covenants that its medical professionals working at the Lab will have and will maintain at all pertinent times such current licenses, credentials, accreditations, registrations, enrollments and certifications as may be required to perform the medical activities of Test Services in the State of Minnesota.

5.3.7 Prior to assigning staff to work on this Contract, each Contractor will confirm that each such staff member, whether employee or contractor, is a citizen or legal resident of the United States. Daily health screening of all on-site collection and laboratory personnel within the State of Minnesota are required. Each on-site collection and Lab staff member performing Test Service activities under this Contract will be furnished appropriate personal protective equipment for their role by each Contractor.

5.4 Performance objectives

5.4.1 The Lab will process Samples at a Turn Around Time of no more than 48 hours, with the exception of days in which the Lab receives more than the current established capacity in a given 24-hour period.

- a) Once the Lab exceeds the required Turn Around Time for more than 10% of all Samples for more than three consecutive days, Infinity will notify State and immediately begin process Samples in its New Jersey lab and State will not be charged for any additional costs of shipping as a result of processing such Samples in Infinity's New Jersey lab. Once Infinity's Minnesota Lab can meet the 48 hour Turn Around Time, Infinity may resume processing Samples at its Minnesota Lab.
- b) Infinity will maintain 1% or less false positive and false negative rates and will notify State of any indications that these rates are not being upheld.

- c) Infinity will notify State if FDA raises any material issues with Infinity's EUA or retracts the EUA. If the EUA for saliva testing is canceled, Infinity will immediately begin processing another Sample collection type of State's choosing via an EUA in good standing.

5.5 Other

- 5.5.1 State will be the sole determinate of which Samples will be submitted to the Lab and where and how collection will occur in Minnesota.
- 5.5.2 To the extent allowable under applicable law and for the term of this Contract, excess Lab capacity that would cause Testing to exceed 125% of the Minnesota Lab's total Testing capacity, may be used by Infinity only with the approval of State and at a benefit to the State of Minnesota and parties to this Contract.
 - a) For the term of this Contract, Infinity or Vault will provide State with a copy of any executed contract for Testing that would cause Testing to exceed 125% of the Minnesota Lab's total Testing capacity at the time the contract is executed, subject to appropriate protections for such third party's and Contractors' confidentiality rights under such agreements entered by Vault or Infinity for capacity at Infinity's Minnesota Lab with any third party prior to execution of such contract.
 - b) For the purposes of contact tracing, terms of any such third party contract must require the purchaser of test processing capacity to submit with each Sample, at a minimum, a name, phone number and date of birth, and preferably, gender and demographic data.
- 5.5.3 All of Contractors' personnel involved with this Contract will be trained, as appropriate for the role, on applicable privacy and data security laws, such as HIPAA, the Minnesota Government Data Practices Act, and the Minnesota Health Records Act.
- 5.5.4 All Information Technology ("IT") software will be HIPAA compliant. All IT infrastructure will be sufficiently protected and firewalled from reasonable security threats. Servers will be redundant with fail over capacity.

6. Resulting

- 6.1 Vault will provide results to Patients immediately after they become available via an electronic reporting system that generates an e-mail to each Patient.
 - 6.1.1 Vault will also generate an SMS message to Patients, if authorized, indicating their results are available in their secure account.
 - 6.1.2 For Patients who do not have an e-mail address or who register telephonically, Vault will result via phone within 24 hours of result availability. Vault will not leave a message, will verify Patient identity before disclosing result and will follow pre-approved script written with State.
 - 6.1.3 For Patients who cannot be reached, Vault will call them at least two additional times in the following 36 hours to attempt to provide results.

6.2 Vault will operate an e-mail and voicemail system (“Care Center”) where Patients can request results, ask questions, or file complaints. Complaints that cannot immediately be resolved by the Vault will be provided to State for additional discussion and resolution.

6.3 Contractors will comply with all U.S. Department of Health & Human Services (HHS) reporting requirements and all IDEPC federal reporting elements captured will be reported to State daily with both positive and negative results. <https://www.hhs.gov/sites/default/files/covid-19-laboratory-data-reporting-guidance.pdf>

7. Testing Costs and Insurance.

7.1 The Total Inclusive Price of a Test is as set forth in Section 4.2.3.

7.2 Contractors must provide Testing to Minnesota healthcare providers, long-term and congregate care providers, local governmental entities, educational institutions, and other entities as directed by State at the Total Inclusive Price of a Test. If at any time, Contractors provide Testing at a lower Total Inclusive Price in the State of Minnesota, they will immediately lower State’s rate. Contractors must be willing to accept all forms of insurance held by Minnesotans but may require any Minnesota entity to guarantee full payment of costs when the State is not the guarantor. In the event of surveillance or occupational health testing, Contractors may require upfront payment before a Sample is collected.

7.2.1 Contractors must provide an opportunity for all Patients to enter their insurance or check “uninsured” upon registration.

7.2.2 For Individuals who check “uninsured,” on a weekly basis, Vault shall provide State with a list of emails entered by such Individuals for State to provide links regarding information about Medicaid or MinnesotaCare or any such other information to such Individuals at State’s discretion.

7.3 Contractors will process any insurance information provided and seek maximum reimbursement for the Total inclusive Price of a Test.

7.3.1 At no time should a Patient receive a bill from either Contractor. Contractors will apply for HRSA funding to cover any Patients who indicate they are uninsured.

7.4 In instances where State opts not to request insurance information from Patients (and therefore Contractors cannot meet HRSA requirements) State will pay the Total Inclusive Price of a Test for each Patient tested. Contractors will deduct it from 4.2.2 until funding is exhausted or invoice the state under 4.4.2.

8. Collection Services.

8.1 Vault will provide a Minnesota-licensed medical provider appropriate to order tests and will also provide appropriate Contractor personnel to supervise test collection, including but not limited to licensed medical and non-medical Vault personnel, including individuals who are contractors engaged by Vault, all of whom shall be trained to perform the tasks to which they are assigned by Vault and follow specified protocols in connection with providing Test Services (except any lab services) (collectively “Vault Personnel”) and who will be acceptable to insurance payers and consistent with federal guidance here <https://www.cms.gov/files/document/covid-19-laboratories.pdf> and here <https://www.cms.gov/files/document/FFCRA-Part-43-FAQs.pdf>

8.2 Vault will provide either recorded or live collection training or sufficient non-video training materials, to all Vault Personnel and to such individual State deems necessary to be trained in the event that State conducts Specimen collection through in-person events managed by State personnel.

8.3 Licensed medical providers engaged by Vault, in the event the activities of such providers are clinical activities, will exercise independent professional judgment in the treatment and medical care of individuals and in this regard will have complete control over decisions requiring medical judgment involving medical activities of Test Services.

8.4 At-home collection: Vault will operate an at-home testing program with such protocols and test facilitation developed by Vault and will limit such program to service Individuals.

8.4.1 Vault will require an ID or photo, but will not limit requirement to a government-issued ID.

8.4.2 Vault will ship collection kits only to locations within the State of Minnesota, with the exception of codes the state directly issues to specific populations that work in Minnesota but may live across state boundaries.

8.4.3 Vault will report once every two weeks, in a manner mutually agreed by and between State and Vault, on how many outstanding codes are more than 1 month old.

8.4.4 State will operate a website through which Minnesotans will make requests for test kits. Unique URLs (test codes) will be provided by Vault to State to issue when a request is approved. State will be responsible for determining how many kits may be sent to any one address or person and the frequency with which requests maybe made. Contractors will assist State in identifying and limiting unintended or fraudulent uses of test codes.

8.5 In-person collection sites:

8.5.1 State will secure leases for up to 10 regional collection sites (5 greater Minnesota and 5 greater Minneapolis-St. Paul sites) and will cover lease costs and all utilities, janitorial and snow removal services.

8.5.2 State will designate interpreters necessary at each collection site. Vault will contract with interpreters and build the cost of this service into the overall cost of the test.

8.5.3 State will provide each collection site with the following: PPE as defined by site testing plan, in regular deliveries and exterior signage of the facility and any materials for exterior site organization, such as cones, A-frames on sidewalks, and security for external activities at site.

8.5.4 Vault will provide:

- a) Materials for interior activities necessary and appropriate to facilitate testing at locations agreed upon by the Parties;
- b) All staffing for Test Services;

- c) As applicable to on-site, in-person Sample collection activities: Computers, tablets, printers, label printers, modems, routers, and other related equipment;
- d) Collection of medical waste and biohazard waste collections as needed;
- e) Collection kits;
- f) As applicable to on-site, in-person Sample collection activities: Medical grade labels, office supplies;
- g) Security services, if needed beyond what is provided in the lease;
- h) A test registration system with both capabilities online and via phone and with language assistance or translations available;
- i) An e-mail address and which the public can utilize to report concerns or issues that require follow up.; and
- j) Results to all Patients tested via e-mail (or phone in the event that an Individual does not provide an email address).

8.5.5 Vault Personnel will perform the sample collection activities of the Test Services in a professional and workmanlike manner in accordance with applicable Vault protocols which shall include non-discrimination and Patient confidentiality in accordance with all applicable federal and state laws. Personnel will clearly display name tags or badges.

8.5.6 Vault Personnel will be subject to daily health screenings conducted by Vault's designee upon arrival and will be issued appropriate PPE by Vault.

8.5.7 Vault Personnel shall use commercially reasonable efforts to promptly move Patients through in-person on-site testing flows from time of entry into queue to exit of the facility.

8.5.8 Collection sites will be subject to review and inspection by State personnel at any time during regular business hours or by mutual agreement between State and Vault before or after business hours.

9. Reporting and Data Security

9.1 Data Privacy. Contractors and State agree that Patient data, including but not limited to individual clinic records relating to Tests and the results thereof shall be regarded as PHI and kept confidential. Vault shall provide Test results directly to Patients. All parties shall comply with all applicable federal and state laws and regulations regarding the use and disposition of PHI, including HIPAA and MHRA, except for instances in which State is exempted from HIPAA as a public health entity.

9.2 Reporting and Accounting

- a) Vault will provide a monthly accounting of the Testing Services performed under this Contract, including how many tests were processed, Turn Around Time, average available capacity, positivity, and deductions from State's advance payments in order to cover the

cost of the Tests. Vault will provide reports specific to each collections site, event or mail order program as requested.

- b) Vault will report both positive and negative test results electronically to MDH daily in accordance with MN Department of Health guidelines.
- c) Consistent with applicable laws, Contractors will provide any information or data collected or maintained in the course of carrying out this Contract upon request to State to aid in State's efforts to obtain funding or reimbursement for costs associated with this Contract from other sources, including FEMA and other entities.
- d) Vault will report positivity rate and de-identified demographic data to State's Authorized Representative or his/her designee weekly. Vault will run reports of testing by locality or community mobile collection as requested State staff or provide a real-time dashboard for use by State staff.
- e) Vault will collect and report at least Patient name, address, data of birth and one Patient-provided phone number with each Sample.

9.3 Privacy and security safeguards. Contractors shall develop, maintain, and enforce policies, procedures, and safeguards to ensure the privacy and security of PHI, and to prevent any use or disclosure of the PHI that is prohibited by law or not expressly authorized by this Contract. Contractors must use encryption to store, transport, or transmit electronic PHI and must not use unencrypted email to transmit PHI.

9.4 Monitoring subcontractors. Each Contractor shall ensure that any third party subcontractor that performs activities under this Contract agrees in writing to the substantially the same restrictions and conditions that apply to Contractors under this Contract.

9.5 Sample usage. Infinity may use Samples submitted for Testing for confirmatory testing, laboratory quality control assurance and improvement, calibration of equipment, evaluating and improving the accuracy of Tests, validation of equipment, and continuity of operations to ensure testing can continue in the event of an emergency.

9.6 Specimen Retention. Infinity will retain all positive Specimens on site for a period of four weeks after collection. Vault will provide to State a list of all positive Specimens within three weeks after collection. State will provide Contractors with a list of Specimens to transfer to State within one week of receiving the list from Contractors. At the conclusion of the four-week period, Specimens not requested by State for transfer must be destroyed.

9.7 Data Retention.

- a) Infinity may only retain test results and any information generated in association with the test results until the retention period identified under Clinical Laboratory Improvement Amendments (CLIA) regulations has elapsed.
- b) Once the CLIA-required retention period has elapsed, Contractors must document the data destruction and provide that evidence to State.

- c) Upon expiration or termination of the Contract for any reason, then all applicable data will be transferred to State in a secure, agreed-upon electronic format. Contractors shall ensure that the same action is taken for all PHI that may be in the possession of their subcontractors or other agents.
- d) Any costs incurred by Contractors in fulfilling their obligations under this Section will be the sole responsibility of Contractors.

9.8 RESTRICTIONS ON USE. In accordance with the MHRA:

- a) Using Samples received under this Contract for research of any kind is strictly prohibited.
- b) Selling Samples, test results, or other data collected associated with Testing under this Contract is strictly prohibited.
- c) Collecting, storing or using residual human DNA collected under this Contract in any manner not explicitly set forth in this Contract is strictly prohibited.

9.9 Other Provisions

- a) Each Contractor must identify a lead point of contact for data transfer and data issues.
- b) Contractors will adhere to all applicable federal and state protocols for collection processes, lab facilities, personnel, and health data and will provide documentation to the State of Minnesota, as reasonably requested.

10. Materials

- 10.1 All printed and digital written materials intended for the public in connection with the services to be provided under this Contract (including signage and the registration website and results emails) will be available in English, and, translated and available to the public in the following languages: Amharic, Hmong, Karen, Oromo, Spanish, Somali, and Vietnamese.
- 10.2 State will collaborate on and approve, provided that State shall not unreasonably withhold, delay, or condition such approval, on a schedule to be mutually agreed upon by and between State and applicable Contractor, the following: final web content, patient education/information sheets provided in packets and onsite, e-mail content, phone scripts for reservations, troubleshooting and resulting. Notwithstanding the foregoing, Vault shall not be required to seek approval from State for changes to its website code base, for changes made to address items including but not limited to, troubleshooting, bugs, non-substantive copy changes, integrations with third party vendor software systems, email triggering and cadence, website layout, result dashboard configurations, or releasing code to production.

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Exhibit B: Pricing

8/22 - 12/31/20	
\$ 4,700,000	Reimbursement of purchase and installation of equipment in the laboratory, initial lease payments of laboratory office space through December 30, 2020, necessary permitting, and buildout of laboratory space upon the provision of an accounting or other documentation for the costs of the above items, and costs associated with set-up of collection sites by Vault as set-forth in Section 8.5.
\$ 960,000	Contingency Budget reserved to cover Contractors' wind-down costs as set forth in the Contract and, if the Parties agree, all or a portion of the Contingency Budget may be used for Testing funding provided under Section 4.2.2.
\$ 19,000,000	Testing funding provided under Section 4.2.2
\$ 24,660,000	Total obligation under this contract

January 1, 2021 – September 30, 2021 Fee Schedule: TBD

Exhibit C: Contract Terms

1. **Prompt Payment and Invoicing.**

- 1.1. The total obligation of State for all compensation to the Contractors under this Contract will not exceed \$24,660,000.
- 1.2. Unless subsequently modified in writing by the parties, all services provided by Contractors under this Contract must substantially satisfy the deliverables outlined in Exhibit A and be performed in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations.

2. **Assignment, Amendments, Waiver, and Contract Complete.**

- 2.1 **Assignment.** Each Contractor may neither assign nor transfer any rights or obligations under this Contract (except to third party subcontractors as expressly provided herein) without the prior consent of State and a fully executed assignment agreement, executed and approved by the authorized parties or their successors, provided, however that such consent will not be required in the event of an assignment or transfer of rights or obligations to an affiliate of a Contractor or in connection with the sale, transfer of all or substantially all of the assets or business of a Contractor to which this Contract relates .
- 2.2 **Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the authorized parties or their successors.
- 2.3 **Waiver.** If any party fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
- 2.4 **Contract Complete.** This Contract contains all negotiations and agreements between State and each Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind any party.

3. **Termination.**

- 3.1 **Termination by State.** State may cancel this Contract at any time, with or without cause, upon 60 days' written notice to Contractors. Upon termination, Contractors will be entitled to payment, determined pursuant to the payment structure as set forth in Section 4.2.3, for services or goods satisfactorily performed or delivered, including but not limited to services or goods in progress of being rendered at the time notice of cancellation of the Contract. For purposes of this Contract, Contractors shall complete testing of all Specimens and be compensated for same for which a test code has been used notwithstanding the cancellation notice but shall not, unless directed otherwise by State, register/process any new test codes after the date of any such cancellation notice. Contractors must continue to process insurance reimbursements for all Tests completed during this process. Contractors will be obligated to use reasonable efforts to mitigate costs and expenses associated with winding down their operations under this Agreement and to re-use such reagents and components of unused Tests. In the event that Contractors have costs and expenses associated with winding down their operations under this Contract after using mitigation efforts as set forth herein for a period of sixty (60) days after the effective date of the termination of this Contract, State will reimburse Contractors reasonable and documented expenses and costs for wind down operation as set forth in Exhibit E using the Contingency Budget.
- 3.2 **Termination by Contractors.** The Contractors have the right (but not the obligation) to terminate this Contract in the event that the amount that has actually been reimbursed by insurance for each Test is equal to or less than eighty percent (80%) of the Total Price of Tests in Section 4.2.3 for a

period of fourteen (14) consecutive days and State funds available for Test reimbursement are below \$5 million at the end of those fourteen days. Upon termination, Contractors will be entitled to payment, determined pursuant to the payment structure as set forth in Section 4.2.3, for services or goods satisfactorily performed or delivered including but not limited to services or goods in progress of being rendered at the time notice of cancellation of the Contract. For purposes of this Contract, Contractor may complete testing of all Specimens and be compensated for same for which a test code has been used notwithstanding the cancellation notice but shall not register/process any new test codes after the date of any such cancellation notice. Contractors will be obligated to use reasonable efforts to mitigate such costs and expense and to re-use such reagents and components of unused Tests. In the event that Contractors have costs and expenses associated with winding down their operations under this Contract after using mitigation efforts as set forth herein for a period of sixty (60) days after the effective date of the termination of this Contract, State will reimburse Contractors reasonable and documented expenses and costs for wind down operation as set forth in Exhibit E using the Contingency Budget. In the event that State reimburses Contractors for a specific wind-down cost, State will have the option to take possession of personal or real property the costs of which it reimbursed to the Contractors. Wind-down costs associated with expenses and obligations created by other entities not party to this Agreement are not the responsibility of State.

- 3.3 Termination for Contractors Default. In the event that either Contractor materially breaches its obligations, representations and warranties or covenants under this Contract, State will provide Contractors with notice of such breach, including a description in reasonable specificity of the breach. Contractors will have thirty (30) days from receipt of the notice of breach to cure such breach. In the event that Contractors have not cured the breach in the thirty (30) day period, State is authorized to cancel this Contract. In the event of default, State reserves the right to pursue any remedy available by law. Contractors may be removed from State's vendors list, suspended or debarred from receiving a contract with State in the event State exercises its right to terminate this Contract under this Section 3.3.
- 3.4 Termination for State's Default. In the event that State materially breaches its obligations, representations and warranties or covenants under this Contract, the Contractors will provide State with notice of such breach, including a description in reasonable specificity of the breach. The State will have thirty (30) days from receipt of the notice of breach to cure such breach. In the event that State has not cured the breach in the thirty (30) day period, the Contractors are authorized to cancel this Contract. Upon termination, Contractors will be entitled to payment, determined pursuant to the payment structure as set forth in Section 4.2.3, for services or goods satisfactorily performed or delivered including but not limited to services or goods in progress of being rendered at the time notice of cancellation of the Contract. For purposes of this Contract, Contractor may complete testing of all Specimens and be compensated for same for which a test code has been used notwithstanding the cancellation notice but shall not register/process any new test codes after the date of any such cancellation notice. Contractors will be obligated to use reasonable efforts to mitigate such costs and expenses and to re-use such reagents and components of unused Tests. In the event that Contractors have costs and expenses associated with winding down their operations under this Contract after using mitigation efforts as set forth herein for a period of sixty (60) days after the effective date of the termination of this Contract, State will reimburse Contractors reasonable and documented expenses and costs for winding down the operation as set forth in Exhibit E using the Contingency Budget. In the event that State reimburses Contractors for a specific wind-down cost, State will have the option to take possession of personal or real property

the costs of which it reimbursed to the Contractors. Wind-down costs associated with expenses and obligations created by other entities not party to this Agreement are not the responsibility of State.

3.5 Termination for Insufficient Funding. State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to Contractors. State is not obligated to pay for any services that are provided after notice and effective date of termination and Contractor is not required to provide any services after notice and effective date of termination. However, Contractors will be entitled to payment, determined pursuant to the payment structure as set forth in Section 4.2.3, for services satisfactorily performed to the extent that dedicated funds are available. State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. State must provide Contractors notice of the lack of funding within a reasonable time of State's receiving that notice and State and Contractor shall in good faith, and to the extent allowed by law, discuss additional funding mechanisms for funding in the event State seeks to terminate this Contract because of insufficient funding.

4. Force Majeure.

Neither party shall be responsible to the other or considered in default of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless 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 defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

5. Indemnification and Limitation on Liability.

5.1 Indemnification.

To the fullest extent permitted by law, each Contractor must indemnify, save, and hold harmless State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by State, to the extent caused by such Contractor's or such Contractor's reseller, any third party that has a business relationship with such Contractor in connection with this Contract, or such Contractor's agents' or employees':

- Intentional, willful, or negligent acts or omissions in performing its obligations under this Contract;
- Actions (not taken at the direction of the State) that give rise to strict liability; and
- Breach of its obligations, representations and warranties, and covenant under this Contract.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of State's intentional, willful, or negligent acts or omissions or due to State's breach of its obligations, representations and warranties, and covenants under this Contract. This clause will not be construed to bar any legal remedies Contractors may have for State's failure to fulfill its obligations under this Contract.

5.2 Limitation on Liability.

- (a) In no event shall any party be liable to the other party for indirect, consequential, incidental, special or exemplary damages, or for loss of profits, however caused, even if such party has been advised of the possibility of such damages.
- (b) Liability for claims of bodily injury, death or property damage arising out of this Contract, whether in contract, tort or otherwise, shall be limited to the amount payable by State to Contractors under this Contract. This limitation of liability does not apply to liabilities under Exhibit C, Sections 9 (Government Data Practices), Exhibit C, Section 9 (Data Security), and Exhibit C, Section 10 (Intellectual Property) of this Contract.

5.3 No additional warranties. Contractor will perform all services in a professional and workmanlike manner and none of such services nor any part of this agreement will be inconsistent with any obligation Contractor may have to others. Except as expressly provided in this agreement, no parties makes any representation or warranty, express or implied, either in fact or by operation of law, by statute or otherwise, and each party specifically disclaims any and all implied or statutory warranties, including, but not limited to, the implied warranties of merchantability, satisfactory quality, fitness for a particular purpose, as to the design, condition, quality, capacity, or other aspect of any of the services provided under this agreement, or noninfringement, or arising from a course of dealing, usage or trade practice.

6. PREP Act Immunity

Contractor is entitled to PREP Act immunity. The Secretary of HHS issued a Declaration under the Public Readiness and Emergency Preparedness Act ("PREP Act") for medical countermeasures against COVID-19 dated March 10, 2020 (the "Declaration"). See 85 Fed. Reg. 15,198 (March 17, 2020); see also Pub. L. No. 109-148, Public Health Service Act § 319F-3, 42 U.S.C. § 247d-6d and 42 U.S.C. § 247d-6e.

The PREP Act and Declaration cover and immunize from liability for damages "Covered Persons," which may include Contractor, as well as any of the Contractor's officials, agents, employees, contractors and volunteers working in collaboration with federal, state or local governmental agencies with respect to the covered countermeasures.

"Covered Countermeasures" include Testing kits and any subcomponent thereof utilized in connection with testing supported pursuant to this Agreement that have been authorized by the Food and Drug Administration, including through an Emergency Use Authorization.

Under the PREP Act and Declaration, Contractor is immunized from liability in accordance with the PREP Act and Declaration with respect to the administration of such Covered Countermeasures, which would include, but are not limited to, (i) testing at or for Providers, including specimen collection, processing, handling, or shipping specimens, (ii) using or providing real property in connection with efforts to provide specimen collection or testing, (iii) using or providing personnel or supplies in connection with the collection of specimens or test samples, or otherwise in connection with combatting COVID-19, or (iv) performing Testing on specimens collected from any person. This immunity from liability does not depend on any particular specimen collection protocol, which HHS acknowledges may change over time. Nevertheless, HHS encourages all covered persons using or administering covered countermeasures to document the reasonable precautions taken to facilitate the safe use of covered countermeasures.

Under the Declaration, immunity will extend to claims of "loss," as defined in the PREP Act, by those who receive collection or testing services related to a Covered Countermeasure, as well as to anyone else involved or in proximity to collection or testing services (either to seek testing, or as employees or

contractors, or for other purposes), or any other persons or entities who may assert a claim for loss against your Companies related in any way to a Covered Countermeasure and the administration thereof. If all requirements of the PREP Act and the Declaration are met, immunity covers claims for loss sounding in tort or contract, whether arising under state or federal law. The PREP Act immunity does not apply to affirmative actions by the federal government. As provided in the Declaration, immunity applies when a covered person engages in activities related to an agreement or arrangement with the federal government, or when a covered person acts according to an Authority Having Jurisdiction to respond to a declared emergency. These two conditions include (1) any arrangement with the federal government, or (2) any activity that is part of an authorized emergency response at the federal, regional, state, or local level. Such activities can be authorized through, among other things, guidance, requests for assistance, agreements, or other arrangements. Because the Secretary issued a Public Health Emergency declaration on January 31, 2020, effective as of January 27, 2020, the immunity granted by the PREP Act under this declaration applies regardless of whether state or local authorities have declared states of emergencies. The PREP Act expressly preempts any State and local law that “is different from, or is in conflict with, any requirement applicable under [the PREP Act].” 42 U.S.C. § 247d-6d(b)(8). This preemption authority includes any state or local law, regulation, or other legal requirement that would otherwise apply to the administration of a Covered Countermeasure. In addition, the PREP Act replaces certain damages claims that would normally be brought in court with a no-fault compensation system outlined at 42 C.F.R. pt. 110

7. Governing Law, Jurisdiction, and Venue.

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

8. Data Disclosure.

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, Contractors consent to disclosure of their social security numbers or federal employer tax identification numbers, and Minnesota tax identification numbers, already provided to State, to federal and Minnesota state agencies, and Minnesota state personnel involved in the payment of Minnesota state obligations under this Contract. These identification numbers may be used in the enforcement of federal and Minnesota state laws which could result in action requiring Contractors to file state tax returns, pay delinquent Minnesota state tax liabilities, if any, or pay other Minnesota state liabilities.

9. Government Data Practices.

Contractors and State must comply with the Minnesota Government Data Practices Act (“MGDPA”), Minn. Stat. Ch. 13, and the Minnesota Health Records Act (MHRA), Minn. Stat. §§ 144.291, et seq., as they apply to all data created, collected, received, stored, used, maintained, or disseminated by Contractors under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the MGDPA, by either Contractors or State.

If Contractors receive a request to release the data referred to in this Section 9, Contractors must immediately notify and consult with State’s Authorized Representative as to how Contractors should respond to the request. Contractors’ response to the request shall comply with applicable law.

10. Intellectual Property Rights.

10.1 Definitions. For the purpose of this Section, the following words and phrases have the assigned definitions:

- 10.1.1 “Documents” are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by a Contractor, its employees, agents, or subcontractors, in the performance of this Contract.
- 10.1.2 “Pre-Existing Intellectual Property” means intellectual property developed prior to or outside the scope of this Contract, and any derivatives of that intellectual property.
- 10.1.3 “Works” means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by a Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. “Works” includes Documents.
- 10.2 Pre-existing Intellectual Property/Works and Documents. Each party shall retain ownership of its respective Pre-Existing Intellectual Property. Contractors shall own Works developed or generated by Contractors.
- 10.3 Contractors represent and warrant that materials produced or used under this Agreement do not and will not infringe upon any intellectual property rights of another including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. Contractors shall indemnify and defend State, at Contractors' expense, from any action or claim brought against State to the extent that it is based on a claim that all or parts of the materials infringe upon the intellectual property rights of another. Contractors shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this grant agreement, amendments and supplements thereto, which are attributable to such claims or actions. If such a claim or action arises or in Contractors' or State's opinion is likely to arise, Contractors shall at State's discretion either procure for State the right or license to continue using the materials at issue or replace or modify the allegedly infringing materials. This remedy shall be in addition to and shall not be exclusive of other remedies provided by law.

11. Copyright.

Each Contractor shall save and hold harmless the State of Minnesota, its officers, agents, servants and employees, from liability of any kind or nature, arising from the use of any copyrighted or noncopyrighted compositions, secret process, patented or nonpatented invention, article or appliance furnished or used in the performance of the Contract.

12. State Audits.

The books, records, documents, accounting procedures and accounting practices of each Contractor that are relevant to this Contract are subject to examination by State, the Minnesota State Auditor, or Minnesota Legislative Auditor under Minn. Stat. § 16C.05, subd. 5, as appropriate, for a minimum of six years from the end of this Contract.

13. Diverse Spend Reporting.

Each Contractor must track and report to State, on a quarterly basis, the amount paid to diverse businesses both: 1) directly to third party subcontractors performing activities on behalf of Contractor under this Contract, and 2) indirectly to diverse businesses that provide supplies/services to your

company (in proportion to the revenue from this Contract 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 contract is in effect.

14. Insurance.

Contractors must comply with all insurance requirements specified in **Exhibit D** of the Contract. Prior to execution of this Contract, amendment, or assignment agreement, State must have a current copy of Contractors' Certificate of Insurance that meets the Contract insurance requirements.

15. Publicity and Endorsement.

15.1 Publicity. Any publicity regarding the subject matter of this Contract must identify State as the sponsoring agency and must not be released without prior written approval from State's Authorized Representative, which approval will not be unreasonably withheld, conditioned or delayed. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, information posted on corporate or other websites, research, reports, signs, and similar public notices prepared by or for Contractors individually or jointly with others, or any subcontractors, with respect to the activities under this Contract.

15.2 Endorsement. Contractors must not claim that State endorses its products or services.

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

Each Contractor certifies that neither it nor its principals are presently debarred or suspended by the Federal government, State, or any of State's departments, commissions, agencies, or political subdivisions. Contractors' certification is a material representation upon which the Contract award was based. Contractors shall provide immediate written notice to State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

17. Federal Funds.

State will inform Contractors of all sources of Federal money that will be used to pay for all or part of the goods, construction or services under the Contract. State will inform Contractors when any source of funding changes. State will provide information about the source of funding, to the extent it is available, to contractor. Each Contractor is responsible for compliance with all federal requirements imposed on the funds and accepts full financial responsibility for any requirements imposed by each Contractor's failure to comply with federal requirements.

18. 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 Contract, therefore each Contractor 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. Contractors' certification is a material representation upon which the Contract award was based.

19. Contingency Fees Prohibited.

Pursuant to Minn. Stat. § 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.

20. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

Each Contractor certifies that 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 such Contractor'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.

21. Non-discrimination (in accordance with Minn. Stat. § 181.59).

Contractors will comply with the provisions of Minn. Stat. § 181.59.

22. E-Verify Certification (in accordance with Minn. Stat. § 16C.075).

For services valued in excess of \$50,000, each Contractor certifies that as of the date of services performed on behalf of State, each Contractor 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 State. Each Contractor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with the applicable Contractor and made available to State upon request.

23. Affirmative Action Requirements

State intends to carry out its responsibility for requiring affirmative action by its Contractors.

23.1 Covered Contracts and Contractors. If the Contract exceeds \$100,000 and Contractors employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, then Contractors 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 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.

23.2 Minn. R. 5000.3400-5000.3600.

23.3 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 contractor'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.

23.4 Disabled Workers. Contractors must comply with the following affirmative action requirements for disabled workers.

- a) Contractors 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. Contractors agree 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) Contractors agree 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 Contractors' noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- d) Contractors agree 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 Contractors' 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) Contractors must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Contractors are 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.

23.5 **Consequences.** The consequences for Contractors' failure to implement their affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or State.

23.6 **Certification.** Contractors hereby certify that they are in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and are aware of the consequences for noncompliance.

24. Equal Pay Certification

If Contractors are required by Minn. Stat. §363A.44 to have a current Equal Pay Certificate, and that Contractors' Equal Pay Certificate expires during the term of this Contract, Contractors must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify State's Authorized Representative once Contractors have received the renewed Equal Pay Certificate. If Contractors are exempt, State may require Contractors to verify their exempt status.

25. Accessibility Standard.

The State of Minnesota (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 which can be viewed at:
<https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software/products/subscriptions available through this Contract, Contractors agree to develop functionality which supports accessibility. If any issues arise due

to nonconformance with the above-mentioned accessibility Standards, Contractors agree to provide alternative solutions upon request at no additional charge to State.

When updates or upgrades are made to the products or services available through this Contract, Contractors agree to document how the changes will impact the product's/service's accessibility and usability. This documentation, upon request, must be provided to State in advance of the change, occurring within an agreed upon timeframe sufficient for State to review the changes and either approve them or request a remediation plan from Contractors. If agreed-upon updates fail to improve the product or service's accessibility or usability as planned, the failure to comply with this requirement may be cause for contract cancellation or for State to consider Contractors in default.

When public-facing web portals and email materials are requested to have additional accessible features, beyond these standards, Contractors will make reasonable best effort to meet requests.

26. Nonvisual Access Standards.

Pursuant to Minn. Stat. §§ 16C.145, Contractors must comply with the following nonvisual technology access standards to the extent required by law:

- That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired; and
- Executive branch state agencies subject to Section 16E.03, subdivision 9, are not required to include nonvisual technology access standards developed under this Section in contracts for the procurement of information technology.
- These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

27. Failure to Supply.

It is the responsibility of Contractors to maintain sufficient inventory levels for all products, supplies and equipment required to provide the services stated in Exhibit A. If either Contractor is notified of a reagent or component outage by its suppliers, then that Contractor will reasonably seek reagents or components to maintain sufficient inventory levels, such as, but not limited to, sourcing from other suppliers and sourcing like-kind supplies. Such Contractor must notify State in writing if it cannot remediate the outage; this notice must be no later than 14 days after Contractor's outage notice from its suppliers.

Exhibit D: Insurance Requirements

1. Notice to Contractors.

- 1.1. Each Contractor is required to submit Certificates of Insurance acceptable to State as evidence of insurance coverage requirements prior to commencing work under this Contract.
- 1.2. Neither Contractor shall commence work under this Contract until it has obtained all the insurance described below and State has approved such insurance. Each Contractor shall maintain such insurance in force and effect throughout the term of this Contract.
- 1.3. The failure of State to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify State of the cancellation of policies required under this Contract shall not constitute a waiver by State to each Contractor to provide such insurance.
- 1.4. State reserves the right to immediately terminate this Contract if either Contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against such Contractor. All insurance policies must be available to inspection by State, and copies of policies must be submitted to State's authorized representative upon written request.

2. Notice to Insurer.

- 2.1 Each Contractor's insurance company(ies) waives its right to assert the immunity of State as a defense to any claims made under said insurance.
- 2.2. Insurance certificate holder should be addressed as follows:

State of Minnesota
Department of Administration
50 Sherburne Avenue, Room 112
St. Paul, MN 55155

3. Additional Insurance Conditions. The following apply to each Contractor, or a Contractor's subcontractor:

- 3.1 Each Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to State with respect to any claim arising out of such Contractor's performance under this Contract;
- 3.2 If a Contractor receives a cancellation notice from an insurance carrier affording coverage herein, such Contractor agrees to notify State within five (5) business days with a copy of the cancellation notice, unless such Contractor'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 State;
- 3.3 Each Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- 3.4 If a Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- 3.5 Each Contractor's policy(ies) shall include legal defense fees in addition to its professional liability policy limits;
- 3.6 Each Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best; and

3.7 An Umbrella or Excess Liability insurance policy may be used to supplement each Contractor's policy limits to satisfy the full policy limits required by the Contract.

4. Coverages. Contractors are required to maintain and furnish satisfactory evidence of the following insurance policies:

4.1 Workers' Compensation Insurance. Statutory Compensation Coverage. Except as provided below, each Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, each Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of State, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

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

\$500,000 – Bodily Injury by Disease aggregate

\$100,000 – Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts each Contractor from Workers' Compensation insurance or if such Contractor has no employees in State, such Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes such Contractor from the Minnesota Workers' Compensation requirements.

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

4.2 Commercial General Liability Insurance. Each Contractor 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 this Contract whether the operations are by such Contractor or by its third party subcontractor or by anyone directly or indirectly employed by such Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence

\$5,000,000 – annual aggregate

\$5,000,000 – annual aggregate – applying to Products/Completed Operations, with respect to Infinity only

The following coverages shall be included:

- Premises and Operations Bodily Injury and Property Damage
- State of Minnesota named as an Additional Insured, to the extent permitted by law

4.3 Professional Liability, Errors, and Omissions. This policy will provide coverage for all claims each Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to such Contractor's professional services required under this Contract. Insurance **minimum** limits are as follows:

\$2,000,000 - per claim or event

\$5,000,000 - annual aggregate

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

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

4.4 Network Security and Privacy Liability Insurance (or equivalent). The coverage may be endorsed on another form of liability coverage or written on a standalone policy. Vault shall maintain insurance to cover claims which may arise from failure of Vault'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:

\$3,000,000 annual aggregate

The following coverage shall be included:

State of Minnesota named as an Additional Insured unless the coverage is written under a Professional Liability policy.

EXHIBIT E: POTENTIAL WIND-DOWN COSTS

For clarity, Contractors agree and acknowledge that the costs and expenses for potential wind-down for which reimbursement State is responsible cannot exceed the contingency budget of \$960,000.

- Costs of reagents used to process Tests that Infinity cannot repurpose (once a reagent batch is opened it cannot be shipped and repurposed, each batch is for many thousands of samples);
- Costs of Test kit components that Infinity cannot repurpose (kits that are sent to site cannot be taken back as they would fail audit tracking);
- Costs of Test processing consumables (e.g., tips) that Infinity cannot repurpose (open boxes cannot be repurposed);
- Monthly rent (including, utilities, taxes, and the like) for the Minnesota Lab (in the event that the Lab space leased in Minnesota is closed);
- Costs associated with termination of vendor contracts relating to the operation of the Minnesota Lab; testing sites (e.g., early termination fees and the like) (in the event that Infinity is closing the Minnesota Lab or Vault shuts down any testing sites); and
- Costs of shutting down any testing sites or at-home Testing operations incurred by Vault.