

## Member-Requested Participation Addendum (MPA)

This Addendum (“**MPA**”) is entered into by State of North Carolina (“**Member**”) and Nutricia North America, Inc., a corporation, with a principle address of 77 Upper Rock Circle, Suite 303, Rockville, MD 20850 (“**Vendor**”) and the MMCAP Infuse, an agency of the State of Minnesota (“**MMCAP Infuse**”), regarding vendor contract MMS2100553 (“**Vendor Contract**”).

**WHEREAS**, MMCAP Infuse and Vendor executed the Vendor Contract on August 1, 2021.

**WHEREAS**, Member and Vendor wish to amend the terms and conditions of the Vendor Contract to address the requirements of Member.

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

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

**THEREFORE**, the parties agree as follows:

### I. **DEFINITIONS**

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

### II. **EFFECTIVE DATE AND TERM**

- A. **Effective Date**: This MPA is effective on the date all signatures have been obtained.
- B. **Termination**: This MPA terminates upon:
  - 1. Thirty/Sixty/Ninety (30/60/90) calendar days’ written notice upon written notice to the other parties; or
  - 2. The termination of the Vendor Contract between MMCAP Infuse and the Vendor; or
  - 3. Written agreement executed by all parties.

### III. **SCOPE**

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

IV. **GENERAL PROVISIONS**

- A. **Assignment:** Except as affirmed in this MPA, the Member nor Vendor will assign, delegate, or transfer any rights or obligations under this MPA without the prior written consent of MMCAP Infuse, subject to any reorganizations of State agencies by the N.C. Legislature.
- B. **Counterparts and Electronic Signature:** The MPA cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP, Member and Vendor expressly agree to conduct transactions under the MPA by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this MPA by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this MPA is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP Infuse in order for this MPA to be a transferable record, to ensure that MMCAP Infuse has control of the authoritative copy of such transferable record.
- C. **Amendments:** Any amendment or modification to this MPA must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP Infuse.
- D. **Jurisdiction and Venue:** This MPA, except for the contents of Exhibit B, will be governed by the laws of Minnesota. Venue for all legal proceedings involving MMCAP Infuse arising out of this MPA, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. All disputes between Member and Vendor will be governed as agreed upon in the Vendor Contract.

**[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

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

**BY AND BETWEEN:**

**FOR THE MEMBER:**

STATE OF NORTH CAROLINA

Signature: NMathis  
Printed: Nicole Mathis  
Title: State Procurement Manager  
Date: August 30, 2021

**Nutricia North America, Inc.**

Signature: Joseph C Pocrass  
Printed: Joseph C Pocrass  
Title: VP of Finance  
Date: August 30, 2021

**IN AN APPROVAL CAPACITY ONLY:**

**State of Minnesota for MMCAP Infuse**

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

Printed: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Minnesota Commissioner of Administration**

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

Printed: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**[SIGNATURE PAGE]**

**EXHIBIT A**

**Vendor Contract and other Applicable Legal Documents**

The following is a list of the legal documents to be referenced and to be incorporated with the terms and conditions of Exhibit B.

1. Vendor Contract MMS2100553

## **EXHIBIT B**

### **Language Modification of the Vendor Contract**

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

#### **Modification of Terms:**

**This has been intentionally been left blank.**

#### **Additional Terms:**

1. **Contact:**

**State of North Carolina**

Nicole Mathis  
NC Department of Administration  
Division of Purchase & Contract  
116 West Jones Street  
Raleigh NC 27603-8002  
Phone: 984-236-0228  
Email: [nicole.mathis@doa.nc.gov](mailto:nicole.mathis@doa.nc.gov)

2. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of the State of North Carolina or any of its sub-units in or as part of any commercial advertising or marketing of products or services.
3. **GOVERNING LAWS:** Solely with respect to matters or disputes related to or arising from purchase orders issued hereunder by governmental entities within the State of North Carolina, this agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. This is a cooperative purchasing agreement advantageous to the State under 01 NCAC 05B.1513 and has been determined eligible for a Waiver of Competition under 01 NCAC 05B.1401. As to State purchases under the Agreement, it is subject to the provisions of Chapter 143 of the N.C. General Statutes and the rules in 01 NCAC Chapter 05.
4. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records, solely to the extent they relate to transactions and matters involving North Carolina's participation in the Contract, to verify accounts and data affecting fees or performance under the Contract, as provided in G. S. §143-49(9).
5. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
6. **COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules,

regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority. If federal funds are utilized, the provisions of 2 CFR 200, and particularly Appendix II, are applicable.

7. **CERTIFICATIONS:** Vendor certifies to each of the following:
- a). that this bid is submitted competitively and without collusion, as required by G.S. 143-54;
  - b). that none of its officers, directors or controlling owners has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2);
  - c). that it is not an ineligible vendor as set forth in G.S. 143-59.1;
  - d). that no employee or agent of Vendor has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32; and
  - e). that it, and each of its sub-contractors under this contract, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system, as required by G.S. §143-48.5.
  - f). that the Vendor is not an ineligible vendor due to being identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, in accordance with the Iran Divestment Act of 2015, G.S. 147-86.55 et seq. The Treasurer's Divestment List may be reviewed at: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.asp>.
8. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the State under applicable law.
9. **ELECTRONIC PROCUREMENT:** Vendor must register for the Statewide E-Procurement Service within two (2) business days of execution of this amendment in order to receive electronic purchase orders resulting from this MPA. All e-procurement fees have been waived for this contract.
10. **LEASE AGREEMENTS:** Any applicable lease terms are attached as Appendix \_\_\_\_.
11. **SUBCONTRACTORS:** All contractors, dealers, and resellers authorized in the State of North Carolina, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the MMCAP Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
12. **ORDERS:** Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
13. **TERMINATION FOR CONVENIENCE:** The State may terminate this contract at any time by providing ninety (90) days' notice in writing from the State to the Vendor and to the Lead State. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for goods and services satisfactorily completed and delivered by the Vendor, less any payment or compensation previously made.
14. **PROHIBITED ACTIONS.** Notwithstanding any provision to the contrary, the State expressly does

not agree to any Vendor term or provision in any attached or referenced document, or any revision thereof, that is inconsistent with or materially changes any posted State requirement, term or condition in a relevant solicitation, except as 1) *expressly and lawfully agreed to in writing by authorized official(s)* prior to award of the contract, or, 2) ordered by a court of competent jurisdiction. For avoidance of doubt, the above statement includes and means, without limitation and supplementing any similar provisions in the Master Agreement, any vendor term or provision that provides for:

- indemnification of any person or entity by the State,
- applicability of state laws other than of North Carolina and of venue in Wake County, North Carolina, G.S. 22B-3 *Contracts against public policy* (Contracts with forum selection provisions deemed void and unenforceable); See, G.S. 114-6,
- arbitration, mediation or any limitation of any right of the State to jury trial, See G.S. 22B-10 (Contract provisions waiving jury trial unenforceable),
- delivery other than FOB Destination,
- passage of title or risk of loss to the State prior to express acceptance of deliverables by the State,
- pre-payment of maintenance fees for a term other than one year,
- state contracts that have a term of more than 3 years without approval by the State Purchasing Officer (SPO).
- a late payment fee, penalty, or interest, or attorney's fees,
- any obligation by the State to pay taxes inconsistent with its tax exempt status,
- any change in the posted payment terms,
- limitation of the right of the State to contract termination upon failure of legislative appropriation,
- a statement of "entire agreement" in a subservient Vendor document,
- assignment of a State contract without approval by the State, 01 NCAC 05B.1507,
- implementation of any oral promise(s) or statements made by any State official or personnel, 05 NCAC 05B.0102
- Vendor intellectual property liability or general indemnity clauses that are not unlimited as to dollar amount,
- any obligation to expose State Personally Identifiable Information or State Data internationally,
- *a general limitation of liability by the Vendor that is less than 2 times the total value of the Vendor's contract.*

NOTE: A contract not made in accordance with Article 3 of G.S. 143 is void. G.S. 143-58.

15. GENERAL: The State of North Carolina shall not be required to provide Vendor with financial information, credit bureau reports, or fulfill credit inquiries from Vendor. North Carolina shall not be required to allow Vendor to audit any records for compliance. North Carolina does not agree to mediate or arbitrate any dispute and does not agree to waive or limit any of the North Carolina's rights to seek dispute resolution through legal action in North Carolina courts.
16. PAYMENT TERMS AND REMEDIES: Payment terms are Net not later than thirty (30) days after receipt of correct invoice. The using agency is responsible for all payments to the Vendor under this MPA. North Carolina shall not be assessed fees for late payments.