

MA 18P 18030500000000000097
MODIFICATION

State of Maine



Master Agreement

Effective Date: 03/05/18

Expiration Date: 03/01/21

Master Agreement Description: McKesson MMCAP MMS18000

Buyer Information

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

Theresa Labrecque 207-287-3991 ext. Theresa.LaBrecque@maine.gov

Requestor Information

Theresa Labrecque 207-287-3991 ext. Theresa.LaBrecque@maine.gov

Agreement Reporting Categories

Reason For Modification: Extension to 3/01/2021.

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VC1000061654

Vendor Name

MCKESSON MEDICAL-SURGICAL

Alias/DBA

MINNESOTA SUPPLY INC

Vendor Address Information

12755 Highway 55 #R200

Plymouth, MN 55441

US

Vendor Contact Information

Marsha Chevalier
 800-328-8111 ext.

Payment Discount Terms

0 Days
 0 Days
 0 Days
 0 Days

Commodity Information

Vendor Line #: 1

Vendor Name: MCKESSON MEDICAL-SURGICAL

Commodity Line #: 1

Commodity Code: 47500

Commodity Description: Contract for Medical Supplies and Accessories

Commodity Specifications: Agency user to submit an MMCAP Application to Div of Purchases Attn: Donny Crockett prior to submitting orders. Applications are submitted once and remain on file for all MMCAP related contracts.

Commodity Extended Description: Once approved, user will place order online with McKesson's website.

Quantity	UOM	Unit Price
0.00000		0.000000
Delivery Days	Free On Board	
	FOB Dest, Freight Prepaid	
Contract Amount	Service Start Date	Service End Date
0.00	03/05/18	03/01/21
Catalog Name	Discount	
	0.0000 %	
	Discount Start Date	Discount End Date

Commodity Terms and Conditions

Vendor Line #: 1

Commodity Line #: 1

T&C #: 165

T&C Name: Payment Terms

T&C Details: Net 30

Please see authorized signatures displayed on the next page

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KEY DEFINITIONS

Throughout this Contract, the following key terms are defined below.

Automatic Product Substitution - An order fulfillment process whereby Products that are not available at the time of order placement, may be automatically substituted with another equivalent (brand, generic or private label) Product substitute, contingent upon written consent by the ordering MMCAP Member.

Commencement Date - The date the Vendor is fully operational and ready to accept and ship orders from MMCAP Members as applicable to the service area designated in the Contract.

Confirmation Printback/Order Confirmation - An electronic confirmation report generated from the Vendor's ordering system, which is sent back electronically to the ordering facility, indicating that the requested Products are available, on Manufacturer Backorder, out of stock, or deleted, etc.

Core Products - Products determined by MMCAP that produced the highest volume in sales, and highest quantity shipped during a given one (1) calendar year period. These Products are identified in *Attachment A, Products Pricing*, under the *Brand Label Core Products* and *Private Label Core Products* tabs.

Drop Shipment(s) - Products ordered by MMCAP Member through the Vendor, and shipped directly to the MMCAP Participating Facilities, from the Manufacturer. The Manufacturer notifies and bills the Vendor, who then invoices and receives payment from the MMCAP Member.

EDI (Electronic Data Interchange) - Inter-process (computer to computer application) communication of business information, in a standardized electronic form.

Effective Date - The date the Contract is fully executed.

Emergency Product Delivery - An off-schedule delivery of the Products required by the MMCAP Participating Facilities, which may include orders of Product for patient-specific medical treatment, or to ensure the facility has sufficient Product to remain operational until the next-scheduled delivery day.

Fiscal Year - The State of Minnesota's Fiscal Year period of July 1-June 30 of each calendar year.

List Price - Vendor's internal (non-published) Government List Price which is a price for commercial items that are sold in substantial quantities to various Federal, state and local Government entities. Importantly, Vendor's Internal Government List Price reflects market and Manufacturer price adjustments (increases or decreases) for items sold to both Government and Commercial Customers so the list price provided to MMCAP will reflect changes in the marketplace.

Manufacturer: Any supplier, of medical Products (including Medical Equipment), who has a contract to supply the Vendor with Products, purchased by MMCAP Members.

Manufacturer Backorder(s) (MBO) - An order placed by the Member or Vendor to a Manufacturer or Supplier, which is not shipped to the Vendor or Member, due to industry wide shortages or other supply issues.

Medical Equipment – The following definition, as provided by the Association for the Advancement of Medical Instrumentation, expands on the FDA definition, and clarifies what "Medical Equipment" is in the United States, and in this Agreement. This definition applies to instruments and software as supplied by industry Manufacturers, once such products have been cleared by the FDA.

"Medical devices that have been cleared by the FDA, that are intended to be used for diagnostic, therapeutic, or monitoring care, provided to a patient by a health care organization.

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NOTE 11 - Medical equipment includes devices such as monitoring equipment, life support equipment, imaging equipment, laboratory equipment, mechanical equipment, transport equipment, as well as any other equipment supporting the care of a patient, whether or not it is in the immediate vicinity of a patient. In addition, this equipment category includes other devices, such as computers, that support the care of a patient when in a health care organization, but are generally not specifically manufactured for use in a health care organization. As used in this standard, the term "equipment" refers to medical equipment.

NOTE 22 - Embedded software is covered by the medical device Manufacturer; standalone software is covered by ANSI/AAMI/IEC 80001-1:2010, Application of risk management for IT networks incorporating medical devices—Part 1: Roles, responsibilities, and activities."

MMCAP Contract/Agreement - Also referred to as the "Contract", is the Agreement including any attachments, addenda and exhibits and is executed by the Vendor and MMCAP, for the distribution and sale of medical Products, Services, Medical Equipment, and select pharmacy Products as agreed to in writing by MMCAP.

MMCAP Contract Pricing - The applicable MMCAP Contract Product Cost agreed upon by the Vendor and MMCAP, and if applicable to this Contract, the Product price agreed upon by the MMCAP Contracted Manufacturer and MMCAP.

MMCAP Members - These are eligible purchasers that are deemed by the MMCAP Office, to have completed, and met the requirements of the membership application process.

MMCAP Participating Facility(ies) - Consist of facilities that are MMCAP Members (eligible purchasers), and facilities recognized by the MMCAP Members, as facilities eligible to receive the delivery of Products and Services.

MMCAP Products - Refers to all Products, covered in *Attachment A, Products and Pricing*. These products cover the entire Product catalog of the awarded Vendor, including Services (referred to in *Attachment A as Additional Value Offerings*), and are identified in *Attachment A*, under the following tabs: the *Brand Label Core Products* tab, the *Private Label Core Products* tab, the *Non-Core Products*³ tab, the *Equipment Schedule* tab, and the *Additional Value Offerings* tab.

MMCAP State Contacts - Purchasing and pharmacy professionals designated by MMCAP Member States, who serve as liaisons between the MMCAP Office and the MMCAP Participating Facilities in each State. A list of MMCAP State Contacts is available at:
http://www.mmd.admin.state.mn.us/MMCAP/background/New_Current_States.aspx.

Net Purchase - All purchases of Products (excluding returns, credits, rebates, late charges and similar fees) made through Vendor by any MMCAP Member, including Products drop shipped from an affiliate of Vendor, in the normal course of business.

Non-Core Products - Refers to Products not specifically covered in the *Brand Label Core Products* tab, the *Private Label Core Products* tab, the *Equipment Schedule* tab, and the *Additional Value Offerings* tab. Through the categories listed in the *Non-Core Products* tab, the awarded Vendor will offer the rest of the Products available in its catalog, which are not featured in the remaining tabs in *Attachment A, Products and Pricing*. Vendor, in Agreement with MMCAP, may amend the *Non-Core Product* categories, as new additions or deletions take place, in the Vendor's catalog.

¹ Reference: Taken from *The Association for the Advancement of Medical Instrumentation (AAMI)*.

² Reference: Taken from *The Association for the Advancement of Medical Instrumentation (AAMI)*.

³ The listed categories in the *Non-Core Products* tab, are intended to cover the Vendor's most current, published catalog of Products, which are not listed in the remaining tabs.

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Non-Recurring Products - Products ordered less than once a month by MMCAP Members.

Order - Means, any purchase order used to order Products or Services under this Contract. An Order amended, consistent with the requirements of any MMCAP Participating Facility, and accepted by the Vendor, shall be governed by the terms and conditions of the original Order, except as amended.

Order Originator - The MMCAP Member, who places the order with the Vendor.

Product(s) - Products offered by the Vendor and awarded by MMCAP.

Product Backorder - A Product order that is not fulfilled in the time frame set forth in this Contract, due to Product unavailability, resulting from the Vendor's or the Manufacturer's inability to supply the Product.

Product Substitutes - Equivalent (brand, generic or private label) Products that the ordering MMCAP Member consented to in writing to accept as a substitute for the ordered MMCAP Contract Products.

Replacement Products - In the event a Product covered under this Contract is removed by the Vendor, or recalled by a Manufacturer, the Vendor must replace the Product with an acceptable Product substitute. In the event the Vendor cannot obtain a suitable Product substitute, then the affected MMCAP Member may purchase the Product from a non-contract source.

Services - Any related offering provided by the Vendor related to the Products covered by this Contract, and which can be provided by the Vendor for a fee or at no cost to MMCAP Members. Services may include but are not limited to: customer service, Product ordering systems, clinical education, Product training, and Product marketing, among others. Services may, or may not, incur cost.

Special Products - If applicable to this Contract, includes all MMCAP Contract Products that require special temperatures and environmental conditions, in accordance with Manufacturer requirements for delivery to the MMCAP Participating Facilities. All refrigerated Special Products will be shipped in returnable coolers or disposable coolers with appropriate packaging, to maintain the required temperature range. Special Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the Manufacturer.

Vendor - MMCAP's Contracted Distributors or Manufacturers of Products and Services, related to the Products for the MMCAP Membership, pursuant to the terms of this Contract.

Vendor Contract Performance Report - A written report prepared by the MMCAP Office, detailing the proficiency of the Vendor. Repeated low ratings in the report might be conducive to penalties, including termination, as well as the inability of the Vendor to respond to future solicitations published by MMCAP.

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**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY**

This contract is between the State of Minnesota, acting through its Commissioner of Administration on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy (“MMCAP”) and McKesson Medical-Surgical Inc., located at 9954 Mayland Drive, Suite 4000, Richmond, VA 23233, McKesson Medical-Surgical Minnesota Supply Inc., located at 8121 10th Avenue North, Golden Valley, MN 55427, and Moore Medical, LLC, located at 1690 New Britain Ave., Farmington, CT 06032 (collectively, “Vendor” or “Contractor”).

ARTICLE 1: RECITALS

1. Under Minn. Stat. § 16C.03, the Commissioner of Administration, on behalf of MMCAP, is empowered to engage such assistance as deemed necessary.

2. MMCAP is a group purchasing organization of government owned and/or operated health care facilities which contracts for healthcare Products and Services for its Members’ use. Participation in MMCAP is limited to facilities within Member states that are specifically permitted by the Member state’s statutes to purchase goods from the Member state’s contracts. Participation is generally available to facilities run by state agencies, counties, cities, townships, and school districts.

3. The Vendor wishes to contract with MMCAP to supply Medical Products and Services to the national MMCAP Participating Facilities.

ARTICLE 2: INCORPORATION

I. The parties agree that the recitals are true and correct, and are hereby incorporated into this Contract.

2. Attachments, Exhibits, and Order of Precedent

2.1. The following attachments and Exhibits are attached and incorporated into this Contract. In the event of conflict, the following order of precedence applies.

- *Attachment A: Products and Pricing*
- *Attachment B: Statement of Work*
- *Attachment C: MMCAP Member Participation Agreements*
- *Attachment D: Service Area*
- *Attachment E: Vendor’s Contract Implementation and Transition Plan*
- *Attachment F: MMCAP Contracted Manufacturer List*
- *Attachment G: Vendor’s Shipping Policy*
- *Attachment H: Vendor’s Stock Outage and Backorder Policy*
- *Attachment I: Vendor’s Product Return Policy*
- *Attachment J: Vendor’s Product Recall Policies/Procedures*
- *Attachment K: Vendor’s Business Interruption Plan*
- *Attachment L: Vendor’ Escalation Procedure*
- *Attachment M: Vendor’s Discount Structure*

2.2. Member Participation Agreements (MPAs)

In order to access this Contract some Members require jurisdiction-specific additional paperwork or contract language. Vendor must not sign any Member documents without prior MMCAP review and approval. If needed, MMCAP will issue a Member-requested Participation Agreement (MPA) that will be amended into to this Contract. No other mechanism of modifying or “attaching to” MMCAP contracts is authorized. The MPA, which will only apply to the requesting Member and must be signed in the following order: Member, Vendor, then MMCAP. Vendor is not required to agree to any additional

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terms; however, by not agreeing to the MPA Vendor may be precluded from doing business with that Member. In the event a Member requires a fee be added to the Contract price (e.g., Member levied procurement fee or system use fee), that fee must be added on top of the MMCAP-contracted pricing. Vendor may not absorb the fee. Vendor must not pay a Member levied fee without first collecting the fee through increased Product costs. The fees will be set aside and paid to the Member as would be detailed in an MPA.

Except as provided in a Member-Requested Participation Agreement (MPA) approved by MMCAP and executed by an MMCAP Member, Vendor and MMCAP, all orders placed by MMCAP Members with Vendor will be priced and offered by Vendor per the terms and conditions of this Contract, and no other terms provided by the MMCAP Member will apply to such orders.

For each state requiring state specific language, a further Exhibit shall be attached to *Attachment C: MMCAP Member Participation Agreements*.

2.2.1. Should any of the terms set forth in any attachment conflict with any terms set forth in the Contract document, the terms of the Contract document shall prevail, except when such conflict arises from the state-specific terms set forth in *Attachment C: MMCAP Member Participation Agreements*, in which case the order of precedence set forth in *Article 2, Section 2.2.2*, shall apply.

2.2.2. Should any terms in the Contract document or other attachments conflict with the state-specific terms set forth in *Attachment C*, the terms set forth in *Attachment C* shall take precedence over the terms of the Contract document, but only as between the Vendor and the MMCAP Member and/or MMCAP Participating Facility bound by said state-specific terms. No other State shall be bound by the terms set forth in any other State's state specific language set forth in the Exhibit provided by an MMCAP Member State and attached to *Attachment C*.

2.2.3. MMCAP and the State of Minnesota shall not be bound by non-Minnesota state-specific terms set forth in any Exhibit included in *Attachment C* at any time, nor when bringing any enforcement action on behalf of MMCAP or the State of Minnesota.

2.3.4. During the term of this Contract other MMCAP Member States may request the MMCAP Office or the Vendor to amend this Contract to include terms and conditions specific to the requesting MMCAP Member State by attaching an Exhibit to *Attachment C* specific to that State. If a MMCAP Member State requests an amendment to this Contract to include their state specific requirements, the Vendor must work with the MMCAP Member State and the MMCAP Office to execute an amendment to this Contract in a reasonable period of time. No verbal or written instructions from the MMCAP Member States, MMCAP Participating Facilities, or any of their staff or state officials to change any provision of this Contract will be accepted by the Vendor without the prior written approval of the MMCAP Office. The Vendor will promptly report any such requests to the MMCAP Office.

ARTICLE 3: REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

1. GPO Representation

MMCAP represents and warrants that it is a "group purchasing organization" (GPO) as that term is defined under 42 C.F.R. Section 1001.952(j) and that it shall comply with all applicable federal and state laws, rules and regulations, including, but not limited to, the provisions set forth in 42 U.S.C. Section 1320a-7b and the "safe harbor regulations" set forth in 42 C.F.R. Section 1001.952. MMCAP is an entity authorized to act as a purchasing agent for a group of entities who are furnishing Services for which payment may be made in whole or in part under Medicare or a State health care program, and who are neither wholly-owned by MMCAP nor subsidiaries of a parent corporation that wholly owns MMCAP (either directly or through another wholly-owned entity), and the MMCAP program and this Contract do and will continue to fully comply with the safe harbor described therein. For the purpose of this clause the State of Minnesota shall not be deemed a parent corporation nor shall any state agency or public entity be deemed a subsidiary.

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2. Federal Health Care Program Exclusion

Vendor represents that it, its directors, officers and employees (i) are not sanctioned individuals or companies and have not been listed by any federal agency as barred, excluded, or otherwise ineligible for participation in federally funded health care programs as defined in 42 U.S.C. Sec. 1320a-7b(f) (the “Federal healthcare programs”); (ii) have not been convicted of a criminal offense related to the provision of healthcare items or Services, an (iii) are not under investigation or otherwise aware of any circumstances which may result in such Vendor being excluded participation in Federal healthcare programs. Vendor agrees not to enter into a subcontract with any individuals or companies that have been sanctioned, debarred or excluded from participation in any federally funded health care programs, to the extent required by 48 CFR 52.209-6, to fulfill Vendor’s obligations under this Contract. In the event of a breach of this provision, this Contract shall immediately terminate, in spite of any notice and cure provisions to the contrary. Vendor agrees to indemnify, hold harmless and defend the State of Minnesota, MMCAP and its Participating Facilities from any claims, demands or damages which the State of Minnesota, MMCAP and its Participating Facilities may suffer as a result of Vendor’s breach of this Section 2.

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

Vendor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Vendor’s certification is a material representation upon which this Contract award is based. Vendor shall provide prompt written notice to the 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.

4. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

Federal funding will be used or may potentially be used to pay for all or part of the work under the contract, therefore Vendor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Vendor’s certification is a material representation upon which the Contract award is based.

5. Warranties

Vendor has good title which is free and clear of all encumbrances. No applicable warranties, whether express or implied, are intended to be disclaimed or diminished by the terms of this Contract, with the exception of the following paragraphs.

EXCEPT WITH RESPECT TO PRIVATE LABEL PRODUCTS, VENDOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OF ANY PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR USE OR PURPOSE. MMCAP AND EACH MMCAP PARTICIPATING FACILITY SHALL LOOK TO THE MANUFACTURER OF PRODUCTS AND THE PROVIDER OF SERVICES (IF OTHER THAN VENDOR) FOR ANY WARRANTY THEREON. NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF VENDOR HAS ANY AUTHORITY TO MAKE ANY AFFIRMATION, REPRESENTATION, OR WARRANTY CONCERNING PRODUCTS NOT SET FORTH IN THIS CONTRACT. VENDOR AGREES TO USE COMMERCIALY REASONABLE EFFORTS TO PASS ON, ON A NON-EXCLUSIVE BASIS, FROM ANY MANUFACTURERS OR SUPPLIERS OF PRODUCTS, THE PRODUCT WARRANTIES PROVIDED BY THE MANUFACTURER OR SUPPLIER TO THE EXTENT SUCH WARRANTIES ARE TRANSFERABLE. MMCAP AND EACH MMCAP PARTICIPATING FACILITY ACKNOWLEDGE THAT AT ALL TIMES VENDOR SHALL BE ABLE TO RELY FOR ITS OWN BENEFIT ON SUCH WARRANTIES AND VENDOR SHALL NOT BE OBLIGATED TO PASS ON SUCH WARRANTIES IF SUCH ACTION SHALL RESULT IN VENDOR BEING UNABLE TO RELY ON THE WARRANTIES FOR ITS OWN BENEFIT.

VENDOR REPRESENTS AND WARRANTS TO CUSTOMER THAT PRIVATE LABEL PRODUCTS SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP FOR A PERIOD OF

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NINETY (90) CALENDAR DAYS FROM THE DATE OF SHIPMENT. VENDOR'S OBLIGATION UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCT, AT VENDOR'S OPTION. THIS WARRANTY WILL NOT APPLY (1) IF MMCAP OR MMCAP PARTICIPATING MEMBER MISUSES THE PRIVATE LABEL PRODUCT, (2) ALTERS OR MODIFIES THE PRIVATE LABEL PRODUCT IN ANY WAY, OR (3) RESELLS THE PRIVATE LABEL PRODUCT OR DOES NOT OTHERWISE USE OR ADMINISTER THE PRIVATE LABEL PRODUCT THROUGH ITS EMPLOYEES OR AUTHORIZED AGENTS.

NEITHER MMCAP NOR AN MMCAP PARTICIPATING FACILITY SHALL HOLD VENDOR LIABLE FOR ANY DEFECT IN PRODUCTS OR SERVICES, REGARDLESS OF KIND. CUSTOMER AND A FACILITY AGREE TO FILE SOLELY WITH MANUFACTURER OF THE PRODUCTS OR PROVIDER OF SERVICES (IF OTHER THAN VENDOR) ANY CLAIM OR LAWSUIT ALLEGING LOSS, INJURY, DAMAGE, OR DEATH ARISING OUT OF OR CAUSED BY THE USE, SALE, DISTRIBUTION, OR POSSESSION OF PRODUCTS OR SERVICES.

ARTICLE 4: CONTRACT TERMS AND CONDITIONS

1. Contract Effective Date

March 1, 2018 or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later. The Vendor must not begin work under this contract, nor make its pricing, Products, Services, or any benefit available until this contract is fully executed and the Vendor has been notified by the State's Authorized Representative to begin the work. Vendor will offer fixed pricing for Core Products in Attachment A for one (1) year with annual agreed-upon price adjustments. The Commencement Date will be ninety (90) days after the Contract Effective Date, unless an earlier mutually agreeable Commencement Date is determined.

Moore Medical, LLC, a McKesson Medical-Surgical Company, under the authority of McKesson Medical-Surgical's signature, will have a Commencement Date of January 1, 2019, for all Products and Services corresponding to the Moore Medical, LLC's portion of this Agreement.

2. Contract Expiration Date

March 1, 2020 the Contract may be extended for up to three (3) additional one (1) year periods upon execution of a written amendment and acceptance of both parties, for a total term not to exceed five (5) years.

3. Contract Termination

3.1. Termination by MMCAP Without Cause

Either party may cancel this Contract at any time during the term of the Contract, without cause, upon no less than one hundred eighty (180) days' written notice to the other party. Upon termination, Vendor will be entitled to pro rata payment for Services performed in accordance with the terms and conditions of this Contract.

3.2. Termination With Cause

Except as set forth in *Article 3, Section 2*, either party may cancel this Contract at any time, with cause, upon no less than 30 days' written notice to the other party, and shall provide for a 30 day period beginning upon notice for the breaching party to cure all alleged defects.

3.3. Termination for Insufficient Funding

MMCAP 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 or fax notice to the Vendor. MMCAP is not obligated to pay for any Services that are provided after receipt of notice to Vendor from MMCAP and effective date of termination. However, the Vendor will be entitled to payment,

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determined on a pro rata basis, for Services performed to the extent that funds are available. The 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. The State must provide the Vendor notice of the lack of funding within a reasonable time of the State's receiving that notice.

3.4. Cancellation by Member States

Subject to MMCAP termination rights, MMCAP Member States and MMCAP Participating Facilities may cancel their participation in this Contract with the Vendor at any time upon no less than thirty (30) days' written notice to the other party. Vendor shall be entitled to payment of Products delivered prior to the end of the thirty (30) day notice period.

4. Vendor's Duties

The Vendor, who is not a state employee, will provide Products and Services, in accordance with the terms and conditions of this Contract, and as set forth in *Attachment B: Statement of Work*, as attached and incorporated herein.

5. Non-Exclusive Agreement

MMCAP and Vendor acknowledge that this Contract neither creates nor implies the creation of an exclusive Agreement between the parties.

6. Eligible Purchasers

Starting on the Commencement Date, all MMCAP Participating Facilities located in the United States shall be eligible to purchase Products offered under this Contract. In addition, the Vendor must allow newly added MMCAP Participating Facilities, located in the MMCAP Participating Facilities List (password protected and published online at www.mmcap.org), as incorporated herein by reference, to access Contract Products and Services at the pricing set forth on *Attachment A* throughout the term of this Contract. Upon addition to the MMCAP Participating Facilities List, Vendor shall provide new MMCAP Participating Facilities with access to Contract pricing, once Vendor has received from MMCAP the new Member notification and confirmed the new MMCAP Membership ID. MMCAP will provide Vendor with monthly e-mail notices announcing that a new MMCAP Participating Facilities List has been posted online, however Vendor is expected to frequently review the posted MMCAP Participating Facilities List and also maintain its own roster of MMCAP Participating Facilities, since the listing is updated daily on the MMCAP website.

In the event that an MMCAP Participating Facility ceases to be an MMCAP Participating Facility of MMCAP, Vendor agrees entity will no longer access contract pricing related to the MMCAP Contract. Any MMCAP Participating Facility desiring to utilize the contractual options, terms and conditions described in this Contract may, at its option, and without penalty or liability, terminate any existing contract or other arrangement with Vendor for the sole purpose of participating in the group purchasing arrangement set forth in this Contract. MMCAP reserves the right to add and delete MMCAP Participating Facilities during the term of this Contract. Notwithstanding the foregoing, Vendor shall rely on the MMCAP Membership Listing electronic file available online at www.mmcap.org, which will be sent to Vendor, as such list is updated daily during the term of this Contract. To the extent that Vendor's breach of this section is based upon incorrect information provided by MMCAP in the MMCAP Participating Facilities List, such breach shall be excused.

7. Separate Agreements

During the term of this Contract, Vendor will not solicit any MMCAP Participating Facilities or Prospective MMCAP Participating Facilities to enter into or negotiate a separate contract or Agreement for the same or substantially equivalent Products offered in this Contract or any amendment, modification, or supplement to this Contract without MMCAP's prior written consent. Vendor is not prohibited from responding to a request for proposals issued by a Participating Facility that may include some Products covered by this Agreement.

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8. Products and Services

The Vendor shall provide Products and Services to MMCAP Participating Facilities listed on *Attachment A*. In addition, Vendor must at least offer Products under this Contract that are the same or substantially equivalent to the Products that are set forth on *Attachment A*.

Both influenza vaccine distribution and prescription pharmaceutical distribution (including vaccines) are independent, separate service offerings. Unless Vendor is also awarded one or both of these other service offerings through separate contract award processes, it is required that reasonable efforts will be made by Vendor, to not solicit, distribute, or market prescription pharmaceuticals (including vaccines) and influenza vaccines, to MMCAP Participating Facilities under this contract. It is also required that Vendor will make reasonable efforts to direct MMCAP Participating Facilities to MMCAP, for guidance on these service offerings.

The sample Agreements included under the "Additional Value Offerings" tab at *Attachment A* (the "templates") are samples provided for informational purposes only and are not meant to be final versions. Other terms and conditions may apply or be separately negotiated depending on the service requested and MMCAP Member type or size, among other possible factors. Templates also may be periodically updated or revised. The templates attached hereto are confidential and proprietary and neither MMCAP nor any MMCAP Member may save, copy, download or forward a template to any party with the express written consent of Vendor.

All Products acquired by MMCAP under this Contract, are to be purchased for medical use only, and all uses shall be in accordance with such Products Manufacturer's intended use as set forth on the Product's labeling.

All Products provided by Vendor under this Contract must comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including registration requirements of the Office of the applicable Secretary of State. Vendor will not receive payment for Products/Services found by MMCAP or MMCAP Members to be unsatisfactory, and returned to Vendor pursuant to Vendor's return goods policy or performed in violation of federal, state or local law.

9. Products and Services Pricing**9.1. Competitive Pricing**

During the term of this Contract, Vendor will perform quarterly pricing reviews of MMCAP Participating Facilities' purchases and competitive pricing data supplied by MMCAP to Vendor. Subject to Vendor's confidentiality obligations with other GPOs, the pricing reviews will compare the MMCAP Contract Products and Services pricing to other GPOs or government-owned buying groups whose Members are a similar class of trade and size to MMCAP's Participating Facilities.

9.2. Vendor's Published Catalog Price

Vendor shall provide a percentage discount for each of Vendor's Contracted Suppliers' categories of Medical Products not listed on *Attachment A*. The list of the Vendor's Contracted Suppliers' categories of Medical Products must include the percentage discount from the Vendor's catalog price of the Product within a specific category, and be submitted on the *Non-Core Products* tab of *Attachment A*. The specific discount shall apply to each of the Vendor's Contracted Suppliers' categories of medical Products listed.

9.3. Pricing and Percentage Discounts

All Product prices and percentage discounts listed on *Attachment A*, will be considered to be ceiling prices during the term of this Contract, and the ceiling prices and/or percentage discounts set forth on *Attachment A*, may not be changed unless approved in writing by MMCAP as set forth in *Section 39.2, Amendments*. The pricing and percentage discounts listed on *Attachment A*, must be made available to all MMCAP Participating Facilities regardless of the size or location of the MMCAP Participating Facilities.

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9.4. No Additional Fees

Unless otherwise stated in this Contract no fee, percentage, or other price may be added to the Products purchased under this Contract unless the fee, percentage, or price is defined, and a formal amendment to the Contract is executed by both parties reflecting the agreed upon fee, percentage, or price.

10. Discounts

If applicable to this Contract, the parties understand that the pricing for Products provided as part of this Contract may be considered a “discount” within the meaning of 42 U.S.C. Section 1320a-7b(b)(3)(A) of the Social Security Act and the regulations promulgated thereunder at 42 C.F.R. §1001.952(h). In accordance with 42 C.F.R. §1001.952(h), Vendor will comply with any applicable obligations of Vendor as “Seller” or “Offeror” of a discount, as applicable. If selling directly to an MMCAP Participating Facility, Vendor will fully and accurately report any discount on invoices, statements or reports submitted to MMCAP Participating Facilities. The parties will refrain from doing anything which would impede MMCAP Participating Facilities from meeting its obligations under the discount safe harbor regulations. In accordance with 42 C.F.R. §1001.952(h) MMCAP’s Participating Facilities(as “Purchasers”) shall disclose the discounts at the invoice level, or value of the Products under the state or federal program which provides cost or charge based reimbursement for the Products covered by this Contract, the net cost actually paid by the MMCAP Participating Facility. In the event a party determines that this discount program may not comply with such statutes, the parties agree to work together to establish a discount structure that meets the requirements of the discount safe harbor regulations set forth in 42 C.F.R. §1001.952(h).

11. Risk of Loss, Damage, and Shipping Terms

Shipments under this contract shall be FOB Destination, freight prepaid and allowed to the MMCAP Participating Facility’s receiving dock or if applicable, its pharmacy, unless otherwise agreed to by Vendor and Participating Facility. Title to and risk of loss of the Products covered by this Contract transfers to the MMCAP Participating Facility upon delivery to the MMCAP Participating Facility, as set forth above. During the term of this Contract Vendor shall not add any fuel surcharges to the purchase of any Products covered by this Contract. Notwithstanding the foregoing, emergency orders, rush orders, orders for Products not regularly stocked by Vendor’s local servicing Distribution Center, Products dropped shipped from Vendor’s Contracted Supplier, and orders not regularly scheduled are subject to an added shipping and handling charge determined by Vendor and disclosed to a MMCAP Participating Facility upon request. Vendor shall have the right to ship the Products at all times via its own vehicle or a carrier selected by Vendor

12. Compliance

Vendor shall be in accordance and comply with all applicable federal, state, and local laws, rules and regulations as applicable to each MMCAP Member State, in the performance of this Contract.

13. Failure to Supply MMCAP Core Products

Unless the result of a Manufacturer Backorder, if Vendor fails to maintain sufficient inventory of Core Products set forth on *Attachment A*, to meet the anticipated needs of MMCAP Participating Facilities for Core Products, the ordering MMCAP Participating Facility may purchase an alternate equivalent Product on the open market for the period of time in which the Vendor is unable to provide the Core Product.

14. Purchase Orders and Payment**14.1. No Minimum Purchase Order Requirement**

There shall be no minimum order requirements or charges, regardless of order size or payment amount.

14.2. Eligible Purchase Orders

As a condition for purchasing under this Contract, orders must only be accepted if made by authorized individuals from MMCAP Participating Facilities who are Eligible Purchasers under this Contract as stated in this section and defined in the Key Definitions of this Contract. It will be the responsibility of MMCAP Participating Facilities to determine an “authorized individual” who is approved to make

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purchases and submit orders under this Contract. Vendor will not be liable for determining “authorized individuals” making purchases on behalf of MMCAP Participating Facility under this Contract. MMCAP Participating Facilities may use their own forms for Purchase Orders. To the extent that the terms of any form differ from the terms of this Contract, the terms of this Contract supersede. Notwithstanding any terms on an MMCAP Member’s Purchase Order form or other form provided by an MMCAP Member, any orders placed by MMCAP Members with Vendor will be priced and offered by Vendor per the terms and conditions of this Contract only, and no other terms and conditions provided by the Member shall apply to such orders.

The purchase order number will appear on the packing list and invoice when it is applied during the order entry process. The terms of this Contract shall apply to each Purchase Order issued by authorized individuals from MMCAP Participating Facilities whether such Purchase Order is communicated by the Purchase Order form, EDI, internet e-commerce, facsimile, orally, or any other method, or whether reference is made to this Contract.

14.3. Verification of Authorized Purchasers

Upon request by MMCAP, Vendor must verify that it provides Products and Services pursuant to this Contract only to MMCAP Participating Facilities. Only MMCAP Participating Facilities may purchase Products and Services under the terms of this Contract. Vendor shall rely on the MMCAP membership listing electronic file which will be sent to Vendor as such list is updated daily, during the term of this Contract. If such listing is incorrect, Vendor shall not be deemed in breach of this Section.

14.4. Funds Available and Authorized/Non-Appropriation

Vendor will not be compensated for Products delivered under a Purchase Order by any entity other than the MMCAP Participating Facility that issued the Purchase Order. By submitting a Purchase Order the MMCAP Participating Facility represents it has sufficient funds currently available and authorized for expenditure to finance the costs of the Purchase Order.

14.5. Termination of Individual Purchase Orders

MMCAP Participating Facilities may terminate individual Purchase Orders (other than purchase orders for special orders and emergency preparedness), in whole or in part, immediately upon notice to Vendor, or at such later date as the MMCAP Participating Facility may establish in such notice, upon the occurrence of any of the following events:

- The MMCAP Participating Facility fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;
- Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or the MMCAP Participating Facility is prohibited from paying for such goods from the planned funding source; or
- Vendor commits any material breach of this Contract or a Purchase Order.

Upon receipt of written notice of termination, Vendor shall stop performance under the Purchase Order as directed by the MMCAP Participating Facility. Termination of a Purchase Order does not extinguish or prejudice the MMCAP Participating Facility’s right to enforce the Purchase Order with respect to Vendor’s breach of any warranty or any defect in or default of Vendor’s performance that has not been cured, including any right of the MMCAP Participating Facility to indemnification by Vendor or enforcement of a warranty. If a Purchase Order is terminated, the MMCAP Participating Facility must pay Vendor in accordance with the terms of this Contract for goods delivered and accepted by the MMCAP Participating Facility.

14.6. Purchase Order Default

All Products furnished will be subject to inspection and acceptance by the MMCAP Participating Facility after delivery, in accordance with Vendor’s Product Return Policy as set forth in *Attachment I*. No

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Product substitutions, shipments of non-conforming goods or Products, or cancellations are permitted without prior written approval of the MMCAP Participating Facility.

14.7. Payment of Purchase Orders

Each MMCAP Participating Facility will be responsible for payment of Products provided by Vendor. MMCAP will not be liable for an unpaid invoice of any MMCAP Member or MMCAP Participating Facility. Vendor agrees to invoice the MMCAP Participating Facility for all Products shipped. Vendor will accept payment of purchase orders via Electronic Funds Transfer (EFT), credit cards authorized by the ordering MMCAP Participating Facility and any other traditional means of payment.

14.8. Federal Funds

Payments to the Vendor for Products ordered by MMCAP Participating Facilities under this Contract may be made from federal funds. The Vendor must agree to accept as payment in full for the Products, the amount as determined by the federal agency or federal program administering the payments. Vendor shall comply with all applicable federal requirements imposed on these funds as may be identified by the ordering MMCAP Participating Facility.

14.9. Conditions of Payment

All Services provided by the Vendor under this Contract must be performed to MMCAP's satisfaction (directed by the MMCAP Participating Facility or MMCAP Member), as determined at the reasonable discretion of MMCAP's Authorized Representative, and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Unless otherwise set forth in this Contract all Products provided under the terms of this Contract are subject to inspection and acceptance by the MMCAP Participating Facility in accordance with the Vendor's Return Product Policy as set forth in *Attachment I*.

15. Vendor Fees**15.1. Administrative Fee**

In consideration for the administrative support and other Services provided by MMCAP in connection to this Contract, the Vendor agrees to pay an Administrative Fee of three percent (3%) on all MMCAP Participating Facilities' Net Purchases of Products and Services made directly with the Vendor by the MMCAP Participating Facilities. The payment of the Administrative Fees is intended to be in compliance with the Medicare and Medicaid Patient Protection Act of 1987 (Anti-Kickback Statute), as set forth at 42 USC§ 1320a-7b (b) (3) (C), and the "safe harbor regulation" set forth in 42 C.F. R. §1001.952(j). The Vendor will submit a check payable to "State of Minnesota, MMCAP Program" for an amount equal to three percent (3%) for all MMCAP Participating Facilities' Net Purchases covered under this Contract. Vendor must provide Administrative Fee data to MMCAP within ten (10) business days after the end of each month. The Administrative Fee must be paid as soon as is reasonable after the end of each month, but no later than thirty (30) calendar days after the end of the month.

Vendor shall not be required to pay administrative fees on excise tax amounts or returns or other shipments for which Vendor did not collect the purchase price. Vendor will not pay an Administrative Fee on the same purchase to more than one GPO, nor will Vendor split an Administrative Fee on any item between such groups. Vendor's payment to the MMCAP Office of the three percent (3%) Administrative Fee will not include the increased Products costs associated with Member levied fees. Vendor will pay an Administrative Fee only on those Services that incur fees. Vendor shall not pay Administrative fees on Products purchased from Vendor, where (i) Vendor has an exclusive Agreement with a Supplier and (ii) Vendor retains only a management fee for each sale. The Suppliers with this Product offering are listed in *Attachment N, List of Vendor's Suppliers*. Vendor reserves the right to add/update the supplier or supplier offering as necessary upon mutual agreement with MMCAP.

The parties shall comply with the requirements of 42 U.S.C. §1320a-7b(b)(3)(A) and the "Safe Harbor" regulations regarding discounts or other reductions in price set forth at 42 C.F.R. §1001.952(h) and GPOs set forth at 42 C.F.R. §1001.952(j). In this regard, the parties acknowledge that Vendor will

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satisfy any and all requirements imposed on sellers by these safe harbors; and MMCAP and each MMCAP Participating Facility will satisfy any and all requirements imposed on buyers and GPOs respectively

15.1.1. Limitations

- Vendor will not pay an Administrative Fee on the same purchase to more than one (1) GPO, nor will Vendor split an Administrative Fee on any item between such groups.
- Upon notification from the MMCAP Member that they wish to purchase from Vendor via the MMCAP Contract, Vendor shall have ten (10) business days from the date of notice to qualify said new Facility's status and eligibility for inclusion of the purchases by said Facility in the calculation of the Administrative Fee. Vendor will not pay an Administrative Fee on purchases of Products ordered, but not yet delivered, on or prior to the date the Facility joins MMCAP.

16. Authorized Representatives

MMCAP's Authorized Representative is Alan Dahlgren, MMCAP Managing Director, or his/her successor, and has the responsibility to monitor the Vendor's performance.

The Vendor's Authorized Representative is John Campbell, Vice President of Government Sales, or his/her successor. If the Vendor's Authorized Representative changes at any time during this Contract, the Vendor must promptly notify MMCAP in writing via e-mail addressed to Emilio Graulau, MMCAP's Healthcare Products and Services Coordinator, at: Emilio.Graulau@state.mn.us or their designee, who will assume that responsibility for Vendor.

17. Notices

Notices under this Contract shall be in writing, effective upon receipt and shall be sent by any of the following methods (i) facsimile or e-mail with return facsimile or e-mail acknowledging receipt; (ii) United States Postal Service certified or registered mail with return receipt showing receipt; (iii) courier delivery service with proof of delivery; or (iv) personal delivery. Either party to this Contract may change the names and addresses for receipt.

To MMCAP:

MMCAP Healthcare Products & Services Program Coordinator
50 Sherburne Avenue, Suite 112
St. Paul, MN 55155
Email: MMCAPContracts@state.mn.us
Fax: 651.297.3996

To the Vendor:

McKesson Medical-Surgical Minnesota Supply Inc., McKesson Medical-Surgical Inc.
Amanda Johnson
9954 Mayland Drive, Suite 4000
Henrico, VA 23233
Email: Government.Bids@McKesson.com

18. Indemnification

In the performance of this contract by Vendor, or Vendor's agents or employees, the Vendor must indemnify, save, and hold harmless the State, MMCAP, MMCAP Participating Facilities and MMCAP Member States, their agents, and employees ("Customer Indemnified Parties"), from any claims or causes of action brought by third parties, including attorney's fees incurred, to the extent caused by Vendor's omissions, and negligent, intentional, or willful misconduct of Vendor in the performance of this Contract. On a comparative negligence basis, the indemnification obligations of this section do not apply in the event the claim or cause of action is the result of a Customer Indemnified Party's sole negligence, intentional, or willful misconduct. In the event that a claim or cause of action arises in part out of the action or inaction of

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the indemnified party, Vendor's obligation to indemnify the State shall be proportionate to the extent the claim or cause of action arose from the acts of the Vendor, Vendor's agents, or Vendor's employees. This clause will not be construed to bar any legal remedies the Vendor may have for the State's failure to fulfill its obligation under this Contract.

Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP cannot indemnify the Vendor.

19. Liability Limitations

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES INCURRED BY THE OTHER PARTY, HOWEVER CAUSED ON ANY THEORY OF LIABILITY, AND WHETHER OR NOT THEY HAVE BEEN ADVISED OF THE POSSIBILITY, OF SUCH DAMAGES. ANY COSTS AND EXPENSES INCURRED BY A PARTY TO MITIGATE OR LESSEN ANY DAMAGES OR HARM CAUSED BY A PARTY'S NEGLIGENCE SHALL BE CONSIDERED DIRECT DAMAGES.

19.1. Warranty

Vendor makes no representation or warranty of any kind, express or implied, as to the merchantability of any Products or their fitness for a particular use or purpose. MMCAP and each MMCAP participating facility shall look to the Manufacturer of Products and the provider of Services (if other than Vendor) for any warranty thereon. No agent, employee, or representative of Vendor has any authority to make any affirmation, representation, or warranty concerning Products not set forth in this contract. Vendor agrees to use commercially reasonable efforts to pass on, on a non-exclusive basis, from any Manufacturers or suppliers of Products, the Product warranties provided by the Manufacturer or supplier to the extent such warranties are transferable. MMCAP and each MMCAP participating facility acknowledge that all times Vendor shall be able to rely for its own benefit on such warranties and Vendor shall not be obligated to pass on such warranties if such action shall result in Vendor being unable to rely on the warranties for its own benefit.

With the exception of Private Label Products, neither MMCAP nor any MMCAP participating facility shall hold Vendor liable for any defect in Products or Services, regardless of kind. MMCAP and MMCAP participating facilities agree to file solely with Manufacturer of the Products or provider of the Services (if other than Vendor) any claim or lawsuit alleging loss, injury, damage or death arising out of or caused by the use, sale, distribution, or possession of Products or Services.

20. Audits

Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State, MMCAP, and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this contract. MMCAP and any MMCAP Participating Facility served by the Vendor shall have the right to audit Vendor to determine the validity of invoice pricing. Audits may be conducted by representatives of MMCAP in collaboration with other state and federal authorities. Such audits may be conducted only during ordinary business hours and upon reasonable prior notice to Vendor. The Vendor and MMCAP and/or the MMCAP Participating Facility shall each be responsible for its own costs associated with any audit, including reasonable costs related to the production of records and/or other documents requested by the other party.

21. Government Data Practices

The Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 as it applies to all data provided by MMCAP under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. Ch. 13, by either the Vendor or MMCAP.

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If the Vendor receives a request to release the data referred to in this clause, the Vendor must immediately notify MMCAP. MMCAP will give the Vendor instructions concerning the release of the data to the requesting party before the data is released.

Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by Vendor of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Contract.

22. Intellectual Property and Data

MMCAP owns all rights, title, and interest in MMCAP customer data, sales transaction data, DEA/HIN information (subject to third-party rights), contract pricing, EDI transaction data, reverse distribution data, and payment data, including copyrights and trade secrets contained therein. MMCAP grants to Vendor a revocable, nontransferable, fully paid license, for the term of this Contract, to (i) release state specific data to an MMCAP Member's State Contact, MMCAP Participating Facilities; (ii) release any of the above data to Product Manufacturers, when necessary for the performance of this Contract or as required by Vendor's Agreements with such Product Manufacturers; (iii) to release any of the above data to other MMCAP-approved third parties, when necessary for the performance of this Contract; (iv) provide MMCAP Participating Facility purchase data to third-party aggregators, subject to Vendor's reasonable efforts to require such data aggregators to protect any identifiable data from discovery by another third party and subject to written approval by MMCAP; (v) provide MMCAP Participating Facility purchase data to other GPOs of which the MMCAP Participating Facility is also a Member, provided such data will not include MMCAP-identifiable data; and (vi) use any of the above data for its internal purposes. Any MMCAP identifiable data provided hereunder to a third party must identify the data as MMCAP data and subject to Minn. Stat. Ch. 13. Vendor hereby agrees that in the event that an MMCAP Member or MMCAP Participating Facility requests in writing that its purchase data be kept confidential, such data will not be provided to third party aggregators.

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

22.1. Pre-Existing Intellectual Property

Subject to the license rights set forth above, MMCAP and Vendor shall each retain ownership of, and all right and, title and interest in and to, their respective pre-existing intellectual property. Vendor grants to State an unlimited, royalty-free, paid up, perpetual, non-exclusive, irrevocable, non-transferable license to use and modify any pre-existing Vendor intellectual property, including marketing materials and materials contained in solicitation responses provided by Vendor to MMCAP, an MMCAP Member, or MMCAP Participating Facility. The aforementioned license is solely for use by MMCAP, an MMCAP Member, or MMCAP Participating Facility, and its agents related to an internal business purposes.

22.2. Private Label Products Indemnification

Vendor will defend, indemnify and hold the Customer Indemnified Parties harmless from any action or other proceeding brought against a Customer Indemnified Party by a third party to the extent that it is based on a claim that the use of the Private Label Products delivered under this Contract infringes any U.S. copyright, patent or trademark. Vendor will pay costs and damages finally awarded against a Customer Indemnified Party as a result thereof; provided, that a Customer Indemnified Party (i) notifies Vendor of the claim within ten (10) business days, (ii) provides Vendor with all reasonably requested cooperation, information and assistance, and (iii) gives Vendor sole authority to defend and settle the claim subject to applicable state law.

(i) Exclusions

Vendor will have no obligations under this *Section 22.2* with respect to claims arising from: (1) modifications to Private Label Products that were not performed by Vendor; (2) misuse of the Private

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Label Products; (3) compliance with specifications provided by a Customer Indemnified Party; or (4) the use or integration of Private Label Products delivered under this Contract in combination with other Products or other technologies not provided by Vendor, if the claim would not have arisen but for the particular combination. THE FOREGOING ARE VENDOR'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER INDEMNIFIED PARTIES' SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO OR ARISING OUT OF THE INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO PRIVATE LABEL PRODUCTS.

(ii) Injunctions

If a Customer Indemnified Party's use of any Private Label Products delivered under this Contract is, or in Vendor's opinion is likely to be, enjoined due to a claim of infringement or misappropriation as specified in *Section 23.2* above then Vendor may, at its sole option and expense: (1) obtain for a Customer Indemnified Party the right to continue using such Private Label Products under this Contract; (2) replace or modify such Private Label Products to avoid such a claim, provided that the replaced or modified Private Label Products is substantially equivalent in function to the affected Private Label Products; or (3) if options (1) and (2) above are not practical in Vendor's reasonable opinion, then Vendor may take possession of the affected Private Label Products and terminate a Customer Indemnified Party's rights and Vendor's obligations under this Contract in respect of such Private Label Products, and upon any such termination Vendor will refund to a Customer Indemnified Party the purchase price of the affected Private Label Product net any discounts, rebates or other adjustments.

23. Statutory Workers' Compensation and Other Insurance

Vendor shall comply with all insurance requirements specified in the contract. Vendor shall not commence work under the contract until they have obtained all the insurance specified in the solicitation document. Vendor shall maintain such insurance in force and effect throughout the term of the contract.

Further, the Vendor shall be in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Vendor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way MMCAP's obligation or responsibility.

Vendor shall not commence work under the contract until they have obtained all the insurance described below and MMCAP has approved such insurance. Vendor shall maintain such insurance in force and effect throughout the term of the contract. Vendor is required to provide certificates of insurance, and to maintain the following insurance policies:

23.1. Statutory Workers' Compensation Insurance

Except as provided below, Vendor must provide Statutory Workers' Compensation insurance for all its employees including Coverage B, Employer's Liability.

Insurance limits are as follows:

\$500,000 – Bodily Injury by Disease per employee

\$500,000 – Bodily Injury by Disease aggregate

\$500,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Vendor from Workers' Compensation insurance or if the Vendor has no employees in the State of Minnesota, Vendor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Vendor from the Minnesota Workers' Compensation requirements.

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If during the course of the contract the Vendor becomes eligible for Workers' Compensation, the Vendor must comply with the Workers' Compensation Insurance requirements herein and provide MMCAP with a certificate of insurance.

23.2. Commercial General Liability Insurance

Vendor will maintain commercial general liability insurance with coverage for bodily injury, including sickness or disease, death, as well as property damage, which may arise from operations under the Contract.

Insurance limits are as follows:

\$5,000,000 – per occurrence

\$5,000,000 – annual aggregate

\$5,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Contractual Liability

23.3. Business Automobile Liability Insurance

Vendor is required to maintain insurance as follows:

\$2,000,000 – each accident Combined Single limit for Bodily Injury and Property Damage.

In addition, the following coverages should be included: Owned, Hired, and Non-owned Automobile.

23.4. Professional Errors and Omissions Liability Insurance

This policy will provide coverage for negligent act, error, or omission related to Vendor's professional Services required under the contract.

Vendor is required to carry the following limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Vendor.

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

23.5. Additional Insurance Conditions

- Vendor's Commercial General Liability and Business Automobile Liability policy(ies) shall be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract, except to the extent such liability is caused by MMCAP;
- Vendor shall endeavor to provide thirty (30) days' advanced written notice to MMCAP in the event of policy cancellation;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- if Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor's policy(ies) shall include legal defense fees;
- Vendor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota (except if self-insured or via captive insurance); and

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- Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.
- Vendor and its affiliates' use of self-insurance and captive insurance, is deemed to satisfy all insurance requirements set forth under this entire Agreement.

23.6. MMCAP reserves the right to terminate the Contract in accordance with *Article 4, Section 3.2*, if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor.

23.7. The Vendor is required to submit Certificates of Insurance acceptable to MMCAP as evidence of insurance coverage requirements prior to commencing work under the contract.

24. Publicity and Endorsement

24.1. Publicity

Any publicity by Vendor regarding the content of this Contract must identify MMCAP as the sponsoring agency and must not be released without prior written approval from MMCAP's Authorized Representative. Any publicity by MMCAP regarding the subject matter of this Contract must not be released without the prior written notice of Vendor's Authorized Representative, except that either party may publicize non-trade secret or public information in the normal course of business in order to promote its Services. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or Services provided resulting from this Contract.

24.2. Endorsement

The Vendor must not claim that MMCAP endorses its Products or Services, nor may MMCAP claim that Vendor endorses its Products or Services.

25. Direct Marketing, Advertising, and Offers with Participating Facilities

Any direct advertising, marketing, or direct offers the Vendor intends to distribute in any form to MMCAP Participating Facilities for Contract Products must be approved in writing by the MMCAP Office.

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

27. Data Disclosure

Under Minnesota Statute § 270C.65, Subdivision 3 and other applicable law, the Vendor consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

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28. Payment to Sub-Contractors (If Applicable)

As required by Minnesota Statute § 16A.1245, the prime Vendor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Vendor's receipt of payment from the State for undisputed Services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

29. Minnesota Statute § 181.59, Discrimination on Account of Race, Creed or Color Prohibited in Contract

The Vendor will comply with the provisions of Minnesota Statute § 181.59 which requires: Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the Vendor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Vendor, material supplier, or Vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates; (2) That no Vendor, material supplier, or Vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color; (3) That a violation of this section is a misdemeanor; and (4) That this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment., and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

30. Affirmative Action Requirements for Contracts in Excess of \$100,000 and if the Vendor has More than 40 Full-Time Employees in Minnesota or its Principal Place of Business

MMCAP intends to carry out its responsibility for requiring affirmative action by its Vendors.

30.1. Covered Contracts and Vendors

If the Contract exceeds \$100,000 and the Vendor 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 principle place of business, then the Vendor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A Vendor 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.

30.2. Minn. Stat. § 363A.36

Minn. Stat. § 363A.36 requires the Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

30.3. Minn. R. 5000.3400-5000.3600**a. General**

Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.

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b. Disabled Workers

The Vendor must comply with the following affirmative action requirements for disabled workers.

1. The Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
3. In the event of the Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
4. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
5. The Vendor must notify each labor union or representative of workers with which it has a collective bargaining Agreement or other contract understanding, that the vendor is bound by the terms of Minnesota Statutes Section 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.

a. Consequences

The consequences for the Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or MMCAP.

b. Certification

The Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

31. Certification of Nondiscrimination (In Accordance with Minn. Stat. § 16C.053)

The following term applies to any contract for which the value, including all amendments, is \$50,000 or more: Vendor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the Vendor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

32. Contingency Fees Prohibited

Pursuant to Minnesota Statutes Section 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.

33. Force Majeure

Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, fire, or raw

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material or transportation shortages that are beyond that party's reasonable control. 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.

Except for provisions of this Contract relating to protection of Trade Secrets and the obligation of payment, neither party will be liable for non-performance caused by circumstances beyond their reasonable control, including, but not limited to (i) Acts of God, explosion, flood, lightning, tempest, fire or accident; (ii) war, hostilities (whether war is declared or not), invasion, acts of foreign enemies; (iii) rebellion, revolution, insurrection, military or usurped power or civil war; (iv) riot, civil commotion or disorder; (v) acts, restrictions, regulations, refusals to grant any licenses or permission, prohibitions or measures of any kind on the part of any local, state, national, governmental or supra-governmental authority; (vi) state government shutdown; (vii) import or export regulations or embargos; (viii) defaults of subcontractors where such default is itself caused by force majeure.

34. Severability

If any non-material provision of the Contract, including items incorporated by reference, or any application of the terms thereof, shall be found to be illegal, invalid, unenforceable, or void, then both MMCAP and the Vendor will be relieved of all obligations arising under such provisions. The remainder of the Contract, including all provisions and the application of such provisions, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

35. Escalation Procedures

If Vendor and an MMCAP Participating Facility (the "Parties") have disputes related to either Parties' performance under this Contract, then the Parties will first utilize the Vendor's Government Sales Escalation Procedure as set forth on *Attachment L* of this Contract. If the disputes cannot be resolved, the Parties will handle resolution of the unresolved disputes using the following procedure set forth below.

35.1. Notification

The Parties shall promptly notify each other of any known unresolved dispute and work in good faith to resolve such dispute within ten (10) business days. Absent resolution after ten (10) business days, parties shall proceed to Documentation and Escalation steps described below.

35.2. Documentation

The Parties will jointly develop a written summary of the unresolved dispute within fifteen (15) business days that describes the issue(s), relevant impact, and positions of both parties. The summary must be sent by the Vendor to the MMCAP Office, the MMCAP Participating Facility, and the Vendor's MMCAP Primary Account Representative.

35.3. Escalation of Dispute

If the Parties are unable to resolve the issue in a timely manner, as specified above, either the MMCAP Participating Facility or Vendor may escalate the resolution of the issue to a higher level of management. Where escalation of the issue proves ineffective, either Party may contact the MMCAP Office and/or the Vendor's MMCAP Representative for further resolution. When escalated to MMCAP, a teleconference will be scheduled with the MMCAP Office and the Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. The plan and timeline must be agreed to by all relevant parties to the dispute including; the MMCAP Office, the MMCAP Participating Facility, and Vendor.

35.4. Resolution Plan

Upon development of a plan and timeline for resolution, a Party will have a reasonable amount of time to cure the issue, but in no event longer than thirty (30) business days, except by express written agreement of the Parties.

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a. Vendor Failure on Member Contract Attachment

1. Upon identifying non-attachment of MMCAP Members, to the Products and pricing of this Agreement, Vendor has thirty (30) calendar days, following written notice from the MMCAP Office, in order to process credits to the MMCAP Member(s) on Products under the pricing of this Agreement, and to report such activity of sales to the MMCAP Office in the Sales Data Usage and Administrative Fee Data Report.
2. If the Vendor does not comply with the credits and non-reported sales to the MMCAP Office, MMCAP reserves the right to terminate the Agreement, as set forth in *Section 3.2, Termination with Cause*, of *Article 4*.

b. Vendor Failure on Reporting Requirements

1. Upon the non-receipt of reporting activity from the Vendor, and following written notice from the MMCAP, (i) Vendor has thirty (30) calendar days in order to submit the required reporting activity to the MMCAP Office, (ii) and if applicable, to process any credits to the affected MMCAP Member(s).
2. If the Vendor does not comply with the required reporting activity to the MMCAP Office, MMCAP reserves the right to terminate the Agreement, as set forth in *Section 3.2, Termination with Cause*, of *Article 4*.

c. Vendor Failure on Pricing Accuracy

1. Upon identifying pricing inaccuracy on the sales of Products under this Agreement, and following written notice from the MMCAP Office, Vendor has thirty (30) business days in order to process credits to the MMCAP Member(s).
2. If the Vendor does not comply with the processing of applicable credits to the MMCAP Member(s), MMCAP reserves the right to terminate the Agreement, as set forth in *Section 3.2, Termination with Cause*, of *Article 4*.

35.5. Jurisdiction and Venue of Purchase Orders

Upon completion of the Dispute Resolution process outlined in this Contract, and solely with the prior written consent of MMCAP and the State of Minnesota Attorney General's Office, the MMCAP Member may bring a claim, action, suit or proceeding against Vendor. The MMCAP Member's request to MMCAP to bring the claim, action, suit, or proceeding must state the initiating party's desired jurisdiction, venue and governing law.

Upon completion of the Dispute Resolution process outlined in this Contract, the Vendor may bring a claim, action, suit or proceeding against MMCAP Member, in Vendor's sole discretion.

35.6. Mandatory Resolution Plan without Need for Prior Escalation

A mandatory resolution plan and timeline shall be created by the Parties, without the prior need for Escalation of Dispute, when any of the following circumstances occur. If Vendor fails to correct identified defects, within thirty (30) business days (or the reoccurrence of any event under *Section 35, Escalation Procedures*, within ninety (90) days of initial resolution) as described below, then Vendor and MMCAP shall proceed with the process stated above in *Section 35, Escalation Procedures*. If defects are not resolved, MMCAP Member has the option to stop use of contract via Vendor and/or may grant MMCAP cause to terminate this Contract under *Section 3 of Article 4*.

35.6.1. Reports

Vendor submits any such required report or data in a manner that materially fails to comply with the applicable provisions set forth in this Contract.

35.6.2. Invoices

If an MMCAP Participating Facility places an order for Product and receives a separate invoice for any fee not directly related to the cost of the Product from the Vendor without providing a separate invoice that references the same invoice number or purchase order number that is indicated on the Product invoice or purchase order.

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35.6.3. Unauthorized Fees

Vendor charges an MMCAP Participating Facility any fee not authorized by this Contract or any attachment hereto.

35.6.4. Inventory Management

MMCAP Contract Products which also include Products resulting from MMCAP's direct contracts with Manufacturers are not loaded, stocked (based upon usage, request, notice of usage or due to barriers created by Vendor to avoid stocking the Product), and viewable by all MMCAP Participating Facilities, as required pursuant to this Contract and within the timelines set forth herein.

35.6.5. Delivery Delays

Deliveries made by the Vendor are not in accordance with the time schedules specified in *Attachment B* or as otherwise agreed upon by the Vendor and MMCAP Participating Facility.

35.6.6. Ordering Information

Products and pricing are not loaded correctly into the Vendor's Product ordering system and an MMCAP Participating Facility must order alternatives to the MMCAP Contracted Products due to the Vendor's error.

35.6.7. Business Interruption Plan

Vendor experiences a systemic business interruption that materially affects Vendor's ability to perform its obligations under this Contract, excluding those systemic business interruptions caused by an event of force majeure; change in applicable laws, rules or regulations or interpretation or application thereof; changes in Manufacturer policies or procedures; or any other event outside the reasonable control of Vendor.

35.6.8. Required Licenses, Permits, and Registration

Vendor fails to maintain all necessary licenses, permits and registrations required by state, local and federal agencies. Vendors must make such documentation available upon request by the MMCAP Office.

35.7. Performance while Dispute is Pending

Notwithstanding the existence of a dispute, the Vendor must continue without delay to carry out all of their responsibilities under the Contract. If the Vendor fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or MMCAP Participating Facilities as a result of such failure to proceed shall be borne by the Vendor.

35.8. No Waiver

This clause shall in no way limit or waive either party's right to seek available legal or equitable remedies.

36. Required Licenses, Permits and Registration

Vendor shall have in place prior to the start of the Contract, and must maintain for the term of the Contract, all applicable current licenses, permits and registrations required by state, local and federal agencies in order to fulfill the obligations under this Contract. Vendors must make such documentation available upon reasonable request by the MMCAP Office.

37. DEA License/HIN

The Vendor shall not require an MMCAP Participating Facility to have a DEA number in order to obtain Products unless the MMCAP Participating Facility places orders for controlled substances. MMCAP Participating Facilities will have HIN numbers assigned by the MMCAP Office, or proof of applicable state licensure from MMCAP Participating Facilities.

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38. Assignment, Amendments, Waiver, and Entire Contract

38.1. Assignment

Neither party may neither assign nor transfer any rights or obligations under this Contract without the prior written consent of the other party and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.

38.2. Amendments

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

38.3. Waiver

If a party fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

38.4. Entire Contract

This Agreement constitutes the entire Contract between MMCAP and the Vendor. This Contract shall exclusively govern the purchases of Products that occur during the Term. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

39. Survival of Terms

The following clauses survive the expiration, termination or cancellation of this Contract: 18. Indemnification; 19. Liability Limitations; 20. Audits; 21. Government Data Practices; 22 Intellectual Property and Data; 24 Publicity and Endorsement; 26. Governing Law Jurisdiction, and Venue; 28. Data Disclosure.

40. E-Verify Certification (In Accordance with Minn. Stat. §16C.075)

For Services valued in excess of \$50,000, Contractor certifies that as of the date of Services performed on behalf of the State, Contractor, all its subsidiaries and its subcontractors, if any, 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 the State. 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 Contractor and made available to the State upon request.

Contractor and the State agree that the suppliers and vendors listed on Attachment A are not “subcontractors” for purposes of this Section 40. Contractor is not currently subcontracting the performance of this Contract. If Contractor subcontracts any part of this Contract at a later date, Contractor will comply with Minnesota Statute Sec. 16C.075 in connection with such subcontracts.

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1. MCKESSON MEDICAL-SURGICAL INC.;
MCKESSON MEDICAL-SURGICAL
MINNESOTA SUPPLY INC.; MOORE
MEDICAL, LLC

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

DocuSigned by:
By: Stanton J. McComb
3A20411B7B33403...

Stanton McComb

Title: President, McKesson Medical-Surgical Inc.,

McKesson Medical-Surgical Minnesota Supply Inc.,

and Moore Medical, LLC

Date: February 14, 2018

2. STATE OF MINNESOTA FOR MMCAP

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

By: Lynn A. Klessig

Title: AMS

Date: 2/16/2018

3. COMMISSIONER OF ADMINISTRATION

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

By: Sara Turbow, PharmD, BCPS

Title: Pharmacist Sr.

Date: 2-23-18

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ATTACHMENT A: PRODUCTS AND SERVICES PRICING

The MMCAP Participating Member will receive the Contract pricing as set forth, in the following tabs: the *Brand Label Core Products* tab; the *Private Label Core Products* tab; the *Non-Core Products⁴* tab; the *Equipment Schedule* tab, and the *Additional Value Offerings* tab.

The price file for *Attachment A* on this Agreement, is located next to the Contract, on the MMCAP website (<http://www.mmd.admin.state.mn.us/MMCAP/Contracts/Default.aspx>), and login credentials are required in order to access it.

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⁴ The listed categories in the *Non-Core Products* tab, are intended to cover the Vendor's most current catalog of Products, which are not listed in the remaining tabs.

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**ATTACHMENT B: STATEMENT OF WORK
AND VENDOR PERFORMANCE REQUIREMENTS**

I. OPERATIONAL REQUIREMENTS

1. Vendor Service Area

As of the Contract Commencement Date, Vendor will provide all Products and related Services, including those Products and Services of its subsidiaries, covered under this Contract, on a timely basis, to all of the MMCAP Participating Facilities located within the Service Area listed in *Attachment D* of this Contract. MMCAP reserves the right to add or delete MMCAP Members at any time, during the Contract term.

2. Required Vendor Personnel

Vendor must maintain sufficient personnel, including but not limited to, the personnel listed below, who can provide comprehensive and timely customer services and support to the MMCAP Participating Facilities and the MMCAP Office. Vendor's personnel must have professional qualifications, training and experience, to provide support related to the Products and Services covered by this Contract. In addition, Vendor represents and warrants that its personnel have validated competencies in accordance with all applicable law and regulatory agencies, related to Services and Products covered by this Contract.

Vendor personnel must include but are not limited to the following:

- Primary Account Representative, Account Representative, sales representatives;
- customer service representatives;
- clinical representatives;
- distribution center representatives;
- MMCAP Contract representatives for the MMCAP Office;
- MMCAP Contract representatives for the MMCAP Members;
- MMCAP account representatives;
- Product marketing specialists;
- Product training and education specialists;
- supply chain improvement specialists;
- Product ordering system technical support and training specialists;
- Contract implementation and transition team;
- account payable/receivable specialists, capable of addressing and timely solving invoice/credit rebill inquiries.

3. Customer Service to MMCAP Office.

3.1. The Vendor will provide its customer service function to the MMCAP Office, by assigning a Primary Account Representative to the MMCAP Office. Vendor will provide prompt notice to the MMCAP Office if the Primary Account Representative is reassigned. The Primary Account Representative will be responsible to discuss at a minimum, but not limited, the following topics:

- Customer satisfaction;
- Vendor performance;
- specific account performance;
- required reports;
- other Contract related issues.

a. The Vendor's designated Primary Account Representative for the MMCAP Office will be as follows (or the Vendor's named successors):

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Name	Title	Office Address	Contact Information
John Campbell	Vice President of Government Sales	9954 Mayland Drive Suite 4000 Henrico, VA 23233	Phone: (800) 328-8111 Option 1 Mobile Phone: Fax: (800) 237-9766 Email: John.Campbell@McKesson.com
Lori Lumpkin	Project Manager	9954 Mayland Drive Suite 4000 Henrico, VA 23233	Phone: Mobile Phone: (804) 475-1564 Fax: (800) 237-9766 Email: Lori.Lumpkin@McKesson.com
Kathy Fleischman	Field Manager, Government Sales	9954 Mayland Drive Suite 4000 Henrico, VA 23233	Phone: Mobile Phone: (954) 980-3774 Fax: (800) 237-9766 Email: Kathy.Fleischman@McKesson.com

b. The alternate Account Representatives will be:

Name	Title	Office Address	Contact Information
			Phone: Mobile Phone: Fax: Email:
			Phone: Mobile Phone: Fax: Email:
			Phone: Mobile Phone: Fax: Email:

c. Additional functional contacts are:

Name	Title	Office Address	Contact Information
			Phone: Mobile Phone: Fax: Email:
			Phone: Mobile Phone: Fax: Email:
			Phone: Mobile Phone: Fax: Email:

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d. In the event the MMCAP Office determines the Primary Account Representative is non-responsive, the MMCAP Office will escalate issues to the following individuals to take appropriate corrective action for problem resolution:

Name	Title	Office Address	Contact Information
			Phone: Mobile Phone: Fax: Email:
			Phone: Mobile Phone: Fax: Email:
			Phone: Mobile Phone: Fax: Email:

e. The Vendor shall notify the MMCAP Office of changes of Vendor’s Authorized Representative and MMCAP Project Manager. Any employee of Vendor, who, in the opinion of the MMCAP Office, the MMCAP Participating Facilities or the MMCAP Participating Member State Contacts is unacceptable, may be removed from the project upon written notice to the Vendor; provided, however, any such removal must be for lawful reasons. In the event that an employee is removed pursuant to a written request from MMCAP’s authorized representative, the Vendor may fill the vacancy with an employee, at Vendor’s sole discretion.

There will be no charge to the MMCAP Office, MMCAP Member States or the MMCAP Participating Facilities, for assigning replacement personnel. Vendor agrees that each such replacement personnel have the necessary orientation, background, knowledge, skills, and abilities, to perform in the position replaced.

3.2. Customer Service Department

Vendor must maintain through the term of this Contract, a toll-free customer service call center. If the Responder is servicing the entire national MMCAP Membership then the call center operational hours must cover all the U.S. time zones, including Alaska and Hawaii, during normal business hours. If the Responder is proposing for a specific region then its call center must adequately cover the specific geographical area and time zones contained within the proposed region.

The call center representatives must be capable of responding to telephone or electronic message inquiries (e.g. email, or text inquiries, from hand-held messaging devices), from the MMCAP Participating Facilities and the MMCAP Office. The call center representatives must also have the corporate authority, experience and training to respond to any inquiry related to the MMCAP Contract.

Vendor shall provide the MMCAP Participating Facilities access to the Vendor’s customer service department, which at a minimum, consists of the following:

- Customer support center located at: 8121 10th Avenue North, Golden Valley, MN 55427;
- Customer service hours of operation are 7:00am to 5:00pm CST, excluding the following national holidays:
 - New Year’s Day
 - Memorial Day
 - 4th of July
 - Labor Day
 - Thanksgiving Day

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- Day after Thanksgiving
- Christmas Day
- Martin Luther King Jr. Day
- Access to customer service representatives, with principal responsibilities in the areas of but not limited to: order entry, shipping, delivery, ordering, stocking issues, and other general customer service requests, can be reached toll free at 844-57-MMCAP (66227); by fax at 800-237-9766, or by e-mail at Government.Sales@McKesson.com.
- Technical support is available from 7:00am to 7:00pm CST Monday-Friday for McKesson SupplyManagerSM, and from 7:00am to 5:00pm CST Monday-Friday for ORBITS®, and McKesson ScanManagerSM other than holidays. EDI technical support is available from 8:00am to 5:00pm EST Monday-Friday other than holidays. Technical support can be reached at the contact(s) provided below. See *Section 2.11, of II. Contract Transition and Implementation*, for more details on technical support for Product ordering.

ORBITS®, ScanManagerSM and SupplyManagerSM

Phone: 800-422-0280

Email: SupplyManager@McKesson.com (SupplyManager only) and ORBITSSupport@McKesson.com (ORBITS and ScanManager)

EDI

Phone: 800-765-6363 (Voicemail only and Vendor will make best efforts to return calls within 30 minutes or less)

Email: MMSCConnectivitySupport@McKesson.com

3.3. MMCAP Participating Facility Customer Account Representatives

Vendor will have a designated account representative appointed by the Vendor's Primary Account Manager, who can address Contract related issues, as initiated by MMCAP Participating Facilities located in each MMCAP Member State. Upon request, the representatives will meet with MMCAP Office, MMCAP Member State/City Representatives and the MMCAP Participating Facilities, to discuss at a minimum, but not limited to, the following:

- Customer satisfaction;
- Vendor performance;
- state account performance;
- reports (e.g., Contract compliance);
- invoices for charge-backs;
- other contract related issues.

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II. CONTRACT TRANSITION, IMPLEMENTATION AND MANAGEMENT**1. MMCAP Contract Transition and Implementation**

In completing the transition of this Contract, Vendor shall work with the MMCAP Office, MMCAP Member State Contacts and MMCAP Participating Facilities, to determine the appropriate steps and schedule for the transition. Vendor acknowledges that the transition may be dependent upon the terms of the MMCAP Participating Facilities' existing contracts with Manufacturers and Distributors. Vendor's procedure for implementing and transitioning MMCAP Participating Facilities to this Contract is set forth on *Attachment E: Vendor's Contract Implementation and Transition Plan*.

1.1. Mutual Exchange of Account Based Information

During the term of this Agreement, MMCAP and the Vendor will exchange their respective lists of Members, on a monthly basis, in order to verify MMCAP Participating Facilities.

1.2. MMCAP Member Eligibility

Vendor shall inform any prospective new MMCAP business account, that before it is eligible to purchase Products covered by this Contract, at pricing available only to MMCAP Members, it must complete the MMCAP Membership Application form, and enter into a MMCAP Membership Agreement. Vendor also agrees to refer any prospective new MMCAP business accounts that need further assistance regarding the MMCAP Membership Application process, to the MMCAP Office and to the MMCAP State Contact.

1.3. Vendor Required Documentation

Vendors will provide written notification to new and existing MMCAP Participating Facilities and State Contacts, about the Vendor's required documentation and instructions, to enable the MMCAP Participating Facilities to transition to the new MMCAP Contract. Throughout the Contract term, Vendor will promptly notify the MMCAP Participating Facilities and the State Contacts of any missing or incomplete documentation required for account set-up.

1.4. Start-Up Inventory

If applicable, historical Product usage data will be provided by the MMCAP Office to the Vendor, at least sixty (60) calendar days prior to the Commencement Date of the Contract. Vendor must have all MMCAP Contract Products loaded in its ordering system, and have adequate Core Contract Product supply available to order before the Commencement Date of the MMCAP Contract.

1.5. Product Samples and/or Demonstration Models

Upon request from any MMCAP Participating Facility, before the Commencement Date of the MMCAP Contract, or at any time during the Contract term, the Vendor agrees to provide Product samples and/or demonstration models to any MMCAP Participating Facility at no charge. Upon request from MMCAP Participating Facilities, the Vendor will also provide training on the Products covered by the MMCAP Contract, including the Product features and proper Product use.

1.6. MCAP Office Contacts

The primary MMCAP Office Contacts during the Contract implementation and transition period are:

- Emilio Graulau, MMCAP Healthcare Products & Services Coordinator
Email: Emilio.Graulau@state.mn.us
Phone: 651-201-3113
- Elizabeth Suszynski, MMCAP Healthcare Products & Services Coordinator
Email: Elizabeth.Suszynski@state.mn.us
Phone: 651-201-3125
- Jim Losinski, MMCAP Healthcare Products & Services Manager

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Email: James.Losinski@state.mn.us

Phone: 651-201-2440

- Alan Dahlgren, MMCAP Managing Director

Email: Alan.Dahlgren@state.mn.us

Phone: 651-201-2410

- Sara Turnbow, MMCAP Manager of Contracting and Business Opportunities

Email: Sara.Turnbow@state.mn.us

Phone: 651-201-2411

1.7. Business Interruption Plan

Vendor must have in place, during the term of this Contract, an emergency preparedness and business continuity plan. During the implementation and transition phase of this Contract, Vendor will work with each requesting MMCAP Participating Facility, to develop a pre-selected list of Products to be shipped in the event of a national or regional emergency. Vendor's detailed Business Interruption Plan is set forth on *Attachment K*.

1.8. Inventory Management

Described below are the Product inventory management requirements for MMCAP Contract Products that are set forth on *Attachment A*. Also, if applicable to this Contract, Products may be added to this Contract, through Contracts between MMCAP and Manufacturers of medical Products, equipment, and select pharmacy Products. In the event such Contracts for specific Products are executed between MMCAP and a Manufacturer, who has a business relationship with the awarded Vendor, the Vendor will agree to distribute the Product under the same terms and conditions as set forth in this Contract.

1.8.1. Inventory Management at an MMCAP Participating Facility

Upon request by an MMCAP Participating Facility, Vendor may provide at cost or no cost to the facility, inventory management support that includes but is not limited to: training, software, reporting capability, and handheld devices, to assist the facility in performing its onsite inventory. Upon request by the MMCAP Participating Facility, Vendor must agree to conduct the inventory management support Services onsite.

1.8.2. Vendor Contacts

Vendor's designated contact for all usage, inventory, and special order questions for the MMCAP Office is:

Name	Title	Office Address	Contact Information
Lori Lumpkin	Project Manager	9954 Mayland Drive Suite 4000 Henrico, VA 23233	Phone: Mobile Phone: (804) 475-1564 Fax: Email: Lori.Lumpkin@McKesson.com

Vendor's designated contact for all usage, inventory and special order questions for the MMCAP Participating Facilities is:

Name	Title	Office Address	Contact Information
Customer Service	Customer Service	8121 10 th Avenue North Golden Valley, MN 55427	Phone: (800) 328-8111, Option 1 Mobile Phone: Fax: (800) 237-9766 Email: Government.Sales@McKesson.com

1.9. MMCAP Contract Products

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1.9.1. Vendor will stock all MMCAP Contract Products, including those of its subsidiaries, and not create any barriers in order to avoid stocking MMCAP Contract Products; however, not all Contract Products may not be stocked by the Vendor and some Contract Products may be drop shipped to MMCAP Participating Facility.

1.9.2. Vendor will stock adequate inventory of Products for initial account set-up, based on sales usage data from the MMCAP Office. Thereafter, Vendor's buying system will acknowledge the created demand, and purchase inventory to meet said demand. See *Section 1.4, Start-Up Inventory*.

1.9.3. Vendor will agree to quarterly notification when MMCAP Core Products are discontinued.

1.9.4. Vendor acknowledges and agrees to maintain Product utilization history data of the MMCAP Contract Products for a minimum of sixty (60) calendar days. If any Product has not been ordered after sixty (60) calendar days, Product utilization history data can be adjusted accordingly in the Vendor's Product inventory management system, to reflect the non-usage of the Product.

1.10. MMCAP Contract Product Additions

1.10.1. Except for newly added MMCAP Contract Products, Vendor will make good faith efforts to have the Products loaded, stocked, and viewable in its system, and ready for delivery no later than ten (10) business days from the time Vendor receives notification that the Product has been added to the MMCAP Contract. Vendor does not guarantee delivery; however, delivery for stock items generally occurs within three (3) business days after receipt of order.

1.10.2. Non-Stocked MMCAP Contract Products

For MMCAP Contract Products that are not stocked, an MMCAP Participating Facility may request the Vendor add the Product to inventory at the applicable distribution center, by contacting customer service or its account representative. MMCAP Contract Products will be available for delivery, no later than three (3) business days from receipt of a request for Products stocked at the Vendor's distribution center, unless the MMCAP Contract Product is delayed due to Manufacturer unavailability, or force majeure provision, as set forth in *Article 4, Section 34* of this Contract. In the event the fulfillment of any of the requests exceeds what is specified in this section, Vendor will provide prior written notice of the delay, the reason for the delay, and the estimated fulfillment date to the requesting MMCAP Participating Facility and the MMCAP Office.

2. MMCAP Contract Management

2.1. MMCAP Contracted Manufacturers

If MMCAP contracts directly with a Manufacturer for medical Products, Medical Equipment and Services, and select pharmacy Products, the Distributor, if it has an existing relationship with the awarded Manufacturer, must agree to stock and distribute the MMCAP Contracted Manufacturer's Products, as they become available to MMCAP Participating Facilities at the Contract prices agreed to by the MMCAP Office and the Manufacturer. Vendor will work with MMCAP to determine mutually agreeable pricing after mark-ups, for those contracts MMCAP negotiates directly with Manufacturers. Once marked-up pricing is agreed upon by Vendor and MMCAP, Vendor agrees to implement contract pricing within thirty (30) days of the effective date. If there is no pre-existing relationship, the thirty (30) days to implement contract pricing will be contingent upon establishment of a Distributor Agreement at Vendor's discretion with qualified Manufacturers.

2.2. The MMCAP Office reserves the right to modify the MMCAP Contracted Manufacturers List, as set forth in *Attachment F*, at any time during the Contract term.

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2.3. New Products Additions

If MMCAP contracts directly with a Manufacturer, the MMCAP Contracted Manufacturer's Product will be loaded, stocked, viewable, and ready for delivery in five (5) business days from the Effective Date of the MMCAP Contract with the Manufacturer, unless a longer term is approved in writing by the MMCAP Office. If Vendor does not have a business relationship with the MMCAP Contracted Manufacturer, and establishes that business relationship, then the Product will be loaded, stocked, viewable, and ready for delivery in forty-five (45) business days, unless a longer term is approved in writing by the MMCAP Office. Vendor will have the discretion to establish new relationships with qualified Manufacturers.

2.4. Product Outages

2.4.1. Vendor Created Stock Outages

Vendor shall include its Stock Outage and Backorder Policy attached to this Contract as *Attachment H*. Vendor Stock Outages due to cancellations/backorders that are not created by the Vendor's Contracted Supplier, will be considered a failure to perform by the Vendor, and may be considered grounds for termination of this Contract. In addition to the policy in *Attachment H*, the Vendor agrees to utilize the following process in the event of a backorder situation due to a Vendor-created stock outage.

- **Immediate Notification**

Vendor's online ordering system will provide prompt notice to the MMCAP Participating Facility of any Products covered by this Contract that the Vendor has placed on backorder. Vendor's backorder notification will include:

- the Products placed on backorder status;
- the expected timeline of the backorder, from the time the Products are added to the backorder status, to time the Products will be removed;
- the reason for the Vendor created stock outage that caused the Product backorder, and how the Vendor intends to resolve the backorder situation.

2.5. Options for Obtaining Backordered Products

2.5.1. Manufacturer Direct Shipment

If there are Products subject to a backorder, and these Products are deemed critical by the MMCAP Participating Facility, and the Products are available from the Manufacturer, then, if expedited shipping is requested, the Vendor will make best efforts to have the Manufacturer of the Product, ship directly (drop shipped) to the MMCAP Facility via Next Day Delivery. Any Products that are drop shipped to MMCAP Participating Facilities from the Vendor's Contracted Supplier may be charged any additional fees or shipping charges. Upon request Vendor shall provide shipping options and costs to the MMCAP Participating Facility.

2.5.2. Auto-Backorder

Vendor will have an auto-backorder function that is part of its existing Product ordering system, which will allow MMCAP Participating Facilities to receive backordered Product due to Vendor created Stock Outages immediately, upon availability of the Product.

2.6. Management of MMCAP Contract Products

2.6.1. Price Loading Requirements

- a. Vendor will be responsible for processing the MMCAP Contract File Updates, or the files sent to the Vendor by the MMCAP Office, which specify the Products and pricing covered under this Contract.
- b. Vendor will load the pricing covered under this Contract.
- c. Vendor will load Non-Core discounts based on Attachment A.

d. Price Loading MMCAP Contracts

If applicable to this Contract, this may also include the Product pricing that the MMCAP Office has negotiated with MMCAP Contracted Manufacturers.

- timeframe, including Effective Date;

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- distribution fees;
- loading of Manufacturer pricing;
- Contract implementation.

e. Vendor will load and make viewable in its ordering system, all data lines from MMCAP's Contract File update notifications, on a date agreed upon between the Vendor and MMCAP.

When Manufacturer verification is needed, in order to load an MMCAP Contracted Manufacturer's Product, and the MMCAP Contracted Manufacturer has not responded, or provides data that is inconsistent with the MMCAP Contract File Updates, Vendor will make a good faith effort to notify the MMCAP Office in writing.

f. Provided that Vendor has received all requested account set-up information, Vendor will have all MMCAP Contract and individual MMCAP Contracted Manufacturer contracts loaded. This includes all tiered Contracts, if applicable to this Contract.

2.6.2. Product Additions/Deletions

Vendor will make reasonable efforts to keep MMCAP informed of any updates or changes to our product lines.

2.6.3. Adequate Supply

Vendor agrees to maintain an adequate supply of Products that are added to the MMCAP Contract.

2.6.4. Automatic Product Substitution

The intent of this Contract is to provide Products included on *Attachment A*, to MMCAP Participating Facilities, and not Product substitutes. During the implementation period, the Vendor shall assist MMCAP Participating Facilities with the identification of acceptable Products for Automatic Product Substitution, in the event the Products covered by this Contract are not available at the time of order placement.

Vendor will only substitute Products with Member's approval. This Agreement can be verbal, via email, or by Member's selection during online order placement. In the absence of Automatic Product Substitution, if the Vendor cannot fill an order for a Product included in *Attachment A*, then the Vendor shall notify the MMCAP Participating Facility, and inform the Order Originator as to the reason the requested Product is not available, and the Vendor shall suggest possible suitable Product substitutes from the established Product substitute list. Vendor shall make suggestions of available options. The MMCAP Participating Facility will decide whether to accept a Product substitute, or to cancel the unavailable Product from the order.

a. On-Contract Purchasing Reports

Vendor agrees to encourage MMCAP Participating Facilities to purchase MMCAP Contract Products, including purchases through open solicitations.

2.6.5. Product Expiration Dating

- Vendor does not guarantee shelf life of MMCAP Contract Products or non-contract Products delivered to MMCAP Participating Facilities; however, our policy is that we request a minimum shelf life of at least six (6) months from our Manufacturers and we typically ship Product with a minimum three (3) month dating from our ship date.

2.7. Product Ordering

Vendor will implement its ordering system regardless of the technological capacity of the Order Originator. Vendor will provide order training procedures to staff identified by the MMCAP Member at no charge, within a mutually agreeable timeframe to the Vendor and the MMCAP Member, after establishing a new MMCAP business account. In addition, Vendor will provide ongoing technical and training support to the MMCAP Members who use its Product ordering system during the term of the MMCAP Contract. Vendor's online catalog is available to users with an account number and a USER ID and Password. Once MMCAP Participating Facility has an established account with Vendor, this account can be used to access the online catalog.

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2.7.1. Ordering System

a. Vendor will provide to each Order Originator, a Product ordering method that allows the facility to quickly and accurately order MMCAP Contract Products, and non-contract Products, within the technological capabilities of the MMCAP Member. At a minimum, Vendor's Product ordering system(s) must provide the following functionalities:

- Clearly identify all MMCAP Contract Products, and whether these Products are in stock;
- build and place electronic orders;
- review pending orders for correctness and Contract compliance;
- provide online allocation of ordered amounts;
- receive order confirmation reports.

b. Vendor will offer its Product ordering system(s) to MMCAP Members. Vendor will support the following ordering methods: Internet, EDI, punch-out, direct call to customer service, handheld device ordering, and fax orders.

2.7.2. Training

Training for the Vendor's ordering system may be provided on-site at the MMCAP Member's facility, through webinars or other online training systems that must be approved of in writing by the facility.

a. Training will include but is not limited to the following:

- Proper use of Product order entry devices including computer and hand held units;
- how to access and interpret Vendor's inventory status;
- order placement process (Product inquiry, placement, order edit, print back confirmation, etc.);
- any required Product ordering system maintenance;
- performing file maintenance;
- requesting or printing bar code labels;
- download/run/print/export contractually required reports;
- operation of inventory management program;
- identifying MMCAP Contract Products (e.g., Contract ranking);
- any other commercially available training in use of the Medical Equipment or ancillary items;
- contact information in case of questions regarding ordering;
- training guides or manuals and system operating manuals, accessible on line (including all updates), for all Medical Equipment and software furnished by the Vendor to each individual ordering facility;
- assigning of account login IDs and passwords;
- processing item returns;
- technical support to interface hand held devices with each facility's PC/network infrastructure.

b. Vendor will provide each ordering facility with an online Product ordering instruction manual, outlining all online ordering functions. Vendor will work with the MMCAP Office, to develop other training processes as necessary.

2.8. Ordering System(s) Back-up Service, Maintenance and Repair

If Vendor's ordering system is internet based, Vendor agrees that routine site maintenance will only occur on weekends, and MMCAP Participating Facilities and State Contacts will be notified in advance of the scheduled maintenance. Vendor reserves a maintenance window nightly from 11:00pm EST to 3:00am EST and every Saturday from 8:00pm EST to 8:00am EST the following day for performing maintenance on Customer's environment that impacts availability and any time outside such maintenance window is subject to prior written approval by MMCAP Participating Facility. Any downtime required to restore the Services, whether or not approved by MMCAP Participating Facility, will not count as excused downtime. During the routine maintenance, phone, email and facsimile orders will serve as back-ups for Vendor's Product ordering systems. If maintenance is required for Vendor's Product ordering system devices (e.g. handheld or computer), then Vendor will replace or repair the devices accordingly.

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2.9. Order Placement

Vendor's Product ordering system will display at least, but is not limited to the following information:

- MMCAP Member name;
- Vendor assigned account number;
- Product name;
- Vendor's Product number;
- generic name or Private Label name;
- Product description;
- packaging;
- Manufacturer name;
- unit dose indicator (if applicable to the Products ordered under this Contract);
- form of Product (if applicable; e.g., tablet, capsule, etc.);
- Product Substitute;
- Contract price (specific to the pricing and Contract eligibility of each MMCAP Member);
- Product denoted as available as a drop shipment;
- Product inventory status (e.g., stocked, unavailable due to MBO, Vendor out of stock, or allocation situations);
- real-time Product inventory quantity available (Product in stock minus those allocated to orders);
- Product substitute search option;
- Product inquiry search option;
- automatic substitution information option;
- auto-backordering function;
- photographic picture of the Product(s) being ordered.

2.9.1. Default Set-Up

All new MMCAP ordering facilities will be onboarded through Vendor's standard procedures. Vendor will verify the MMCAP ID for each ordering facility and attach the MMCAP Contract pricing to the established, on-boarded account.

2.10. Confirmation Print back/Order Confirmation

The Vendor's Product ordering system will allow for the input of an individual purchase order number, assigned by the MMCAP Member for each order submitted. Vendor will provide a purchase order confirmation report to the Order Originator the same day the order is placed. The order status report will reference the purchase order number of the original order, and include any related Product order information, including but not limited to, the turn-around time from the placement of the MMCAP Member's order, to the expected delivery of the Product.

2.11. Technical Support for Product Ordering

Vendor's technical support is available from 7:00am to 7:00pm CST Monday-Friday for McKesson SupplyManagerSM and from 7:00am to 5:00pm CST Monday-Friday for ORBITS® and McKesson ScanManagerSM other than holidays. EDI technical support is available from 8:00am to 5:00pm EST Monday-Friday other than holidays. Vendor will make best efforts to respond to after-hours support requests the following business day.

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2.12. Emergency Order Placement and Delivery

Vendor agrees to offer an emergency Product ordering system during the term of this Contract. An emergency Product order is defined as one necessary for immediate and specific patient care, which falls outside the normal order and delivery parameters. Vendor will work with MMCAP Members to accommodate emergency order processing requests whenever possible. Order size and time of day the request is received are factors used in determining if the request can be shipped after the standard cut-off time. Expedited delivery is possible; however, additional freight charges will be incurred. The actual price of expedited service is based on a number of factors such as number of boxes, weight and ship-to location. Emergency orders can be placed via phone, our web-based ordering system, e-mail or fax. It is recommended that the MMCAP Participating Facility reach out to their assigned Sales Representative to assist with an emergency situation when necessary.

2.12.1. Emergency Order Placement

During normal working hours, emergency orders should be directed to the customer service team assigned to service the MMCAP Member. After normal business hours, Vendor will provide each MMCAP Participating Facility access to Vendor's online ordering system which is capable of accepting emergency orders. Vendor's emergency ordering system must be available twenty-four (24) hours a day, seven (7) days a week.

2.12.2. Emergency Order Delivery

The emergency order must be processed the same day it is received and shipped by the most expeditious means possible, unless other shipping means are identified by the Order Originator. Vendor's ability to process the order the same day it is received is dependent on the order size and time of day the request is received.

2.13. Product Delivery

Vendor must distribute and deliver the Products covered under this Contract to the nationwide MMCAP Participating Facilities, including the states of Alaska and Hawaii. The Vendor must deliver to sites identified by the Order Originator, and if necessary, add other delivery sites as identified by the MMCAP Members during the term of the MMCAP Contract, including home delivery, as authorized by the MMCAP Participating Facility. The Vendor will at no time, refuse to deliver to any MMCAP Participating Facility without the prior written approval by the MMCAP Participating Member and the MMCAP Office. Vendor must agree to deliver the Products that accommodate the business model, or the specific delivery needs of the MMCAP Participating Facilities.

2.13.1. Routine Delivery Requirements

a. No Additional Fees

Vendor will not charge any additional fees for routine Service to MMCAP Participating Facilities.

b. Shipping Terms

All routine scheduled order shipments will be F.O.B. Destination, Freight Prepaid and Allowed.

c. No Fuel Surcharges

Vendor agrees that it will not charge a fuel surcharge for the term of this Contract.

d. Delivery Schedule

Upon request from MMCAP Participating Facility, Vendor will work with MMCAP Participating Facility to establish a routine delivery schedule. Vendor does not guarantee delivery; however, delivery for stock items generally occurs within three (3) business days, from the date the Product is ordered, to have the Product stocked and delivered at no extra cost to the Order Originator, barring any Manufacturer production issues. It is understood that deliveries to Alaska or Hawaii may take longer.

All expedited deliveries will be made next day, or on the Next Scheduled Delivery Day (excluding Alaska and Hawaii), unless communicated otherwise. MMCAP Participating Facilities will provide the Vendor with a Holiday Schedule throughout the term of this Contract, and Vendor will provide the MMCAP Participating Facilities a Holiday Delivery Schedule, which accommodates the delivery needs of the MMCAP Participating Facilities.

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e. Delivery Time

Vendor's daily order cut off time will be 1:00pm local time, with the delivery window by 5:00pm on the scheduled delivery day, depending on location and distance from servicing distribution center. Orders received Monday through Thursday will be delivered in an average turnaround time from the placement of an MMCAP Member's order, to the expected delivery date of the Product of less than three (3) business days. Vendor does not guarantee delivery; however, delivery of stock items generally occurs within 3 business days after receipt of order. Orders received Friday will be delivered the next business day. Vendor's distribution centers will make a good faith effort to deliver before noon local time.

f. Hazardous Materials

Vendor will only ship hazardous materials as allowed by the appropriate government regulations.

g. Damaged Products

All damaged Products must be reported to Vendor's customer service department, as set forth in *Section 2.20, Products Returned to the Vendor*, and applicable credits will be issued within ten (10) business days from date of notification of the damaged item.

h. Lost Products

All lost Products must be reported to Vendor's customer service department, as set forth in *Section 2.20, Products Returned to the Vendor*. Upon reconciliation, Vendor will issue credit within ten (10) business days of notification of lost Product, or sooner, once documentation from carrier is received. Re-shipment of missing Product will occur immediately after notification.

i. Large Size Orders

Vendor must have the ability to ship palletized deliveries via freight companies, and must be able to use large companies for dock deliveries instead of small couriers. Orders should be shipped as ordered (by case or by pallet) by the MMCAP Member, so they can be properly unloaded and stored. Vendor will ship palletized and case quantity orders on a weekly, or bi-monthly basis, for all distribution centers, or as mutually agreed upon between the Vendor and the ordering MMCAP Member.

j. No Minimum Order Requirements

During the term of this Contract, there shall be no minimum order requirements or extra charges assessed to orders, regardless of order size or payment amount.

2.14. Drop Shipments

- a. All fees associated with Drop Shipments are listed in *Attachment G: Vendor's Shipping Policy*.
- b. The Vendor will act as a conduit to expedite and simplify the ordering and payment of drop shipped Products.
- c. Unless approved by the MMCAP Member, Drop Shipments directly from Manufacturer (not shipped by Vendor) for recurring orders are prohibited.
- d. Products requiring Drop Shipment must be easily identified in Vendor's Product ordering system. Vendor's Drop Shipment Products are denoted in its Product ordering system.
- e. Timelines for the delivery of Drop Shipment Products will be made per the request of the MMCAP Participating Facility (e.g., expedited shipment, standard delivery, etc.). Vendor will place Drop Shipment requests with Manufacturers within three (3) business days of receiving the request from the MMCAP Member.
- f. In the event that Vendor is unable to fill a MMCAP Member's order for an MMCAP Contract Product, Vendor will have the Product drop shipped directly from the Manufacturer. The MMCAP Member will not be assessed a fee for this shipment.

2.15. Delivery for Special Products

- a. If applicable to the Products offered under this Contract, Vendor will maintain appropriate temperatures and environmental conditions in accordance with Manufacturer requirements for delivery of Special Products to the MMCAP Participating Facilities. All refrigerated Special Products will be shipped in returnable coolers or disposable coolers with appropriate packaging to maintain the required temperature range. Special Products requiring refrigeration will be clearly marked as such. Temperature monitors will be used if they are required by the Manufacturer.

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b. All Special Products will be adequately packaged by Vendor. If an MMCAP Participating Facility refuses Special Product that has been inadequately packaged, the MMCAP Participating Facility must notify Vendor's customer service department to log the complaint. Any costs associated with the return of Special Product due to improper packaging or transport, will be at the expense of the Vendor.

c. In the event a Manufacturer charges Vendor for shipping, due to an expedited request by an MMCAP Member, Vendor will provide advance written notice to the MMCAP Member, and invoice the facility by line item, for the shipping charges.

2.16. Invoicing

2.16.1. Order Invoice

a. Vendor will submit an invoice with each order. Invoices must be only for the amount of Product delivered, not the amount ordered. Quantity ordered and quantity shipped must be based on the packaging associated with the Vendor's Product ID number.

b. No additional fees or special handling charges will be assessed for MMCAP Contract Products.

c. All additional fees (e.g., expedited shipping charges) previously agreed upon between the Vendor and MMCAP, will be in line item detail, separated from the Product's cost, and will be tied back to an original invoice number.

d. At a minimum, the Vendor's invoice will contain the following fields:

- MMCAP Member and name;
- Vendor-assigned account number for the MMCAP Member;
- invoice line number;
- MMCAP Member's purchase order number (MMCAP Member must provide a purchase order number at the time of order for this to appear on Vendor's invoice);
- invoice date;
- Vendor's SKU item number;
- Product name/description;
- packaging as associated with NDC number(if applicable to this Contract);
- unit price;
- quantity ordered;
- quantity shipped;
- extension (unit price multiplied by the quantity shipped);
- total invoice price;
- bill to address;
- ship to address;
- applicable omit codes (e.g., Manufacturer backorder, Wholesaler temporarily out, Manufacturer discontinued, etc.).

2.16.2. Invoice Rounding

Vendor agrees to round down if the third digit after the decimal is 4 or less. Vendor agrees that any rounding will occur at the MMCAP Member invoice unit price.

2.16.3. Invoice Disputes

In the event that applicable state law mandates set-off by an MMCAP Member or MMCAP Participating Facility, such set-off rights shall be exercised only to the extent expressly set forth in the applicable statute.

Unless expressly mandated by applicable state law, the MMCAP Member will notify Vendor of any known dispute with an invoice within fifteen (15) calendar days from receipt of the invoice. If all, or a portion of the disputed invoice is found to be in error, Vendor shall issue a credit and/or adjust the original invoice to the MMCAP Member appropriately, and provide a corrected invoice.

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Where the above is prohibited by an MMCAP Member State's applicable law(s), the Vendor shall comply with requirements of that state's law(s) related to disputed invoices. Vendor will make a good faith effort to resolve known disputes related to Contract pricing within thirty (30) calendar days of notice of the dispute. This clause will in no way be deemed a limitation on the Parties, as it relates to the future auditing and/or correction of invoices.

2.17. Payment

Each MMCAP Member will be responsible for payment of goods and Services, provided by Vendor. MMCAP will have no liability for an unpaid invoice of any MMCAP Member. Vendor agrees to invoice the MMCAP Member for all Products shipped. Vendor agrees to accept purchase orders. Vendor will accept payment in the form of check or Automated Clearing House/Electronic Funds Transfer (ACH/EFT). Vendor will accept, for payment of purchase orders, Electronic Funds Transfer (EFT) and credit cards authorized by the ordering MMCAP Member. Initial selection of, and changes to a MMCAP Participating Member's choice of payment terms, are subject to Vendor's reasonable credit requirements. If not otherwise provided, payments are due within ten (10) days from Vendor's invoice date.

2.18. Credits and Rebills

- a. Vendor will process credits and rebills as notifications are received from an MMCAP Member. In the case of an invoice dispute, Vendor will promptly issue credits/rebills, after the Dispute Resolution process set forth in this Contract.
- b. Vendor will notify MMCAP Member of credit balances. An account statement listing open invoices/credit memos will be sent weekly, semimonthly, or monthly, depending on the account's payment terms.
- c. Vendor credits are valid until they are refunded or the account has used payment.
- d. In the event of a facility closure, or other extreme event where the MMCAP Member will not be making another purchase through Vendor, the MMCAP Member may cash out its credit(s).
- e. If directed by an MMCAP Member, a credit can be transferred from one account to another account.
- f. Vendor will clearly identify credits as a credit.
- g. The Vendor will take all commercially reasonable steps to ensure that credits that become available close to the end of the MMCAP Member's Fiscal Year, are activated for use by the MMCAP Member no later than five (5) business days before the end of the fiscal year.
- h. Vendor's credit memo will contain, but is not limited to the following information:
 - original purchase order;
 - original Vendor invoice number;
 - itemized listing of the Product(s) affected;
 - any rebill associated with the credit;
 - Net credit amount available to the MMCAP Member.
- i. Vendor will clearly identify rebills as a rebill.
- j. Vendor's rebill memo will contain but is not limited to the following information:
 - original order date;
 - itemized listing of the Product(s) affected;
 - effective date of the Product price change.

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2.19. Price Audits and Corrections

- a. In the event of a Product pricing error (e.g., late pricing load, etc.) that is solely attributable to the Vendor, Vendor agrees to process credit/rebills for ninety (90) calendar days.
- b. When an MMCAP Member or the MMCAP Office discovers an error in pricing for an MMCAP Contract Product that favors an MMCAP Participating Facility, the MMCAP Participating Facility or the MMCAP Office will notify Vendor. Upon mutual agreement by the MMCAP Office and Vendor of the error in pricing, Vendor will issue credits/rebills to MMCAP Participating Facilities for the time period from the date the error began to the date it is corrected subject to timeframe described in this Section.

MMCAP and its Members reserve the right to authorize delegate(s), to audit this Contract and its transactions.

2.20. Products Returned to the Vendor

Vendor will maintain a returned goods policy set forth on *Attachment I: Vendor's Product Return Policy*, for accepting returns from the MMCAP Participating Facilities, in accordance with applicable laws, regulations, and normal business practices.

2.21. Product Recalls

Vendor's Recall Procedures/Policies are set forth in *Attachment J: Vendor's Product Recall Procedures/Policies*. If any Product covered by this Contract requires modification, is removed, or recalled by the Vendor, then Vendor shall promptly notify MMCAP and the affected MMCAP Participating Facilities as follows:

a. Recall Notification

Vendor agrees to notify MMCAP and the MMCAP Participating Facilities within three (3) business days, after becoming aware of any Products covered by this Contract and distributed to MMCAP Participating Facilities that require modification, removal or recall as stated above.

b. Vendor agrees to comply with any process mandated by the FDA, or any other regulatory body if applicable, and will address the recall with each MMCAP Participating Facility. Based upon procedures indicated by awarded Vendor, the MMCAP Participating Facility shall return to Vendor any Products or Product components subject to recall. MMCAP Participating Facilities do not incur costs for Product returns related to recalls. If applicable to the recall notice, Vendor will issue credit for recalled Product.

2.22. Shareback Credits

Vendor will manage, at no additional cost to the MMCAP Office, the MMCAP Member States or the MMCAP Participating Facilities, the MMCAP annual disbursement of shareback credits, according to the schedule below:

a. The MMCAP Office will provide Vendor with (i) an accurate list of MMCAP Members receiving a credit, (ii) the MMCAP ID numbers, facility names, facility addresses, facility cities, facility states, and the credit amount for each facility, and (iii) a check for the total amount of all credits to be provided.

b. Vendor must apply the credit to all listed MMCAP Members within fifteen (15) business days of the receipt of the funds.

c. Within thirty (30) business days of the receipt of the funds, Vendor must provide to the MMCAP Office, an Excel Spreadsheet detailing the credit memo information. This Excel listing must include the following fields: distribution center, account number, MMCAP Member ID, facility name, facility address, facility city, facility state, DEA (if applicable), HIN (if applicable), date of credit memo, credit memo number, and credit memo amount.

d. Within sixty (60) business days of the receipt of the funds, Vendor will refund to the MMCAP Office, any remaining dollars for which it was unable to issue credit; this may be for any MMCAP Member that were determined to no longer be valid Members, or that were not able to be located for any variety of reasons. Vendor will work with the MMCAP Office, in order to identify all MMCAP Members to the best of its ability, in an effort to issue all necessary credits, before refunding dollars back to the MMCAP Office.

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- Upon initiating the refund to the MMCAP Office, Vendor will provide a copy of the original Shareback Credit spreadsheet, detailing the credit information (received from the MMCAP Office), the reason for non-application of funds, and the dollar amount of the funds being returned to the MMCAP Office.

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III. KEY CONTRACT PERFORMANCE METRICS**I. Vendor Performance Requirements**

Vendor will be required to meet the performance requirements specified in this Contract. Vendor's performance will be recorded in the Vendor Contract Performance Report, and reviewed at the quarterly business reviews with the MMCAP Office. If Vendor's performance is unsatisfactory, as measured against the performance requirements described in this Contract, then the Vendor will be put on a corrective action plan. The corrective action plan will detail the MMCAP Office's expectations, and timeline for bringing the Vendor up to a satisfactory level of performance specified in this Contract. Vendor's failure to perform at a satisfactory level, may result in the termination of this Contract, as described in *Article 4, Section 3, Contract Termination*.

1.1. MMCAP Business Reviews

The Vendor's Primary Account Representative for the MMCAP account must attend and participate in business reviews, semi-annually or unless otherwise mutually agreed upon during the term of this Contract. Upon request, or if deemed necessary, any MMCAP Participating Facility may also attend. Business reviews will include, but not be limited to the structure and topics in *Section 1.2* below.

1.2. Meeting Structure and Topics

- a. The business review meeting agenda must be finalized a week in advance, with significant MMCAP input.
- b. All data, backup reports, and slides pertaining to the meeting, should be sent to the MMCAP Office at least three (3) business days in advance, or, as agreed upon between MMCAP and the Vendor.
- c. The quarterly business reviews will, at a minimum, address the following:
 - Contract attachment;
 - pricing accuracy;
 - Contract activity reporting;
 - industry news/updates;
 - Product information and updates (recalls, innovations, new Products etc.);
 - success stories and ongoing new business opportunities;
 - EDI setup and audits;
 - customer satisfaction;
 - Vendor's response to price inquiries;
 - Vendor performance issues;
 - Member issues;
 - conversion activities;
 - Contract implementation/transition issue;
 - briefing on Vendor's efforts to refer the MMCAP Members to Products that represent the "Best Value".

2. Products and Pricing Accessibility**2.1. Contract Attachment**

Vendor agrees to connect and to provide access of Contract Products and pricing to MMCAP Members, according to their membership status, and as listed on the Membership Roster of the MMCAP website. Under no circumstance, Vendor will deny access to Contract Products and pricing to a Member, as long as the Member is in good standing and current on payments to the Vendor, as stated in *Section 2.17, Payment, of II. Contract Transition, Implementation and Management*, of this Agreement. Vendor agrees to encourage the MMCAP Member, procuring Products and pricing under this Agreement, and to extend pricing and applicable discounts, under the conditions of this Contract.

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2.2. Pricing Accuracy

Vendor agrees to extend accurate Contract pricing and all applicable discounts to all Members, as set forth in *Attachment A* of this Agreement. If due to error, the price that was extended to a Member did not meet the Contract pricing, Vendor must provide a reimbursement or credit to the affected Member, as set forth in *Section 2.18, Credits and Rebills, of II. Contract Transition and Implementation.*

2.3. Accessibility to Vendor's Order Entry System

Vendor agrees to facilitate, and to encourage the use of MMCAP Contract Products, by identifying those Products directly in its order entry system. In the case where an MMCAP Member is denied MMCAP Contract pricing, the Vendor agrees to send notification to the MMCAP Member, as well as to the MMCAP Office via e-mail at: mmcap.contracts@state.mn.us.

3. Vendor's Response to Price Inquiries

3.1. Price Inquiries from Members

Vendor is required to respond to Product and pricing inquiries from MMCAP Members, within five (5) business days after receipt of the request, or at a mutually agreed upon date with the MMCAP Member and/or MMCAP Office, for a specific quote request. Vendor will make best efforts to respond to Product and pricing inquiries from MMCAP Members, within five (5) business days after receipt of the request, or at a mutually agreed upon date with the MMCAP Member and/or MMCAP Office, for a specific quote request. In order to meet these guidelines, MMCAP Members must provide at a minimum, Manufacturer number, Manufacturer name, description and unit of measure. In order to expedite the process, the MMCAP Member is responsible for providing Vendor with its MMCAP Member ID and bill to address. Once Vendor identifies the customer as an MMCAP Member, Vendor is responsible, to ensure that the generated price Quotes satisfy the pricing, as set forth in *Attachment A* of this Agreement. Orders placed as Product of generated quotes, will remain consistent with the pricing found in this Agreement. Failure of Vendor, to provide a timely response to customer inquiries on Product information and pricing, will be documented in the Vendor Contract Performance Report, and the Vendor might be subject to penalties, including termination.

3.2. Price Inquiries from Potential Members

In instances in which MMCAP requests pricing from a Vendor, on behalf of customers who are considering Membership with MMCAP, Vendor may provide pricing for the Products, consistent with the pricing of this Agreement, and within the due date requested by the customer, unless such due date is changed under mutual agreement between the inquiring customer, the MMCAP Office, and the Vendor. Vendor understands that if it does not provide pricing to the customer, this might limit future sales activity with said customer, once it becomes a Member.

4. Reporting Requirements

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

4.1. Reporting Tools

- a. Vendor must provide online electronic access to all MMCAP Participating Facilities. Upon request, Vendor will provide access to related Member to obtain purchasing data. Vendor will provide MMCAP Office online access to MMCAP Products and Pricing. Electronic access will provide a system for reporting each individual MMCAP Member's purchases, as well as reports on select groups of facilities. Users must be able to manipulate the data, in order to build reports based on each MMCAP Participating Facility's or MMCAP Member State's individual need, and/or ability to transfer data into spreadsheets in a Microsoft Office compatible format.
- b. At a minimum, Vendor will provide the following on-line reporting tools:

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- Purchase Summary Report - ranks items by sales value, over a designated period of time;
- Manufacturer backorder reporting;
- c. Vendor will set up a user login on Vendor’s online reporting system for each MMCAP Member State and the MMCAP Office, with all MMCAP Member accounts for reporting purposes at no cost.

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

4.2. Monthly Sales Data Usage and Administrative Fee Data Reports

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

a. Monthly Sales Data Usage Reports for the MMCAP Office

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

- Table 1 details the required fields for the sales data report;
- Table 2 details the required record layout, in a fixed record format.

Vendor will pay an Administrative Fee on Products and only those Services that incur fees.

b. Administrative Fee Data Report

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

The monthly *Administrative Fee Data Report* must contain the fields set forth below, as those fields apply to this Contract. A detailed data file in Microsoft Excel format will be provided upon request. All required Administrative Fee Data Reports must be sent to MN.MMCAP@state.mn.us, on or before ten (10) business days of the subsequent calendar month. Failure to comply with this provision, may constitute breach of this Contract. In the event the Vendor is delinquent in any undisputed Administrative Fees, MMCAP reserves the right to terminate this Contract, as set forth in *Article 4, Section 3*, and to reject any proposal submitted by the Vendor in any subsequent solicitations for medical Products, Services and Medical Equipment, and select pharmacy Products. Vendor will pay an Administrative Fee on Products and only those Services that incur fees.

Table 1

Required Data Fields for the Sales Data Report
MMCAP-assigned facility ID
MMCAP Facility Name
Vendor Distribution Center Code
Vendor-assigned Account number for the MMCAP Facility
Customer Invoice Number
Customer Invoice Line Number
Customer Purchase Order Number
Invoice date (mmddyyyy)
Buyer name or equivalent of buyer ID for person submitting the invoices (May be left blank)
Vendor's (Distributor) SKU item number

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NDC of purchased Product in 5-4-2 format as stored in First DataBank, Inc. (may be left blank if not pharmaceutical)
Label Name (Product description)
Unit Dose (may be left blank if not pharmaceutical)
Pack Size (may be left blank if not pharmaceutical)
Unit (selling unit of measure)
Case Size (case packaging size)
Dose (may be left blank if not pharmaceutical)
Strength (may be left blank if not pharmaceutical)
Route (may be left blank if not pharmaceutical)
Unit price (99999.9999) (selling unit price)
Quantity ordered (not Vendor repackaged or re-bundled quantity) (999999.9999)
Quantity shipped (not Vendor repackaged or re-bundled quantity) (999999.9999)
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (99999999.999)
Type of transaction (MMCAP Contract purchase, other Contract purchase (340B,PHS), not on Contract purchase) 1=Contract item, 2=other contract, 3=not on Contract
Bill to Address 1
Bill to City
Bill to State (2 alpha postal code)
Bill to Zip (standard 5-4 format, no dash necessary)
Ship to Address 1
Ship to City
Ship to State (2 alpha postal code)
Ship to Zip (standard 5-4 format, no dash necessary)
Service Fee (9999.9999) (if providing negotiated service fee discounts)
MMCAP Contract Number (MMSxxxxx)
Admin Fee (9999.9999)
Credit Indicator (C for credit)
MMCAP Assigned Wholesaler Code (AmeriSource-Bergen=0401, Cardinal Health=0301, Morris-Dickson=0701, Bergen=0201, (New codes will be assigned to PPV's during implementation period of the Contract)
Manufacturer Name (MFG Name)
Class of Trade (if offering volume or tiered discounts)
340B Purchase (1=True, 0=False)
Manufacturer Part Number
Product Category
Manufacturer Part Number
Product Category

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Table 2

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

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

Upon request from an MMCAP Participating Facility or MMCAP Member State Contacts, Vendor will provide a Sales Data Usage Report within ten (10) business days from the date of the request. The report data will provide a summary of a particular MMCAP Member's total usage by Product and dollar spend amount, sorted in descending order, and grouped by Product category for a specified date range. Upon request by the MMCAP Participating Facility and/or MMCAP Member State Contacts, the following reports must be made available through Vendor's

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custom reporting tools. Vendor must be able to supply to the MMCAP Participating Facilities, accurate reports with the following information:

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

4.4. Vendor Member Listing Report

Vendor will provide a monthly listing to the MMCAP Office, of the MMCAP Members attached to the MMCAP Contract, within the first 10 business of the subsequent calendar month. The report must be submitted electronically to MN.MULTISTATE@state.mn.us.

4.5. Vendor's Baseline Market, or List Pricing

Upon request, Vendor will provide the MMCAP Office or MMCAP Member, based on a Market Basket of Products, the following data:

- Vendor number;
- Product number;
- Product description;
- Product selling unit of measure;
- Product Contract price, per selling unit of measure;
- Product type (Core, Non-Core);
- Manufacturer name;
- Manufacturer part number;
- case packaging;
- List Price (per selling unit of measure).

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ATTACHMENT C: MMCAP MEMBER PARTICIPATION AGREEMENTS

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ATTACHMENT D: SERVICE AREA**Service area based on states and cities whom MMCAP has executed Joint Powers Agreements (JPAs) with.**

Alabama	Alaska	Arizona	Arkansas	California
City of Los Angeles	City of Chicago	Colorado	Connecticut	Delaware
District of Columbia	Florida	Georgia	Hawaii	Idaho
Illinois	Indiana	Iowa	Kansas	Kentucky
Louisiana	Maine	Maryland	Massachusetts	Michigan
Minnesota	Mississippi	Missouri	Montana	Nebraska
Nevada	New Hampshire	New Jersey	New Mexico	New York
North Carolina	North Dakota	Ohio	Oklahoma	Oregon
Pennsylvania	Rhode Island	South Carolina	South Dakota	Tennessee
Texas	Utah	Vermont	Virginia	Washington
West Virginia	Wisconsin	Wyoming		

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**ATTACHMENT E:
VENDOR'S CONTRACT IMPLEMENTATION AND TRANSITION PLAN**

In order to properly implement your business, Vendor typically requires thirty (30) days from the time of award. This allows time to set up account numbers, load pricing and contracts, increase inventory in our distribution centers and implement the desired technology approach. At time of award, we will work with MMCAP to create a detailed, mutually agreed upon timeline for implementation including major milestones and the resources necessary. Vendor has previous experience on-boarding large providers. We have resources dedicated to the on-boarding process to assist in a seamless integration. Upon award, Vendor can provide a Sample Implementation Plan if requested by MMCAP.

Vendor's MMCAP Member onboarding procedure will include standard account setup, MMCAP Membership ID verification, loading MMCAP Member account to MMCAP-specific price sources and completion verifications. If there are any questions or discrepancies in the account setup request inquiries are sent directly to the MMCAP Member or to MMCAP for verification or confirmation.

Vendor will review MMCAP's Membership roster to ship-to locations with Vendor's customer listing to identify those Members that are not attached to the MMCAP Contract. If a Member on the roster is not currently associated in the Vendor's listing with the MMCAP Contract, Vendor will take the steps to input the Member information in our system and load the necessary pricing once an account is created. Vendor cannot share our entire customer listing with MMCAP.

Vendor's MMCAP Member onboarding procedure will include account setup, MMCAP Membership ID verification, loading to MMCAP-specific price sources and completion verifications. If there are any questions or discrepancies in the account setup request inquiries are sent directly to MMCAP for verification or confirmation. The same process is followed for transitioning accounts, with the exception of account setup. Existing customers follow the same confirmation and verification process and then are moved from their current price source to the MMCAP-specific price source.

MMCAP Member's account will determine the appropriate contact information for customer service and the dedicated sales representative or support staff to assist with Member inquiries. Upon award, Vendor will provide detailed contact information for each entity responding in this Proposal.

Vendor verifies on-boarding of new customers to help ensure compliance with contractual pricing and performs random, periodic price reviews. Quarterly Business Reviews are also used to review general contract compliance. Vendor's quarterly random price reviews will include invoice review, where warranted. McKesson Minnesota Supply and McKesson Medical-Surgical customers can utilize a variety of reports found in McKesson SupplyManagerSM to monitor purchases and pricing. MMCAP Members have access to contracted pricing which allows Members to compare to invoices. Moore Medical customers may contact the dedicated contract administration team for reports. Vendor is available, upon request, to research any further inquiries.

Additionally, Vendor will provide the requested Sales Data Usage Report. The McKesson MMCAP Project Manager and Sales Team dedicated to government will be educated on the awarded contract to ensure compliance and so that they may inform existing MMCAP Members and potential Members of the MMCAP Contract. Moore Medical's dedicated contract administration and management team will take the necessary measures to ensure the timely reporting, training and promotion of the MMCAP Contract occur.

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ATTACHMENT F: MMCAP CONTRACTED MANUFACTURERS LIST
(If applicable to this contract)

Nutritionals	Medical Food Products	Diabetic Syringes
Abbott Nutrition	Hormel	AgaMatrix, Inc.
Nestle	Kent Precision Foods	ARKRAY USA, Inc.
Nestle Infant Nutrition (Gerber)		Retractable Technologies, Inc.
Nutricia		Roche Diagnostics
Mead Johnson		Abbott Diabetes Care
		UltiMed
		Trividia

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ATTACHMENT G: VENDOR'S SHIPPING POLICY

1.1. Deliveries

McKesson Medical-Surgical Inc. will deliver Products to the receiving area for the MMCAP Participating Facility listed on the order five (5) times per week, Monday through Friday (excluding weekends and holidays) by 5:00 PM local time. Scheduled delivery days may be arranged on a mutually agreed upon day. Transit times vary by origin and destination point.

McKesson Medical-Surgical Minnesota Supply Inc. will ship the Products from its distribution center to the applicable MMCAP Participating Facility or directly to a patient's home if requested by MMCAP Participating Facility. Vendor shall deliver Products Monday through Friday (excluding weekends and holidays) in accordance with a delivery schedule to be determined by the parties.

1.2. Freight Charges

MMCAP Participating Facilities will pay freight charges in accordance with Vendor's standard freight policy in effect at the time of order. Emergency orders, rush orders, orders for Products not regularly stocked by Vendor's local servicing distribution center, and Products dropped shipped are subject to an added shipping and handling charge determined by Vendor and disclosed to a MMCAP Participating Facility prior to or at the time of order. Freight charges and/or shipping and handling charges will be included on the shipping invoice.

1.3. Shipment, Risk of Loss and Title

McKesson Medical-Surgical Inc.

Shipment of Products per routine order to an MMCAP Participating Facility and subsequent back orders related to the original shipment will be shipped FOB Destination, except for drop shipments which will be shipped in accordance with Supplier's shipping policies.

McKesson Medical-Surgical Minnesota Supply Inc.

Except for Vendor Product shipments to individuals made at the direction of MMCAP Participating Facility, title and risk of loss for the Products will pass at the time the Products reach their designated destination for both outbound shipments and returns, except that drop shipments directly from a Supplier will be shipped in accordance with Supplier's shipping policies. For Vendor Product shipments to individuals made at the direction of Customer, title to the Products will pass to MMCAP Participating Facility at the time the Products leave Vendor's distribution center, but risk of loss will remain with Vendor until the Products reach their designated destination. The cost of shipment, if any, will be paid by Vendor and added to the invoice. Vendor will have the right to ship the Products at all times via its own vehicle or a carrier selected by Seller.

1.4. Drop Shipment Fees

Vendor may charge a fee of \$35.00 for Laboratory Products drop-shipped to MMCAP Participating Facility. MMCAP Participating Facility will be notified at the time of order placement if a drop-ship charge applies.

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ATTACHMENT H: VENDOR'S STOCK OUTAGE AND BACKORDER POLICY

Although not a Manufacturer of Products, Vendor is usually able to acquire a mutually agreeable, equivalent Product should an item the MMCAP Member requests is out of stock.

When using Vendor's web-based platform to place orders, the system will indicate if a Product is in stock or on back order. If a Product is not available, the individual placing the order will be asked if they would like to order a recommended substitute (if Vendor has been made aware of a substitute) or leave the item on backorder. Standard delivery is Monday through Friday excluding holidays. Although a delivery time is not guaranteed, delivery for stock items occurs within 1-3 days ARO.

If a desired item is not a stocked Product and Vendor has an established relationship with the Manufacturer, Customer Service or Sales researches whether the item can be sourced. Once the desired item is determined, the Account Manager, designates a competitive price for the item and an item number is set up in our system.

If Vendor does not have an existing business association with the Manufacturer, Vendor will work with Manufacturer to establish a relationship. Although a timeline cannot be guaranteed, Vendor will strive to establish a timely business relationship with those Manufacturers Vendor deems qualified.

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ATTACHMENT I: VENDOR'S PRODUCT RETURN POLICY

McKesson Medical-Surgical Minnesota Supply Inc. & McKesson Medical-Surgical Inc. Return Goods Policy

Subject to applicable law, Seller will process returned goods for Products purchased from Seller, in accordance with its then standard Return Goods Policy. Seller's current Return Good Policy is as follows:

- All requests for return of Products must have a return authorization number issued by Seller's customer service department or Seller's automated Customer Service Platform (e.g., SupplyManager™).
- All returned Products must be in the original unopened packaging and in resalable condition, unless due to the fault of Seller.
- Products cannot be returned if they are: (i) special order Products; (ii) custom Products; (iii) identified as non-returnable in SupplyManager; or (iv) Products not available for general or unrestricted distribution.
- The following credit, if applicable, for returnable Products will be issued no later than thirty (30) days after the receipt of the Product and necessary documentation, and the examination and inspection of such return at the local Seller distribution center.
 - Products returned within thirty (30) days of date of invoice that are (i) shipped in error by Seller, (ii) damaged during shipping by Seller, (iii) nonconforming, or (iv) do not meet Seller's standard quality – FULL CREDIT.
 - Locally stocked Products returned within thirty (30) days of date of invoice – FULL CREDIT.
 - Locally stocked Products returned after thirty (30) but no more than ninety (90) days of date of invoice – FULL CREDIT LESS A 15% RESTOCKING CHARGE.
 - Non-locally stocked Products that are returned within thirty (30) days of date of invoice - FULL CREDIT LESS A 20% RESTOCKING CHARGE (plus any additional costs incurred in returning such Products to Supplier such as Supplier restocking fees paid by Seller).
 - Non-locally stocked Products that are not returnable to the Supplier – NO CREDIT WILL BE ISSUED
- Notwithstanding anything above to the contrary, Buyer shall receive FULL CREDIT on any Products returned as the result of a recall or defective condition.
- Returned items that require a pedigree under applicable law, such as prescription drugs, must be accompanied by the appropriate signed declaration from Buyer. For Buyers in the State of Florida the signed declaration must be signed within seven (7) days of the original invoice date. Failure to comply results in NO CREDIT.

Moore Medical Warranty and Return Policy:

Warranty –The warranties on the Products that are not sold under the label or trademarks of Moore are only those of the Manufacturer. Moore Medical LLC makes no warranty, expressed or implied, with respect thereto.

Credit will be given for damaged or defective Products within 45 days of invoice. In order to receive full credit, return Products must be unopened and in salable condition.

The following Products have Warranty and return restrictions or cannot be returned. Please call Customer Relations at 1-800-234-1464 for further information.

- All Over-The-Counter and Prescription Medications. Any Medications that don't meet date requirements must be reported within 5 days of receipt and will then be verified through warehouse for stocked merchandise dating;
- controlled substances;
- diagnostic test kits;
- discontinued Products;
- drop shipped or special order Products shipped from the Manufacturer;
- expired Products;
- hazardous/ORM materials — call for details;
- items shipped on ice or dry ice;
- opened or defaced Products;

McKesson Medical-Surgical Contract MMCAP MMS18000

- used instruments;
- oxygen tanks.

Damaged Shipments:

All deliveries should be inspected for shipping damage before accepting delivery. If damage has occurred, customer should note the extent of the damage on the freight bill and call Customer Relations immediately at 1-800-234-1464. Moore Medical's responsibility for loss or damage ceases when the Products are accepted by the carrier. When notified, Moore Medical will file a damage claim for the goods shipped, issue credit for the damaged goods, and ship replacement goods. All damage claims must be completed within 5 days of receipt of merchandise.

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ATTACHMENT J: VENDOR'S PRODUCT RECALL PROCEDURES/POLICIES**RECALLS PROCESSING**

May 10, 2017

Dear Customer:

You have requested information on our procedures for handling a Product recall. As a domestic distributor of medical surgical supplies, McKesson Medical-Surgical Inc., McKesson Medical-Surgical Minnesota Supply Inc., and Moore Medical, LLC (collectively, "McKesson") has deployed processes for the administration of the recall of Products, whether such recall is initiated by a Manufacturer voluntarily or is directed by the U.S. Food and Drug Administration ("FDA"). These processes are designed to (i) support compliance with Medicare quality standards as well as state and federal regulatory requirements, (ii) help respond to public safety concerns and (iii) support our service goals to our customers.

Our Recall Policy:

As a wholesale distributor of drugs, biologics and devices, McKesson Medical-Surgical Companies ("MMS") will respond promptly to and cooperate with a Product recall ("recall") notice received from a Manufacturer, supplier or importer (collectively hereafter referred to as "Manufacturer") with an express interest in protecting public safety and promoting a customer's knowledge of the recall and ability to effectively respond. This policy applies to all MMS locations including distribution centers. To the extent that individually identifiable health information (or Protected Health Information) of MMS customers or MMS' customer's patients is relevant to a recall, MMS will maintain the confidentiality of the Protected Health Information in accordance with HIPAA privacy and security standards. Recall documentation will be maintained in accordance with MMS' Records Information Management Policy and Records Retention Schedule.

Our recall process involves multiple steps and guidelines for managing the many stages involved in a Product recall. The content of this document focuses on our process as it pertains to you, our customer.

Our recall process includes:

- Internal review of the Manufacturer notification letter.
- Notification to McKesson distribution centers of the recall and the affected lot numbers, when there is inventory and/or sales history records for the subject Product(s) of the recall.
- When necessary, segregation of affected stock in our warehouses and containment actions are taken to address the disposition of the affected Product(s) accordingly.
- Notification to potentially affected customers, usually via written notice.
- Review for other considerations or actions related to FDA regulations for the specific recall.

Customer Notification:

Notifications provided to McKesson customers are based on our sales history records. Our analysis is based on the subject Product(s) of the recall and the timeline provided by the Manufacturer including shipments from when the affected Product distribution began. McKesson tracks all individuals and entities to which it has distributed the affected Products. When McKesson receives written notification from a Manufacturer regarding a Product recall, McKesson will send a recall notice to all customers who potentially purchased affected Product(s), rather than just notifying customers that purchased a specific lot number of affected Product(s). This process results in our customers having a higher awareness of recalls and the ability to validate if they have affected Product(s).

For McKesson customers, whose patients or end-users that receive drop shipments of medical-surgical Products, any recall notification from McKesson, will be sent to the billing address of the customer account on file with McKesson at

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the time of the notification; not to the patient or end-user address.

Recall Information Provided to Customers:

The notification sent to McKesson's customers contains the following information:

- A summary of the Product issue and the potential health and/or safety impact to end-users of the Product.
- Specific identification of the Product(s) purchased from McKesson, including NDC code, Manufacturer item number, McKesson item number, Product description, affected lot numbers(s) and expiry date(s), as applicable.
- Instructions to the customer including screening for any affected inventory at their location, updated use instructions and return or disposal, as applicable to the subject recall.
- When a Product return is specified or optional, directions for return (as applicable) to (i) the Manufacturer, (ii) a third party logistics service or (iii) to McKesson via contact with our customer service teams.
- Contact information needed to execute any required Product handling instructions, or to direct inquiries to the Manufacturer for clinical or Product use related concerns.

The customer notification is usually sent via U.S.P.S. mail and includes reply forms (when applicable) and any additional documentation provided by the Manufacturer to complete the Product recall communication.

Shipment details such as a listing of Products shipped, including dates, quantities and ship-to locations, are not provided as a normal course of administering the recall process. However, customers may later request a detailed listing, including drop shipments made on their behalf, for the time period outlined in the recall notification. The foregoing provides a high-level summary of McKesson's policy and procedure and is not intended to be all-inclusive.

The recall process is administered by the Compliance and Regulatory Affairs (CARA) Department.

Sincerely,

Brian Green
Quality Assurance Manager
McKesson Medical-Surgical Inc.
4345 Southpoint Blvd.
Jacksonville, FL 32216
www.mckesson.com

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McKesson Medical-Surgical Contract MMCAP MMS18000

ATTACHMENT K: VENDOR'S BUSINESS INTERRUPTION PLAN

As a leading distributor of medical and surgical supplies, McKesson has a robust and thorough Business Continuity and Disaster Recovery Program. Our priorities are to:

- Protect our customers;
- help ensure the safety of our employees;
- help ensure our workplaces are safe and secure; and
- help ensure the continuity of critical business processes following natural disasters, human- caused threats, and any other incidents.

In the immediate aftermath of a significant business disruption, our focus will be to quickly mitigate any negative impacts to our customers, safeguard our people and property, and help ensure clear and open communication throughout the incident. We will then focus on restoring normal operations as quickly as possible and completing any delayed or impacted orders. A few of our mission-critical Services are listed below:

- sales order management;
- information technology and cyber security;
- order fulfillment;
- distribution logistics and transportation; and
- customer service and support.

Customer Expectations During a Business Interruption

McKesson is committed to providing our customers with the highest level of service while minimizing any impact to our service levels during business disruptions. While we realize some events cause us to miss service expectations, we can plan and execute against our goals with the help of our customers and business partners.

To better prepare in the event of emergency situations, you can:

- Contact your McKesson sales representative or customer service representative as soon as possible to discuss early ordering, order prioritization, emergency orders, and order consolidation where possible.
- Please let your sales representative or customer service representative know about any changes to operating hours, facility damage, or other factors that will impact our ability to deliver your Product.
- If you are expecting a forecasted natural disaster, please place orders early; and
- review the McKesson homepage at mms.mckesson.com, for updates and instructions regarding recent events.

Please see the following contact numbers and email addresses for our Customer Service Team:

<u>Customer Segment</u>	<u>Phone Number</u>	<u>Email Address</u>
PC	(866) 625-2679	MMSPCCustomerService@McKesson.com
EC	(800) 328-8111	MMSECCustomerService@McKesson.com
Lab	(844) 866-7522	MMSLabCustomerService@McKesson.com

Further Details on Our Business Continuity Program

To help ensure our response to business disruptions meets expectations for safeguarding our customers, people and property, McKesson has implemented a cross-functional approach to business continuity:

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Emergency Response

- Each facility has a dedicated Emergency Response Team.
- Each facility has a unique Emergency Response Plan which addresses multiple crisis scenarios.

Disaster Recovery

- IT processes and technologies have recovery and failover plans.
- Critical facilities and business processes have dedicated Incident Response teams who handle immediate response to business disruptions.

Business Continuity

- Dedicated Business Continuity Coordinators support inter-departmental response to disruptions.
- Coordinators maintain protocols for inter-departmental response to multiple possible types of business disruptions.

Example Response to a Typical Business Disruption

McKesson responds to multiple business disruptions every year, including hurricanes, snow storms and other events. Here is a summary of the steps we take to prepare for and recover from a typical weather-related emergency.

Event Detection and Preparation

Our facility leaders and business continuity coordinators monitor local and regional weather conditions. If potential threats are detected:

- Local and regional Incident Response teams are notified of the possible event. These teams include Members from the Distribution Center, Transportation, Customer Service, and Information Technology departments.
- Once notified, local distribution center teams and other facilities will prepare for the event and create operating plans in conjunction with local business partners.
- Our Customer Service department will also prepare by developing a staffing plan and working with customers as needed to pre-order goods.

Event Management

During the event, our Incident Response teams meet regularly to share status updates, modify operating plans and respond to any specific failures. Examples of these responsibilities include:

- If a facility is damaged or is inoperable, the facility's Emergency Response Team will manage evacuations, building repairs or other activities as necessary to restore service as quickly as possible.
- Distribution center leaders, transportation leaders, and customer service representatives work closely together to respond to local requirements, reroute and prioritize deliveries and monitor fleet operations.
- Distribution center and transportation leaders work with our carrier partners to ensure service disruptions are minimized for our customers.
- Twice a day, our Business Continuity Coordinator:
 - o Hosts a call with our Incident Response teams to discuss the ongoing nature of the disruption, as well as impact on our facilities, employees and customers; and
 - o provides a summary communication to our senior leadership and other department leaders regarding status and actions taken.

Event Resolution

Once the event is resolved:

- Our team reviews the impact of the event and any outstanding impacts to customer orders;
- our Incident Response Team works to complete any outstanding orders as quickly as possible; and
- finally, our Incident Response Team reviews the management of the event for continuous improvement.

The following sections provide additional details on how our departments are prepared to handle business disruptions, which may affect our customers.

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Sales Order Management

Receiving customer orders is critical to the McKesson Business Continuity program. In the unlikely event our online ordering system fails, we have an alternate plan for taking manual orders through our Customer Service Department. We currently offer a variety of methods for you to complete orders with us during an emergency or business disruption, including:

- Our website at: mms.mckesson.com, which also provides alerts regarding current business disruptions;
- place your orders directly with your sales representative via phone or fax; and
- place your orders directly with our customer service representatives via phone or fax.

In the unlikely event our core sales order management system experiences an outage, the McKesson web-based ordering system can be used to capture orders. These orders will be held and submitted when the core sales order management system becomes available.

Information Technology and Cyber Security

McKesson maintains Disaster Recovery plans covering software failures, failures of our data-centers, and servers supporting our Enterprise Resource Management system and our distribution centers. These plans allow us to provide continuity in systems operation and availability and include the following key items:

- Redundancy in our autonomous distribution centers and Customer Service facilities;
- backup procedures detailing how Customer Service, Information Technology, and Operations collaborate so customer orders are placed, processed and shipped in the event of a system failure;
- complete system failover capability ensures we can migrate complete system functionality to an alternate site; and
- Cyber security preparedness, testing, and response.

Redundant Technologies for Customer and Internal Information Systems

McKesson maintains separate instances of its Corporate Information systems in dual state-of-the-art data-centers. Further, we help ensure all customer-facing technologies have redundant backups in case the primary system has a failure.

- Our databases employ failover technology to protect against a service outage should we encounter a hardware failure.
- Each distribution center has a dedicated server so the distribution center can operate independently of the core system (distribution centers can continue to receive orders if the central system is operative).
- The core Enterprise Resource Planning system is housed in a separate location from our distribution centers to provide protection from impacts affecting select geographies.

Complete System Disaster Recovery Services

McKesson has contracted with a leading third-party recovery Services provider as a disaster recovery partner. This means if our data-centers, Enterprise Resource Planning system or other information technologies experience a complete failure, we can restore complete service at the partner's site. Services include:

- *Alternate Site Recovery:* In the event of a disaster, our computing environment would be restored at a separate geographic location;
- *Comparable Computing Equipment and Hardware:* Our recovery partner provides hardware comparable to those currently in use in our in-house production environment;
- *Recovery Management Services:* Our recovery partner provides experienced recovery technicians knowledgeable in all operating system platforms; and
- *Annual Testing:* In conjunction with our recovery partner, we conduct an annual disaster recovery exercise to test our current capabilities and procedures.

Cyber Security

McKesson maintains an Information Security and Risk Management program based on the internationally recognized ISO 27001 framework. By implementing a defense-in-depth strategy, our approach is to ensure our IT environments are protected against cyber threats and to mitigate the impact of a potential system outage due to an attack.

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Order Fulfillment and Distribution Centers

McKesson operates a network of distribution centers across the United States. Each distribution center maintains a Business Continuity Plan including objectives and responsibilities during business disruptions. In the event of a business disruption, these plans allow our distribution centers to quickly communicate with carriers, Customer Service, Sales Support and other departments to maximize service availability and communication with customers.

Logistics and Transportation

The Transportation Team leverages a variety of options to get orders to your door including national and local carriers, private fleet, direct shipment, and other alternatives. During a business disruption, our team monitors service interruptions and coordinates communications between our carriers and distribution centers frequently to provide up-to-date communications to our Customer Service teams. We work to ensure prompt notifications for all affected deliveries. We recognize timely deliveries are imperative for our customers and work through all possible service options to resolve delivery issues and get the Product to its destination as quickly as possible.

Customer Service and Support

McKesson operates a network of call centers with automated failover across the United States. This allows our customer service representatives to quickly respond to customer requests regardless of the situation or location. Our customer service representatives work directly with local Sales Support and Operations to provide the best level of support in placing emergency orders or identifying orders impacted by a business disruption.

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ATTACHMENT L: VENDOR'S ESCALATION PROCEDURE

Issues reported are promptly resolved by our customer service department according to standard operating procedures and metrics to quickly and efficiently resolve complaints, disputes and grievances. The Customer Service Supervisors help manage workflow so calls are answered and issues are handled timely or are there to assist if an issue requires escalation. The Manager or Director of Customer Service is also available to help ensure prompt resolution to situations. If additional assistance related to contract-specific questions is needed the assigned Project Manager can help MMCAP Members.

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ATTACHMENT M: VENDOR'S DISCOUNT STRUCTURE

Vendor's Prompt Pay Discounts or other discount programs can be reviewed at the individual account level with MMCAP Member's Account Manager. Below is a sample of prompt payment discounts:

Prompt Payment Terms
AR 1% 15 NET 30
AR 2% 10/ NET 30

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ATTACHMENT N: LIST OF VENDOR'S SUPPLIERS

Biomerieux		
Siemens		
Biofire		

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McKesson Medical-Surgical Contract MMCAP MMS18000

State of Minnesota
Affirmative Action Certification Form

Complete the information requested below to determine whether Responder is subject to the Minnesota Human Rights Act certification requirement (Minnesota Statutes Section 363A.36. Responder must provide this information and—if required—apply for Human Rights certification prior to the due date and time of the proposal and to obtain Human Rights certification prior to the execution of the contract.

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

The proposal will be rejected unless Responder's business: has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR) OR has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the proposals are due.

Check one of the following statements if Responder has employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- X We have a current Certificate of Compliance issued by the MDHR. Proceed to BOX C. Include a copy of Responder's certificate with your proposal.
[] We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on (date). (If the date is the same as the proposal due date, indicate the time Responder's plan was received; (time). Proceed to BOX C.
[] We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. We acknowledge that our proposal will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance. (See below for contact information.)

Note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by other governmental entities (federal government, county, or city) must still be reviewed and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B – For those companies not described in BOX A. Check below.

- [] We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. Proceed to BOX C.

Box C – FOR ALL COMPANIES

By signing this statement, Responder certifies that the information provided is accurate, that you are authorized to sign on behalf of the Responder, and that Responder is in compliance with federal affirmative action requirements that may apply to the Responder's company. (These requirements are generally triggered only by participating as a prime or subcontractors on federal projects/contracts. Vendors are alerted to these requirements by the federal government.)

Name of Company: McKesson Medical-Surgical Minnesota Supply Inc. Telephone number: (800) 328-8111
Date: 5/10/2017 Title: Proposal Specialist
Authorized Signature: Kimberly Zahriskie Date: 5/10/2017
Kimberly Zahriskie

Minnesota Department of Human Rights, Compliance Services Section
Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101
Web: www.humanrights.state.mn.us
Email: employvinfo@thrightspace.net

TC Metro: (651) 296-5663 Toll Free: 800-657-3704
Fax: (651) 296-9042 TTY: (651) 296-1283

McKesson Medical-Surgical Contract MMCAP MMS18000

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BOX B - For those companies not described in BOX A. Check below.
[] We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. Proceed to BOX C.

Box C - FOR ALL COMPANIES
By signing this statement, Responder certifies that the information provided is accurate, that you are authorized to sign on behalf of the Responder, and that Responder is in compliance with federal affirmative action requirements that may apply to the Responder's company. (These requirements are generally triggered only by participating as a prime or subcontractors on federal projects/contracts. Vendors are alerted to these requirements by the federal government.)
Name of Company: McKesson Medical-Surgical Inc. Telephone number: (800) 328-8111
Date: 5/10/2017 Title: Proposal Specialist
Authorized Signature: Kimberly Zabriskie Date: 5/10/2017
Kimberly Zabriskie

Minnesota Department of Human Rights, Compliance Services Section
Mail: 190 East 5th St., Suite 700 St. Paul, MN 55101 TC Metro: (651) 296-5663 Toll Free: 800-657-3704
Web: www.humanrights.state.mn.us Fax: (651) 296-9042 TTY: (651) 296-1283
Email: employinfo@hrrightsplace.net

McKesson Medical-Surgical Contract MMCAP MMS18000

**State of Minnesota
Affirmative Action Certification Form**

Complete the information requested below to determine whether Responder is subject to the Minnesota Human Rights Act certification requirement (Minnesota Statutes Section 363A.36. Responder must provide this information and—if required—apply for Human Rights certification prior to the due date and time of the proposal and to obtain Human Rights certification prior to the execution of the contract.

BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.

The proposal will be rejected unless Responder's business: has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR) OR has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the proposals are due.

Check one of the following statements if Responder has employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

We have a current Certificate of Compliance issued by the MDHR. Proceed to BOX C. Include a copy of Responder's certificate with your proposal.

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BOX B – For those companies not described in BOX A. Check below.

We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. Proceed to BOX C.

Box C – FOR ALL COMPANIES

By signing this statement, Responder certifies that the information provided is accurate, that you are authorized to sign on behalf of the Responder, and that Responder is in compliance with federal affirmative action requirements that may apply to the Responder's company. (These requirements are generally triggered only by participating as a prime or subcontractors on federal projects/contracts. Vendors are alerted to these requirements by the federal government.)

Name of Company: Moore Medical LLC Telephone number: (800) 328-8111
 Date: 5/10/2017 Title: Proposal Specialist
 Authorized Signature: Kimberly R. Zabriok Date: 5/10/2017
 Kimberly Zabriok

Minnesota Department of Human Rights, Compliance Services Section	TC Metro: (651) 296-5663	Toll Free: 800-657-3704
Mall: 190 East 5th St., Suite 700 St. Paul, MN 55101	Fax: (651) 296-9042	TTY: (651) 296-1283
Web: www.humanrights.state.mn.us		
Email: employerinfo@hrrightsplace.net		

McKesson Medical-Surgical Contract MMCAP MMS18000

**State of Minnesota
Resident Vendor Form
(Return with proposal only if applicable)**

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a "Resident Vendor" means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

To receive recognition as a Minnesota Resident Vendor ("Resident Vendor"), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

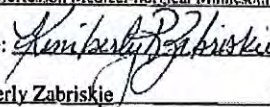
Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

1. Is authorized to conduct business in the State of Minnesota on the date a solicitation for a contract is first advertised or announced. (This includes a foreign corporation duly authorized to engage in business in Minnesota.)
 Yes No (must check yes or no)
2. Has paid unemployment taxes or income taxes in the State of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.
 Yes No (must check yes or no)
3. Has a business address in the State of Minnesota.
 Yes No (must check yes or no)
4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.
 Yes No (must check yes or no)

BY SIGNING BELOW, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of Company: McKesson Medical-Surgical Minnesota Supply Inc. Date: 5/10/2017

Authorized Signature:  Telephone: (800) 328-8111

Printed Name: Kimberly Zabriskie Title: Proposal Specialist

IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR BID OR PROPOSAL SUBMISSION.