



State of Idaho

Participating Addendum

Purchase Order Summary

Purchase Order Number: PADD19200437
Account Number: AC-1
Purchase Order Date: April 05, 2019
Service Start Date: April 5, 2019
Service End Date: May 31, 2020
Payment Method: Invoice
Payment Terms: NET30
Currency: USD
FOB Instruction: Destination
Attachment(s):

Supplier

David Delgado
Medical Solutions Inc
10401 93rd Ave. N
#100
Maple Grove, MN 55369
Phone: 763-493-4114-11

Fax: 763-493-4310

Email: ddelgado@medicalsolutionsinc.com

Contract Number:

Bill To Address

DOP - Prog Mgr
Dept of Administration
Division of Purchasing
304 N 8th Street Rm 403
PO Box 83720
Boise, Idaho 83720
Phone: 208-332-1600
Fax: 208-327-7320
Email: purchasing@adm.idaho.gov
Mail Stop: DOP Program Manager

Ship To Address

DOP - Prog Mgr
Dept of Administration
Division of Purchasing
304 N 8th Street Rm 403
PO Box 83720
Boise, Idaho 83720
Phone: 208-332-1600
Fax: 208-327-7320
Email: purchasing@adm.idaho.gov
Mail Stop: DOP Program Manager

Instructions

NOTICE OF STATEWIDE CONTRACT (PADD AWARD)

This PADD is for Medical Products and Services pursuant to Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), MMCAP Contract No. MMS18013. This contract is for the benefit of State of Idaho agencies, institutions, and departments; as well as eligible political subdivisions or other "Public Agencies" as defined by Idaho Code, Section 67-2327. The Division of Purchasing or the requisitioning agency will issue individual releases (delivery or purchase orders) against this Contract on an as needed basis. This contract is to be drawn upon as requested by Participating Agencies for the period noted above and may be renewed for three (3) additional years, at increments determined by MMCAP, on written acceptance by both parties, for a total term not to exceed five (5) years.

Agencies will need to become members of MMCAP in order to access MMCAP Contract MMS15001. Contact the Division of Purchasing for information regarding becoming a member.

PADD Title: Medical Products and Services

PADD Usage Type: Mandatory Use

Public Agency Clause: Yes

PADD Administrator: Chelsea Robillard

Phone Number: 208-332-1607

Fax Number: 208-327-7320

Email: Chelsea.Robillard@adm.idaho.gov

Contractors Primary Contacts:

Lynn Meyers, Key Accounts/Contract Sales

Phone Number: 888-557-8020

Mobile Number: 612-747-1622

Email: lmeyers@medicalsolutionsinc.com

CONTRACTOR: Ship to the FOB DESTINATION point and BILL DIRECTLY to the ORDERING AGENCY. DO NOT MAIL INVOICES TO THE DIVISION OF PURCHASING. Notating the Contract Award Number on any invoices/statement will facilitate the efficient processing of payment.

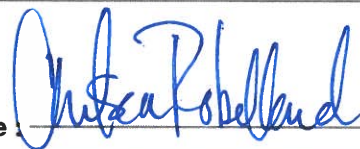
QUANTITIES: The State of Idaho, Division of Purchasing, can only give an approximation of quantities and will not be held responsible for figures given in this document.

Supplier Part Number	Quantity	Items		Unit	Unit Price	Total
		Back Order				
	1.00	0		EA	250,000.00	\$250,000.00
Item Description	#1					
	Medical Products and Services I					
Delivery Date:	April 06, 2019					
Shipping Method:	Delivery					
Shipping Instructions:						
Ship FOB:	Destination					
Attachment(s)						
Special Instructions:						
Sub-Total (USD)						\$250,000.00
Estimated Tax (USD)						\$0.00
TOTAL: (USD)						\$250,000.00

Note: If there is a  next to an item's unit price, that indicates that the price has been discounted.

Signature:

Signed By:



CHELSEA ROBILARD

Member-Requested Participation Addendum (MPA)

This Addendum ("MPA") is entered into by State of Idaho ("Member") and Medical Solutions, Inc., located at 10401 93rd Avenue North, Suite 100, Maple Grove, MN 55369 ("Vendor" or "Contractor") and incorporates the Minnesota Multistate Contracting Alliance for Pharmacy, an agency of the State of Minnesota ("MMCAP") vendor contract MMS18013 ("Vendor Contract").

WHEREAS, MMCAP and Vendor executed the Vendor Contract on June 6, 2018.

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

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

WHEREAS, Member, MMCAP, and Vendor do not intend to alter, amend, interfere, modify, or adjust the contractual relationship of MMCAP and Vendor nor the relationship between any other member of MMCAP and the Vendor.

THEREFORE, the parties agree as follows:

I. DEFINITIONS

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

II. EFFECTIVE DATE AND TERM

- A. **Effective Date:** This MPA is effective on March 15, 2019 or the date all signatures have been obtained, whichever is later.
- B. **Termination:** This MPA terminates upon:
 - 1. Thirty (30) calendar days' written notice upon written notice to the other parties; or
 - 2. The termination of the Vendor Contract between MMCAP and the Vendor; or
 - 3. Written agreement executed by all parties.

III. SCOPE

- A. **Exhibit A:** Which is attached and incorporated herein, identifies the Vendor Contract and all other previous agreements and amendments to be incorporated into the contractual relationship between Member and Vendor.
- B. **Exhibit B:** Which is attached and incorporated herein, identifies the additional Facilities Member and MMCAP has approved to access the Vendor Contract and MPA.
- C. **Exhibit C:** Which is attached and incorporated herein identifies the language to be incorporated into the contractual relationships between Member and Vendor, as referenced on Exhibit A. In the event of any conflict between the terms of the Vendor Contract and Exhibit C of this MPA, the terms of Exhibit C will supersede as between Member and Vendor.

MMCAP, the State of Minnesota, nor any other party of the Membership (except for Facilities) are bound by the terms of Exhibit C.

IV. GENERAL PROVISIONS

- A. **Assignment:** Except as affirmed in this MPA, the Member nor Vendor will not assign, delegate, or transfer any rights or obligations under this MPA without the prior written consent of MMCAP.
- B. **Counterparts and Electronic Signature:** The MPA cannot be executed in counterparts and will not be enforceable until MMCAP has obtained all required signatures. If requested by MMCAP, Member and Vendor expressly agree to conduct transactions under the MPA by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this MPA by electronic means and to the enforceability of this electronic agreement). MMCAP will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law recognizes electronic transferable records or control of electronic transferable records and regardless of whether this MPA is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP in order for this MPA to be a transferable record, to ensure that MMCAP has control of the authoritative copy of such transferable record.
- C. **Amendments:** Any amendment or modification to this MPA must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP

[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]

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

BY AND BETWEEN:

FOR THE MEMBER:

STATE OF IDAHO

Signature: [Signature]

By: Chelsea Robinson

Title: Lead Purchasing Officer

Date: 3/15/19

VENDOR:

MEDICAL SOLUTIONS, INC.

Signature: [Signature]

By: David Delgado

Title: Owner

Date: 3/15/19

IN AN APPROVAL CAPACITY ONLY:

State of Minnesota for MMCAP

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

Signature: Sara Turnbow PharmD, BCPS Printed: Sara Turnbow Date: 3-15-19

Minnesota Commissioner of Administration

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

Signature: [Signature] Printed: Jennifer VandenKerkhof Date: 3/18/2019

[SIGNATURE PAGE]

EXHIBIT A

Vendor Contract and other Applicable Legal Documents

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

1. Vendor Contract MMS18013

EXHIBIT B

Approved Facilities

1. **Scope:** All state governmental entities, approved by MMCAP, within the State of Idaho and public agencies (as defined by Idaho Code, Section 67-2327) are authorized to purchase products and services under the terms and conditions of the Vendor Contract. These public agencies include any city or political subdivision of the State of Idaho, including, but not limited to counties; school districts; highway districts; port authorities; instrumentalities of counties, cities, or any political subdivision created under the laws of the State of Idaho; and public schools and institutions of higher education.
2. **Participation:** Use of specific MMCAP contracts by Facilities to use state contracts are subject to the prior approval of Idaho's Chief Procurement Official and MMCAP.
3. **Individual Customer:** Each ordering Facility ("Purchasing Entity") that places an order under this MPA will be treated as if it is an individual customer. Except to the extent modified by this MPA, each Purchasing Entity will be responsible to follow the terms and conditions of the Vendor Contract and this MPA. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities; and will have the same rights to any indemnity or to recover any costs allowed in the Vendor Contract for its individual purchases.
4. **Price Agreement Numbers.** All purchase orders issued by Purchasing Entities within the jurisdiction of this MPA shall include the following price agreement number:

MMCAP Vendor Contract #MMS18013 and MPA #PADD19200400

EXHIBIT C

Language Modification of the Vendor Contract

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

Modification of Terms:

This has been intentionally been left blank.

Additional Terms:

1. **Idaho Fee and Quarterly Usage Report.** A one and one-quarter percent (1.25%) Idaho Fee will apply to all purchases made under the resulting MPA by any state or public agency in Idaho, the State of Idaho understands and agrees that Vendor will raise the Vendor Contract prices by this amount. Additionally, Vendor and Member agree and understand that the Idaho Fee will in addition to, not part of the MMCAP Administrative Fee. Idaho Fee payments and reports to the State of Idaho are due no later than thirty (30) calendar days after the end of each calendar quarter.

State of Idaho Reporting Time Line:

- 1st Quarter: July 1 – September 30
- 2nd Quarter: October 1 – December 31
- 3rd Quarter: January 1 – March 31
- 4th Quarter: April 1 – June 30

Report of Contract Purchases:

Provided there are sales to report, quarterly reports must accompany each Idaho Fee payment; and be furnished electronically in Microsoft Excel format. For each account, Vendor needs to provide a listing of all items purchased during the prior quarter indicating the item # and description, the quantity delivered, the delivery destination, the date of delivery, and the unit prices. The total dollar amount accounts will have state agencies grouped separately from political subdivisions (e.g., cities, counties, school districts, water districts, etc.).

The report must be emailed to: purchasing@adm.idaho.gov.

Idaho Fee Payment checks must be made out and mailed to:

Division of Purchasing, State of Idaho
P.O. Box 83720
Boise, ID 83720-0075

2. **Restrictions.** Purchases under this Vendor are restricted to purchases of medical equipment and supplies offered by the Vendor and are listed on the Vendor Contract.
3. **Terms and Conditions in the Vendor Agreement that Do Not Apply to Idaho.**

- B. Subject the state of Idaho, its agencies, or political subdivisions of the state of Idaho to the jurisdiction of the courts of other states;
 - C. Limit the time in which the state of Idaho, its agencies, or political subdivisions of the State of Idaho may bring a legal claim to a period shorter than that provided in Idaho law;
 - D. Impose a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code; or,
 - E. Require the state of Idaho, its agencies, or political subdivisions of the state of Idaho to accept arbitration or to waive right to a jury trial.
 - F. Require indemnification not specifically authorized by the Idaho legislature or subject to appropriation (pursuant to Section 67-9213, Idaho Code, and Section 59-1016, Idaho Code).
 - G. Hold employees or officers of the State of Idaho and of political subdivisions of the State of Idaho personally liable.
4. **Primary Contacts:** The primary contact individuals for this MPA are as follows (or their named successors):

Vendor

Name:	David Delgado or Lynn Meyers
Address:	Medical Solutions, Inc.
Telephone:	888-557-8020
Fax:	877-557-9123
Email:	ddelgado@medicalsolutionsinc.com , lmeyers@medicalsolutionsinc.com

Participating Entity

Name:	Chelsea Robillard
Address:	State of Idaho, Division of Purchasing 304 N. 8 th Street, Room 403 Boise, ID 83709
Telephone:	208-332-1607
Fax:	208-327-7320
Email:	Chelsea.Robillard@adm.idaho.gov

5. **Orders:** Any Order placed by a Purchasing Entity for a product and/or service available from the Vendor Contract shall be deemed to be a sale under (and governed by the prices and other terms and conditions) the Vendor unless the Purchasing Entity and the Vendor agree in writing that another contract or agreement applies to such Order.

TABLE OF CONTENTS

Key Definitions	Page 3
Article 1: Recitals	Page 6
Article 2: Incorporation	Page 6
2.1. Attachments, Exhibits and Order of Precedent	Page 6
2.2. Member Participation Agreements (MPAs)	Page 6
Article 3: Representations, Warranties and Certifications	Page 7
1. GPO Representation	Page 7
2. Federal Health Care Program Exclusion	Page 7
3. Debarment by State, its Departments, Commissions, Agencies or Political Subdivisions	Page 8
4. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion	Page 8
5. Warranties	Page 8
Article 4: Contract and Conditions	Page 9
1. Contract Effective Date	Page 9
2. Contract Expiration Date	Page 9
3. Contract Termination	Page 9
4. Vendor's Duties	Page 9
5. Non-Exclusive Agreement	Page 9
6. Eligible Purchasers	Page 10
7. Separate Agreements	Page 10
8. Products and Services	Page 10
9. Products and Services Pricing	Page 11
10. Discounts	Page 11
11. Risk of Loss, Damage, and Shipping Terms	Page 12
12. Compliance	Page 11
13. Failure to Supply MMCAP Core Products	Page 11
14. Purchase Orders and Payment	Page 11
15. Vendor Fees	Page 13
16. Authorized Representatives	Page 14
17. Notices	Page 14
18. Indemnification	Page 15
19. Liability Limitations	Page 15
20. Audits	Page 15
21. Government Data Practices	Page 16
22. Intellectual Property and Data	Page 16
23. Worker's Compensation and Other Insurance	Page 17
24. Publicity and Endorsement	Page 19
25. Direct Marketing, Advertising, and Offers with Participating Facilities	Page 19
26. Governing Law, Jurisdiction and Venue	Page 19
27. Antitrust	Page 20
28. Data Disclosure	Page 20
29. Payment to Sub-Contractors (If Applicable)	Page 20
30. Minnesota Statute § 181.59, Discrimination on Account of Race, Creed or Color Prohibited in Contract	Page 20
31. 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	Page 20

Medical Solutions, Inc. MMCAP Contract No. MMS18013

32. Certification of Nondiscrimination (In Accordance with Minn. Stat. § 16C.053)	Page 21
33. Contingency Fees Prohibited	Page 22
34. Force Majeure	Page 22
35. Severability	Page 22
36. Escalation Procedures	Page 22
37. Required Licenses, Permits and Registration	Page 25
38. DEA License/HIN	Page 25
39. Assignment, Amendments, Waiver, and Entire Contract	Page 25
40. Survival of Terms	Page 25
41. E-Verify Certification (In Accordance with Minn. Stat. §16C.075)	Page 26
Attachment A: Products and Pricing	Page 27
Attachment B: Statement of Work and Vendor Performance Requirements	Page 28
I. Operational Requirements	Page 28
1. Vendor Service Area	Page 28
2. Required Vendor Personnel	Page 28
3. Customer Service to MMCAP Office	Page 28
II. Contract Transition, Implementation and Management	Page 32
1. MMCAP Contract Transition and Implementation	Page 32
2. MMCAP Contract Management	Page 34
III. Key Contract Performance Metrics	Page 45
1. Vendor Performance Requirements	Page 45
2. Products and Pricing Accessibility	Page 45
3. Vendor's Response to Price Inquiries	Page 46
4. Reporting Requirements	Page 46
Attachment C: MMCAP Member Participation Agreements	Page 52
Attachment D: Service Area	Page 53
Attachment E: Vendor's Contract Implementation and Transition Plan	Page 54
Attachment F: MMCAP Contracted Manufacturers List (If Applicable to this Contract)	Page 55
Attachment G: Vendor's Shipping Policy	Page 56
Attachment H: Vendor's Stock Outage and Backorder Policy	Page 57
Attachment I: Vendor's Product Return Policy	Page 58
Attachment J: Vendor's Product Recall Procedures/Policies	Page 59
Attachment K: Vendor's Business Interruption Plan	Page 60
Attachment L: Vendor's Escalation Procedure	Page 61
Attachment M: Vendor's Discount Structure	Page 62
State of Minnesota – Affirmative Action Certification Information	Page 63
State of Minnesota Resident Vendor Form	Page 64

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.

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 - 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.

NOTE 1: - 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.

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

Medical Solutions, Inc. MMCAP Contract No. MMS18013

NOTE 2:² - 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.

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.

² Reference: *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.

Medical Solutions, Inc. MMCAP Contract No. MMS18013

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 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 Medical Solutions, Inc., located at 10401 93rd Avenue North, Suite 100, Maple Grove, MN 55369 (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

1. 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's 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 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-

Medical Solutions, Inc. MMCAP Contract No. MMS18013

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.

2.2.4. 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 immediately 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.

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, and (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 contract with any individuals or companies that have been sanctioned, debarred or excluded from participation in any federally funded health care programs 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 within five (5) business days 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 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

May 31, 2018, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later. The Commencement Date will be September 29, 2018 after the Contract Effective Date, unless a different, mutually agreeable Commencement Date is agreed upon between the Vendor and MMCAP.

2. Contract Expiration Date

On May 31, 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 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, 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 immediate access to Contract pricing. 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 a MMCAP Participating Facility of MMCAP, Vendor agrees not to allow such entity to purchase the Vendor's Products and Services related to this 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.

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.

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. Upon mutual consent between MMCAP and Vendor, such consent is not to be unreasonably withheld by Vendor, that the pricing is not competitive, Vendor shall provide written notice to MMCAP within ten (10) business days following any adjustments, lowering prices and/or increasing any discounts applicable to the purchase of the MMCAP Contract Products and Services by MMCAP 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 published 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.

9.4. No Additional Fees

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

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, 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. 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 Contract number and the purchase order number must appear on all documents (e.g., invoices, packing slips, etc.). 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 MMCAP will notify to the Vendor on a monthly basis, as such list is updated daily, during the term of this Contract. Additionally, the membership listing is updated daily on the MMCAP website, in order for Vendor to access its latest and most updated version. 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 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, including amount to be paid, to MMCAP within ten (10) calendar 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.

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 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.
- Vendor shall have ten (10) business days from the date of notice by MMCAP that the MMCAP Participating Facility is an Eligible Purchaser under this Contract 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.

All sales of Medical Equipment, and service, including repairs, parts and preventive maintenance, are exempt of administrative fees, set forth in Section 15.1, *Administrative Fee*. Purchases of accessories and consumables for Medical Equipment are still subject to Administrative Fees, unless the accessories and the consumables are included in the service, repair or preventive maintenance of the medical device.

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 David Delgado, Majority Owner or his 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:

Medical Solutions, Inc.
David Delgado
10401 93rd Avenue North, Suite 100, Maple Grove, MN 55369
Email: ddelgado@medicalsolutionsinc.com
Fax: 763-493-4130

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. 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 OR ANY FAILURE OF A PARTY TO COMPLY WITH THE WARRANTIES (OTHER THAN THE GPO REPRESENTATION IN ARTICLE 3, SECTION 1) REFERENCED IN THIS CONTRACT SHALL BE CONSIDERED DIRECT DAMAGES.

19.1. Warranty

Vendor makes no representation or warranty of any kind, express or implied, as to the merchantability or 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.

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 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 Customer 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. Workers' Compensation and Other Insurance

Vendor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this 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 certifies that it is 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 maintain and furnish satisfactory evidence of the following insurance policies:

23.1. Workers' Compensation Insurance

Except as provided below, Vendor must provide Workers' Compensation insurance for all its employees in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance minimum limits are as follows:

\$100,000 – Bodily Injury by Disease per employee
\$500,000 – Bodily Injury by Disease aggregate
\$100,000 – Bodily Injury by Accident

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

If during the course of the 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 insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Vendor or by a subcontractor or by anyone directly or indirectly employed by the Vendor under the Contract.

Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence
- \$2,000,000 – annual aggregate
- \$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages must be included:

- Premises and Operations Bodily Injury and Property Damage
- Personal and Advertising Injury
- Blanket Contractual Liability
- Products and Completed Operations Liability
- MMCAP named as an Additional Insured

23.3. Commercial Automobile Liability Insurance

Auto Liability insurance is not necessary unless the Vendor, Vendor's employees, or subcontractors will be driving on state property or on the property of MMCAP Members or MMCAP Participating Facilities or will be using, owned, hired, or non-owned vehicles to conduct business on behalf of MMCAP.

Vendor will maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this Contract, and in case any work is subcontracted the Vendor will require the subcontractor to maintain Commercial Automobile Liability insurance.

Insurance minimum limits are as follows:

- \$2,000,000 – per occurrence 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/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance

This policy will provide coverage for all claims the Vendor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Vendor's professional services required under the contract.

Vendor is required to carry the following minimum 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 at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Vendor to fulfill this requirement.

23.5. Additional Insurance Conditions

- Vendor's General Liability and 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 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
- An Umbrella or Excess Liability insurance policy may be used to supplement the Vendor's policy limits to satisfy the full policy limits required by the Contract.

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. All insurance policies must be open to inspection by MMCAP, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

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. Antitrust

The Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to Products provided in connection with this Contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

28. Data Disclosure

Under Minnesota Statute § 270C.65, Subdivision 3 and other applicable law, the Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the 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.

29. 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).

30. Minnesota Statute § 181.59

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.

31. 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.

31.1. 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.

31.2. 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.

31.3. 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.

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.

32. 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.

33. 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.

34. 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 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.

35. 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.

36. 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.

36.1. Notification

The Parties shall promptly notify each other of any known unresolved dispute and work in good faith to resolve such dispute within five (5) business days. Absent resolution after five (5) business days, parties shall proceed to Documentation and Escalation steps described below.

36.2. Documentation

The Parties will jointly develop a written summary of the unresolved dispute within five (5) 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.

36.3. 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.

36.4. 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. Failure to cure any defect within thirty (30) business days shall give the non-breaching Party cause to declare a material breach, subject to the termination rights set forth herein.

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 ten (10) 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. In the event the service failure remains uncured, and Vendor has not applied such credits to the MMCAP Member(s), and not reported the sales to the MMCAP Office, Vendor must pay the amount of the assessed and non-reported Administrative Fee activity to MMCAP, no later than ten (10) business days upon notification from the MMCAP Office, and a fee of \$500 per business day thereafter.
3. If the Vendor does not comply with the assessed fees and amounts as specified above, MMCAP reserves the right to pursue any remedy available at law, including, without limitation, termination of the Contract and/or debarring the Vendor from receiving a Contract from the State of Minnesota.

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 ten (10) 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. In the event the material breach has not been cured, Vendor must pay any amounts assessed on non-reported activity to MMCAP, no later than ten (10) business days upon notification from the MMCAP Office, and a fee of \$500 per business day thereafter.
3. If the Vendor does not comply with the assessed fees and amounts as specified above, MMCAP reserves the right to pursue any remedy available at law, including, without limitation, termination of the Contract and/or debarring the Vendor from receiving a Contract from the State of Minnesota.

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 ten (10) business days in order to process credits to the MMCAP Member(s).
2. In the event the material breach has not been cured, and upon written notification by the MMCAP Office, (i) Vendor must pay a fee of \$500 per business day thereafter to the MMCAP Office, and (ii) resolve applicable credits to the affected MMCAP Member(s), no later than ten (10) business days after written notification.
3. If the Vendor does not comply with the assessed credits to the MMCAP Member(s), and the fees and as specified above, MMCAP reserves the right to pursue any remedy available at law, including, without limitation, termination of the Contract and/or debarring the Vendor from receiving a Contract from the State of Minnesota.

36.5. 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.

36.6. 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. Failure to correct identified defects, as set forth below in

Sections 36.6.1, through 36.6.8, within the agreed upon time, not to exceed thirty (30) business days, or the reoccurrence of any event under Section 36 within ninety (90) days of initial resolution, shall give MMCAP cause to declare a material breach, subject to the termination rights set forth herein. Failure to correct identified defects, as described below, shall grant cause for any affected MMCAP Member or MMCAP Participating Facility to terminate this Contract in accordance with Section 3 of Article 4.

36.6.1. 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.

36.6.2. 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.

36.6.3. Unauthorized Fees

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

36.6.4. 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.

36.6.5. 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.

36.6.6. 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.

36.6.7. 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.

36.6.8. 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.

36.7. 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.

36.8. No Waiver

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

37. 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.

38. 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.

39. Assignment, Amendments, Waiver, and Entire Contract

39.1. 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.

39.2. 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.

39.3. 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.

39.4. 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.

40. 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.

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41. 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/EVerifySubCrtForm.doc>. All subcontractor certifications must be kept on file with Contractor and made available to the State upon request.

1. MEDICAL SOLUTIONS, INC.

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.

By: David Delgado
Title: Owner
Date: 5/18/18

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: SPA-C
Date: 5/30/2018

3. COMMISSIONER OF ADMINISTRATION

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

By: Sara Turnbow, PharmD, BCPS
Title: Pharmacist Sr.
Date: 6-6-18

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ATTACHMENT A: PRODUCTS AND 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 Products*⁴ 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 current catalog Products, which are not listed in the remaining tabs.

**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. Upon request, Vendor will provide written documentation to the MMCAP Office and/or the MMCAP Participating Facilities and/or MMCAP Member State Contact, substantiating competencies of its personnel, servicing this Contract.

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

- Primary Account Representative, alternate 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, and must provide a minimum of 72 hours' advanced notice to MMCAP, if that person 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):