



## State of Idaho Contract Number SBPO20245051

### Parties

Agency	Contractor
Department of Administration Division of Purchasing 650 W. State St. Boise, ID 83702	McKesson Medical-Surgical Government Solutions LLC 9954 Mayland Drive Suite 5176 Henrico, VA 23233

### Contract Summary

<b>Contract Name:</b> McKesson Medical Statewide <b>Contract Description:</b> Statewide Medical Supplies <b>Original Effective Date:</b> March 1, 2024 <b>Current Expiration Date:</b> February 28, 2025	<b>Current Contract Value:</b> \$ 1,000,000.00 <b>Estimated Lifetime Value:</b> \$ 1,000,000.00 <b>Contract Usage Type:</b> OPEN
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### Agency Contacts

Contact Name	Contact Type	Contact Email
MICHAEL GWINN	208-332-1617	MIKE.GWINN@ADM.IDAHO.GOV

### Contractor Contacts

Contact Name	Contact Phone	Contact Email
TONY NUDO	630-945-7081	TONY.NUDO@MCKESSON.COM

### Recitals

1. This Contract number SBPO20245051 for McKesson Medical Statewide ("the Contract") is awarded for the Department of Administration ("the Agency") pursuant to a one time exemption from competition.
2. The Contract is issued under the authority provided by the Administrator of the Division of Purchasing pursuant to the State Procurement Act, title 67, chapter 92, Idaho Code.
3. McKesson Medical-Surgical Government Solutions LLC ("Contractor") agrees to provide medical supplies per the McKesson Product Supply Agreement.

### Agreement

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

The Contract consist of and precedence is established by the order of the following documents:

1. McKesson Product Supply Agreement
2. State Blanket Purchase Order SBPO20245051

**Department of Administration**

Signature: 

Name: Mike Gwinn

Title: Contract Administration Supervisor

Date: 2/22/2024

**McKesson Medical-Surgical Government Solutions LLC**

Signature: 

Name: Margaret Donnell

Title: Senior Vice President

Date: February 19, 2024



# Product Supply Agreement

This Product Supply Agreement (“**Agreement**”), effective as of the date of the last signature below (“**Effective Date**”), is made by and between McKesson Medical-Surgical Government Solutions LLC, 9954 Mayland Drive, Suite 5176, Richmond, Virginia 23233 (“**Seller**”) and the State of Idaho, Department of Administration, Division of Purchasing, 650 W. State Street, Room 100, P.O. Box 83720, Boise, ID 83720-0075 (“**Customer**”).

1. **Term.** This Agreement will be for an initial term of one (1) year, commencing on the Effective Date. Following the initial term, this Agreement will then be renewed automatically for successive one (1) year periods unless either party has given the other written notice of non-renewal at least ninety (90) days prior to the expiration of the then term or the agreement is otherwise terminated in accordance with Paragraph 4 of this Agreement.

2. **Appointment.** Customer appoints Seller as its authorized distributor of medical-surgical products purchased from any distributor or Supplier and available for sale by Seller (“**Products**”) for itself and, upon Seller’s approval, for its Facilities. “**Facility**” means any non-acute physician practice, clinic, urgent care center or health care facility with respect to which Customer (i) exercises control over the election of wholesale medical-surgical distributor, whether by ownership, management contract or subcontract or otherwise. “**Supplier**” means a manufacturer, vendor, or other supplier of a Product that is purchased by Seller for distribution. A Customer affiliate may, in Seller’s discretion, be added to this Agreement upon Seller receiving necessary information from Customer and, if required by Seller, an executed Joinder to this Agreement.

3. **E-Commerce Channels.** Customer represents and warrants that it shall not resell, export, re-export, transfer, distribute, or otherwise provide any Products on or through any e-commerce platforms which are owned or operated by Customer or through any third-party e-commerce platforms including, but not limited to, any third-party marketplace websites (e.g., Amazon, eBay, Walmart, Target, etc.), drop-ship accounts (e.g., Buy.com, Newegg.com, Overstock.com, Groupon.com, etc.), classified sites (e.g., Craigslist.com, Facebook Marketplace, etc.), or direct messages on social media or online forums. A breach of this Section will be deemed a material breach of this Agreement.

4. **Termination:** The Customer may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Seller has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. In the event of a default, Seller agrees to pay the difference in the purchase price that Customer actually paid for the same or similar product up to 150% of the then-current contract price between Seller and Customer.

5. **Renewal Options:** Notwithstanding any other provision in the Agreement limiting or providing for renewal of the Agreement, upon mutual, written agreement by the parties, the Agreement may be extended under the same terms and conditions for the time interval equal to the original contract period, or for such shorter period of time as agreed to by the parties.

6. **Prices:** With the exception of price increases due to increased manufacturer costs or other changes in market conditions beyond the control of Seller, prices shall not fluctuate for the period of the Agreement and any renewal or extension unless agreed to in writing by the Customer. Unless otherwise specified, prices include all costs associated with delivery to the F.O.B. Destination address identified in the Solicitation, as provided in Paragraph 17, Shipping and Delivery, below.

7. **Administrative Fee:**

7.1 Application of Administrative Fee: All Statewide Blanket Purchase Orders (SBPO) shall be subject to an Administrative Fee of one and one-quarter percent (1.25%), based on orders placed against the Contract (unless the SBPO is exempt), as follows:

- a. The prices to be paid by the State shall be inclusive of a one and one-quarter percent (1.25%) Administrative Fee. On a quarterly basis, Contractor will remit to State of Idaho, Attn: Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075 an amount equal to one and one-quarter percent (1.25%) of Contractor’s net (sales minus credits) quarterly Contract sales.

*For Example: If the total of Contractor’s net sales to the Agency for one quarter = \$10,000, Contractor would remit \$10,000 x 0.0125 = \$125 to the Division of Purchasing for that quarter, along with the required quarterly usage report.*

- b. Contractor will furnish detailed usage reports as designated by the State. In addition to any required detailed usage reports, Contractor must also submit a summary quarterly report of purchases made from the Contract to [purchasing@adm.idaho.gov](mailto:purchasing@adm.idaho.gov), utilizing the State’s Summary Usage Report Form.

c. Reporting Timeline (Fiscal Year Quarters):

1st Quarter July 1 - Sept 30  
2nd Quarter Oct 1 - Dec 31  
3rd Quarter Jan 1 - Mar 31  
4th Quarter Apr 1 - Jun 30

Fee and Report Due:

October 31st  
January 31st  
April 30th  
July 31<sup>st</sup>



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7.3 Contractor's failure to consider the Administrative Fee when preparing its pricing response shall not constitute or be deemed a waiver by the State of any Administrative Fees owed by Contractor to the State as a result of an Award issued through IPRO.

A. Administrative Fee Exemptions:

1. Notwithstanding any language to the contrary, the Administrative Fee will not apply to Contracts with an original awarded value of \$100,000 or less.
2. The Administrative Fee will not apply to Purchase Orders (PO), Contract Purchase Orders (CPO) or Blanket Purchase Orders (BPO).
3. The Administrative Fee will not apply to Contracts issued without a competitive solicitation, e.g. Emergency Procurements (EPA), Sole Source Procurements (SSA), etc.
4. The Administrator of the Division of Purchasing may also exempt a specific solicitation or class of solicitations from the Administrative Fee requirement.

B. Payment of Administrative Fee Contractor will remit the Administrative Fee to the Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075, as follows:

1. SBPOs: Contractor will remit the Administrative Fee and Report for the prior quarter based on the schedule outlined in Paragraph 7.1., above.

C. Refund of Administrative Fee: In the event that a Contract is cancelled by the State through no fault of the Contractor, or if item(s) are returned by the State through no fault, act, or omission of the Contractor after the sale of any such item(s) to the State, the State will refund the Contractor any Administrative Fees remitted. Administrative Fees will not be refunded or returned when an item is rejected or returned, or declined, or the Contract cancelled by the State due to the Contractor's failure to perform or comply with specifications or requirements of the Contract. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.

D. Failure to Remit Administrative Fees: If a Contractor fails to remit the Administrative Fee, as provided above, the State, at its discretion, may declare the Contractor in default; cancel the Contract; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; exclude Contractor from participating in future solicitations; and/or suspend Contractor's IPRO account.

8. **Changes/Modifications:** Changes of specifications or modification of the Agreement in any particular manner can be affected only upon written consent of all parties. In the event that a typographical or other ministerial or clerical error is discovered, the Customer may correct such error after providing notice to the Seller of its intent to make the clerical correction. A copy of the corrected Agreement (or that portion of the Agreement which contains correction(s)) will be provided electronically to the Seller immediately after the correction(s) are made.

9. **Conforming Property:** The Property shall conform in all respects with the requirements of this Agreement. In the event of non-conformity, and without limitation upon any other remedy, the Customer shall have no financial obligation in regard to the non-conforming goods or services. Additionally, upon notification by the Customer, the Seller shall pay all costs for the removal of nonconforming Property from Customer's premises. All returns shall be in accordance with Seller's Return Goods Policy in effect at the time of the return. Customer acknowledges that the unit of measure may change due to factors beyond Seller's control. In the event of such an occurrence, Seller shall provide to Customer prompt notice of the change.

10. **Official, Agent and Employees of The Customer Not Personally Liable:** In no event shall any official, officer, employee or agent of the Customer be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with the Agreement.

11. **Contract Relationship:** It is distinctly and particularly understood and agreed between the parties to the Contract that the State is in no way associated or otherwise connected with the performance of any service under the Contract on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of the Contract, and solely and personally liable for all labor, taxes, insurance, required bonding and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of the Contract, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, defend, indemnify and hold the State harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, worker's compensation and income



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tax laws with respect to the Contractor or Contractor's employees engaged in performance under the Contract. The Contractor will maintain any applicable worker's compensation insurance as required by law and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certificate of worker's compensation insurance may, at the State's option, result in cancellation of the Contract or in a contract price adjustment to cover the State's cost of providing any necessary worker's compensation insurance. The Contractor must provide either a certificate of worker's compensation insurance issued by a surety licensed to write worker's compensation insurance in the state of Idaho, as evidence that the Contractor has in effect a current Idaho worker's compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission. The State does not assume liability as an employer.

12. **Anti-Discrimination/Equal Employment Opportunity Clause:** The Seller is bound to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for Agreements involving federal funds, the applicable provisions and requirements of Executive Order 11246 as amended, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Act of 1990, are also incorporated into the Agreement. The Seller shall comply with pertinent amendments to such laws made during the term of the Agreement and with all federal and state rules and regulations implementing such laws. The Seller must include this provision in every subcontract relating to the Agreement.

13. **Taxes:** The Customer is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The Customer is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Seller is required to pay any taxes incurred as a result of doing business with the Customer, it shall be solely responsible for the payment of those taxes. If, after the effective date of the Agreement, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time the Agreement becomes effective, the Customer will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the Customer be responsible for personal property taxes affecting items subject to the Agreement at the time it becomes effective.

14. **General Indemnification:**

14.1. **Contractor's Indemnification.** Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule during performance or applicable to the performance of the Contract.

14.2. **Actions on Tender; Limitations.** Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under the Contract. Contractor shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction. If it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State, to the extent funds are legally available therefore, shall reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 12.C.

14.3. **Requirements of Defense.** Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).

15. **Seller's Insurance:**

Prior to starting work under the contract (or as otherwise designated by the Purchasing Activity), the Seller must provide certificates of insurance required herein and will maintain the insurance during the life of the Contract. There are no provisions for



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exceptions to this requirement. Failure to provide the certificates of insurance within the requisite time period may be cause for cancellation of the contract.

Seller shall carry liability and property damage insurance that will protect it and the State of Idaho from claims for damages for bodily injury, including accidental death, as well as for claims for property damages, which may arise from operations under the Contract whether such operations be by themselves or by anyone directly or indirectly employed by either of them.

Seller shall not commence work under the Contract until it obtains all insurance required under this provision and furnishes a certificate or other form showing proof of current coverage to the State. All insurance certificates must be signed copies. After work commences, Seller will keep in force all required insurance until the Contract is terminated.

**Commercial General.** Seller shall maintain Commercial General Liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence.

CGL insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

**Commercial Automobile.** Seller shall maintain Commercial Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

Seller may request a waiver from providing Commercial Automobile and Commercial Umbrella Liability Insurance in its bid or proposal if the bidder or offeror will not use any owned, hired or non-owned vehicles to conduct business under the contract, if it is awarded the contract, and the State of Idaho will consider the request.

**Workers Compensation Insurance and Employer's Liability.** Seller shall maintain workers compensation and employer's liability. The employer's liability shall have limits not less than \$1,000,000 each accident for bodily insurance by accident, \$1,000,000 disease policy limit, and \$1,000,000 disease, each employee.

Seller must provide either a certificate of workers compensation insurance issued by a surety licensed to write workers compensation insurance in the State of Idaho, as evidence that the Seller has in effect a current Idaho workers compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

**State of Idaho as Additional Insured:** The commercial general liability insurance coverage required for performance of the Contract shall include the State of Idaho, the (agency) and its divisions, officers and employees as additional insured, but only with respect to the Contractor's activities to be performed under this Contract.

The Seller must provide a Certificate of Insurance (COI) evidencing the State of Idaho, the (agency) and its divisions, officers and employees are additional insured where required by written contract. The COI will show the policy numbers and the policy effective dates.

If a liability insurance policy provides for automatically including them as an additional insured when required by contract, then, in that case, the Seller must provide proof of the State of Idaho, the (agency) and its divisions, officers and employees being additional insured by including this on the COI.

**Notice of Cancellation or Change:** Seller shall ensure that should any of the above described policies be cancelled before the expiration date thereof, or if there is a reduction in limits, potential exhaustion of aggregate limits by more than half, or intent not to renew insurance coverage(s), that written notice will be delivered to the Division of Purchasing (if the Contract was issued by the Division) or to the Purchasing Activity (contracting state agency) in accordance with the policy provisions.

**Acceptable Insurers and Deductibles:** Insurance coverage required under the Contract shall be obtained from insurers rated A-VII or better in the latest Bests Rating Guide and in good standing and authorized to transact business in Idaho. The Seller shall be financially responsible for all deductibles, self-insured retention's and/or self-insurance included hereunder. The coverage provided by such policy will be primary to any coverage of the State on or related to the contract, except to the extent a loss or damages is proximately caused by the negligent acts or omissions of the State and shall provide that the insurance afforded applies separately to each insured against whom a claim is made, except with respect to the limitation of liability.

**16. Contract Numbers:** The Contractor shall clearly show the State's Contract number or Purchase Order number on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**17. Seller Responsibility:** The Seller is responsible for furnishing and delivery of all Products included in the Agreement. Further, the Contractor will be the sole point of contact on contractual matters, including all warranty issues and payment of charges resulting from the use or purchase of Property.

**18. Subcontracting:** Seller will not be using subcontractors for purposes of fulfilling this solicitation. Seller does not consider as subcontractors third party carriers or suppliers engaged for the purpose of providing delivery of products to Seller's customers generally.

**19. Commodity Status:** It is understood and agreed that any item offered or shipped shall be new and in first class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the Customer in this



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Agreement. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the Customer as their first user and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.).

**20. Shipping And Delivery:** Unless otherwise required in the Agreement, all orders will be shipped directly to the Agency that placed the order at the location specified by the Customer, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. Unless otherwise specified in the Agreement, deliveries shall be made to the Agency's receiving dock or inside delivery point, such as the Agency's reception desk. The Seller shall deliver all orders and complete installation, if required, within the time specified in the Agreement. Time for delivery commences at the time the order is received by the Contractor.

**21. Acceptance:** Unless otherwise specified in the Agreement: A. When the Agreement does not require installation, acceptance shall occur ten (10) calendar days after delivery, unless the Customer has notified the Seller in writing that the product delivered does not meet the Customer's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Agreement. B. When the Agreement requires installation, acceptance shall occur ten (10) calendar days after completion of installation, unless the Customer has notified the Seller in writing that the product(s) delivered does not meet the Customer's specification requirements, that the product is not installed correctly or otherwise fails to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Agreement. C. When the Agreement requires the delivery of services, acceptance shall occur ten (10) calendar days after delivery of the services, unless the Customer has notified the Seller in writing that the services do not meet the Customer's requirements or otherwise fail to pass the Contractor's established test procedures or programs or test procedures or programs identified in the Agreement. Subject to applicable law, Seller will process returns in accordance with its Return Goods Policy currently in effect, or as otherwise agreed to by Seller and Customer.

**22. Risk Of Loss:** Risk of loss and responsibility and liability for loss or damage will remain with Seller until acceptance, when responsibility will pass to the Customer with the exceptions of latent defects, fraud and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Seller from any obligation under the Agreement.

**23. Invoicing:** All Invoices are to be sent directly to the agency to which the property is provided, unless otherwise required by the Agreement. The purchase order number is to be shown on all invoices. Invoices must not be sent to the Division of Purchasing unless required by the Agreement.

**24. Assignments:** Seller shall not assign this Agreement, or its rights, obligations, or any other interest arising from the Agreement, or delegate any of its performance obligations, without the express written consent of the Administrator of the Division of Purchasing and the Idaho Board of Examiners. Transfer without such approval shall cause the annulment of the Agreement, at the option of the Customer. All rights of action, however, for any breach of the Agreement are reserved to the Customer. (Idaho Code Section 67-9230). Notwithstanding the foregoing, and to the extent required by applicable law (including Idaho Code Section 28-9-406), Seller may assign its right to payment on an account provided that the Customer shall have no obligation to make payment to an assignee until thirty days after Seller (not the assignee) has provided the responsible Customer procurement officer with (a) proof of the assignment, (b) the identity of the specific state contract to which the assignment applies, and (c) the name of the assignee and the exact address to which assigned payments should be made. The Customer may treat violation of this provision as an event of default.

**25. Payment Processing:** Idaho Code Section 67-9218 reads as follows: "Within ten (10) days after the property acquired is delivered as called for by the bid specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be reimbursed according to the terms of the bid. Within ten (10) days of receipt of the document necessary to permit reimbursement of the contractor according to the terms of the contract, the State Controller shall cause a warrant to be issued in favor of the contractor and delivered." Payments shall be processed within the timeframes required by I.C. § 67-9218 unless otherwise specified in the Agreement.

**26. Compliance With Law, Licensing and Certifications:** Seller shall comply with ALL requirements of federal, state and local laws and regulations applicable to Seller or to the Property provided by Seller pursuant to the Agreement. For the duration of the Agreement, the Seller shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

**27. Patent and Copyright Indemnity:**

27.1. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased under the Contract. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing

by the State of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

27.2. Contractor shall have no liability to the State under any provision of this clause with respect to any claim of infringement that is based upon: (i) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the specifications; (ii) the modification of the Property unless such modification was disclosed in the specifications; or (iii) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the specifications.

27.3. Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the State the right to continue using the Property, to replace or modify the Property so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the Property and accept its return.

28. **Use Of the State Of Idaho Name:** Seller shall not, prior to, in the course of, or after performance under the Agreement, use the Customer 's name in any advertising or promotional media, including press releases, as a customer or client of Seller without the prior written consent of the Customer.

29. **Termination For Fiscal Necessity:** The Customer is a government entity and it is understood and agreed that the Customer 's payments under the Agreement shall be paid from Idaho Legislative appropriations, funds granted by the federal government, or both. The Legislature is under no legal obligation to make appropriations to fulfill the Agreement. Additionally, the federal government is not legally obligated to provide funds to fulfill the Agreement. The Agreement shall in no way or manner be construed so as to bind or obligate the state of Idaho beyond the term of any particular appropriation of funds by the Idaho State Legislature, or beyond any federal funds granted to the Customer, as may exist from time to time. The Customer reserves the right to terminate the Agreement in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the state of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the Customer to continue such payments, or requires any return or "give-back" of funds required for the Customer to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available (e.g. through repeal of enabling legislation), or if the Customer discontinues or makes a material alteration of the program under which funds were provided, or if federal grant funds are discontinued. The Customer shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event that funds are no longer available to support the Agreement, as described herein, the Customer shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom. In the event of early Agreement termination under this section, the Customer will collect all Contractor-owned equipment and accessory items distributed under the Agreement within thirty (30) calendar days of Agreement termination. Items will be collected at a central (or regional) location(s) designated by the Customer. Seller will be responsible for all costs associated with packaging and removing all Contractor owned items from the Customer -designated location(s), which must be completed within thirty (30) calendar days of written notification from the Customer. If Seller fails to remove its items within that time period, the Customer may charge Seller for costs associated with storing the items; and may otherwise dispose of the items as allowed by applicable law. At Contractor's request, the Customer shall promptly provide supplemental documentation as to such Termination for Fiscal Necessity. Nothing in this section shall be construed as ability by the Customer to terminate for its convenience.

30. **Public Records:** A. Pursuant to Idaho Code Section 74-101, et seq., information or documents received by the Customer will be open to public inspection and copying unless the material is exempt from disclosure under applicable law. The person or entity submitting the material must clearly designate specific information within the document as "exempt," if claiming an exemption; and indicate the basis for such exemption (e.g. Trade Secret). The Customer will not accept the marking of an entire document as exempt; or a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure.

31. **Notices:** Any notice which may be or is required to be given to the Customer pursuant to the provisions of the Agreement shall be in writing and shall be hand delivered, sent by facsimile, email, prepaid overnight courier or United States' mail as follows: A. For notice to the Customer, the address, phone and facsimile number are: State of Idaho Division of Purchasing 650 W State Street – Room 100 P.O. Box 83720 Boise, ID 83720-0075 208-327-7465 (phone) 208-327- 7320 (fax) Additionally, for notice to the Customer, the email address to use is the email address identified in the Agreement, courtesy copied to purchasing@adm.idaho.gov. B. For notice to the Contractor, the address, facsimile number or email address shall be that contained on the Contractor's Bid, Proposal or Quotation (including, for any Bid, Proposal or Quotation submitted electronically through IPRO, the address, facsimile number or email address in the profile under which the Seller submitted its Bid, Proposal or Quotation). Notice shall be deemed delivered immediately upon personal service, facsimile transmission (with confirmation printout), email





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(with printout confirming sent) the day after deposit for overnight courier or forty-eight (48) hours after deposit in the United Customer's mail. Either party may change its address, facsimile number or email address by giving written notice of the change to the other party. Any notice due under this Agreement to the Seller, including any notice of termination, will be in writing and delivered by: (i) if sent by postage prepaid registered or certified U.S. Post mail, then five (5) working days after sending; or (ii) if sent by commercial courier, then at the time of receipt confirmed by the recipient to the courier upon delivery to each party at its address above, addressed to "President", with a copy to the Law Department.

32. **Non-Waiver:** The failure of any party, at any time, to enforce a provision of the Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

33. **Attorney Fees:** In the event suit is brought or an attorney is retained by any party to the Agreement to enforce the terms of the Agreement or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorney fees, court costs, costs of investigation and other related expenses incurred in connection therewith in addition to any other available remedies; however, the Customer's liability is limited to that which is identified in the Idaho Tort Claims Act, Idaho Code Section 6-9 et seq.

34. **Certification Concerning Boycott Of Israel:** Pursuant to Idaho Code section 67-2346 (effective July 1, 2021), if payments under the Agreement exceed one hundred thousand dollars (\$100,000) and Seller employs ten (10) or more persons, Seller certifies that it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

35. **Force Majeure:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of either party, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather, provided that in all cases the Seller shall notify the Customer promptly in writing of any cause for delay and the Customer concurs that the delay was beyond the control and without the fault or negligence of the Contractor. The period for the performance shall be extended for a period equivalent to the period of the Force Majeure delay.

36. **Priority Of Documents:** This Agreement, any exhibits and/or attachments to this Agreement, in that order of control, embody the entire agreement between the parties with regard to the subject matter hereof and supersede all other agreements, understandings and representations, including any applicable group purchasing agreement to the extent its terms address the subject matter hereof, with the exception of any promissory note, security agreement, or other credit or financially related document(s) executed by the Customer and Seller, whenever executed.

37. **Governing Law And Severability:** The Agreement shall be construed in accordance with and governed by the laws of the state of Idaho. Any action to enforce the provisions of the Agreement shall be brought in State district court in Ada County, Boise, Idaho. In the event any term of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms of the Agreement will remain in force.

38. **Electronic Signatures.** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement shall have the same force and effect as manual signatures and shall be valid and effective to bind the signatories. Delivery of a copy of this Agreement or any other document contemplated hereby bearing an original or electronic signature by facsimile, by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

39. **Government Terms and Conditions.** Unless specifically notified and agreed to in writing by Seller, Seller will not be bound by any other terms and conditions (legal, operational, or otherwise) of any government (Federal, state, local, or tribal) contracts to which Customer may be a party.

40. **Miscellaneous.** Each provision of this Agreement will be interpreted so as to be effective and valid under applicable law, but if any provision of this Agreement should be prohibited or invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of this Agreement. The failure of any party to enforce at any time any provisions hereof will not be construed to be a waiver of the right of such party thereafter to enforce such provision. All rights and remedies of the parties hereunder are cumulative and not exclusive. This Agreement has been negotiated by the parties and its provisions will not be presumptively construed for or against either party. The headings and section titles in this Agreement are used for reference purposes only, and will not affect the construction or interpretation of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be deemed an original instrument, but together will constitute one agreement. Except as otherwise provided herein, this Agreement may be modified only by a written document executed by Customer and Seller.




# Product Supply Agreement


41. **Entire Agreement.** This Agreement, any exhibits and/or attachments to this Agreement, in that order of control, embody the entire agreement between the parties with regard to the subject matter hereof and supersede all other agreements, understandings and representations, including any applicable group purchasing agreement to the extent its terms address the subject matter hereof, with the exception of any promissory note, security agreement, or other credit or financially related document(s) executed by Customer and Seller, whenever executed. Idaho Standard Terms and Conditions have been incorporated into this Agreement.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized officer or delegate, as of the Effective Date.

**THE STATE OF IDAHO**

By:   
Name: Mike Gwinn  
Title: Contract Administration Supervisor  
Date: 2/22/2024

**MCKESSON MEDICAL-SURGICAL GOVERNMENT SOLUTIONS LLC**

By:   
Name: Margaret Donnell  
Title: Senior Vice President  
Date: February 19, 2024