

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and**

**Medline Industries, Inc.**

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## AGREEMENT

This Agreement is made this 5th day of April 2021, in the City and County of San Francisco, State of California, by and between Medline Industries, Inc., a corporation with corporate offices located at Three Lakes Drive, Northfield, IL 60093 (“Medline”) and City.

### Recitals

**WHEREAS**, Vizient and Medline entered into that certain addendum dated July 1, 2018 and further identified as contract number DM0026BG (as may be amended from time-to-time, the “Addendum”);

**WHEREAS**, the Addendum is an addendum to an agreement between Vizient and Medline dated September 1, 2012 and further identified as contract number DM0026 (as may be amended from time-to-time, the “Base Agreement”); and

**WHEREAS**, the Parties desire to amend the Addendum pursuant to the terms, covenants and conditions set forth in this Amendment; and

**WHEREAS**, the Medline/Vizient base agreement governs all Vizient terms not expressly detailed in this Agreement; and

**WHEREAS**, the Department of Public Health (“Department”) wishes to obtain BULK medical/ surgical (med/surg), laboratory supplies distribution and required associated services for a period of 5 years; and

**WHEREAS**, Department is authorized under to Administrative Code Section 21A.2 to procure certain goods and services through a Group Purchasing Organization (GPO), and Department selected Medline through that process; and

**WHEREAS**, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

**WHEREAS**, Medline represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

**WHEREAS**, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 43503-20/21 on 05/17/2021; and

**WHEREAS**, approval of this Agreement was obtained when the Board of Supervisors approved the following Resolution No. 294-21, File No. 210413 on 06/25/2021;

Now, THEREFORE, the parties agree as follows:

### Article 1      Definitions

The following definitions apply to this Agreement:

1.1.    **"Agreement"** means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2. "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and Department of Public Health."

1.3. "City Program Budget Revision" means City's reallocation of contingency amounts available with respect to the Agreement in accordance with Article 3 of the Agreement.

1.4. "CMD" means the Contract Monitoring Division of the City.

1.5. "Contested Amount" means the amount of a charge from Medline that the City disputes in writing in good faith.

1.6. "Medline" means Medline Industries Inc., including its personnel.

1.7. "Controller" means the Controller of the City and County of San Francisco.

1.8. "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.9. "Formal Amendment" means a fully executed written amendment to this Agreement that has been approved by each Party in accordance with the terms of Article 3 of the Agreement. A Formal Amendment can either increase the GMP or reallocate contingency amounts.

1.10. "GPO" means Medline's group purchasing organization.

1.11. "GPO Agreement" means the base agreement between Medline and the GPO.

1.12. "GPO Services" means the Medline GPO services provided to the City

1.13. "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Medline.

1.14. "Party" and "Parties" mean the City and Medline either collectively or individually.

1.15. "Product" means the commodities delivered by Medline to the City.

1.16. "Uncontested Amount" means an amount charged by Medline that is not then a Contested Amount.

## Article 2 Term of the Agreement

### 2.1 Term.

The term of this Agreement is for sixty (60) months and shall commence on July 1, 2021 ("Initial Term"), unless earlier terminated as otherwise provided herein. Both Parties understand and agree that within one year in advance of the expiration date, the City must commence its process to extend or replace this Agreement. In the event of that the Agreement is not extended by the exercise of an Option in Section 2.2, the Holder Extension of Section 2.2 will apply.

### 2.2 Options.

The City has an option to extend the contract term for four (4) additional years by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement" and certifying any additional amount for such extension as provided in Section 3.4.

### 2.3 **Holdover**

Should this Agreement expire without a new Agreement in place, at that time as mutually agreed by the Parties, this Agreement and associated budget may remain in full force and effect for a period of twelve months in order to enable the City to put a new GPO in place. The best estimated Holdover Extension budget shall be detailed in Appendix B (Calculation of Charges).

## **Article 3 Financial Matters**

### 3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.**

3.2 This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Medline assumption of risk of possible non-appropriation is part of the consideration for this Agreement. For clarity, in no event can City place orders or will Medline be obligated to fill orders should charges exceed the Guaranteed Maximum Price ("GMP") certified by the Controller.

Medline and City will review the City's expenditure rate quarterly to ensure that each understands whether demand will exceed the Guaranteed Maximum Price currently certified by the Controller to enable the City to seek additional funds, as appropriate. Medline and City will review current spend and purchase history during their quarterly reviews to enable the City to determine if certification of any additional funds will be required. **For clarity, the addition of any funds beyond the GMP in excess of \$500,000 will require a Formal Amendment to this Agreement and will require approval by the San Francisco Board of Supervisors.** Given this requirement, the City will use best efforts to begin the process of modifying this Agreement, if required, twelve (12) months in advance of the date that the Parties anticipate the need for additional funds.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

### 3.3 **Guaranteed Maximum Costs.**

The City's payment obligation to Medline cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Medline under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### 3.4 Compensation.

**3.4.1 Payment.** If applicable, Medline shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges. Payment shall be made within 30 calendar days of date of the invoice, unless the City notifies Medline that a dispute as to the invoice exists in accordance with Section 11.6.1. In no event shall the amount of this Agreement exceed **NINETY FOUR MILLION TWO HUNDRED THREE THOUSAND SEVENTY TWO (\$94,203,072)**. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

**3.4.2 Payment Limited to Satisfactory Services.** If applicable, payments to Medline by City shall not excuse Medline from its obligation to replace Products that do not materially conform to the requirements of this Agreement, including equipment, components, materials, or Services even if the nonconformance of such Products, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Products, equipment, components, materials and Services that do not materially conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Medline at no cost to the City.

**3.4.3 Withhold Payments.** If Medline fails to provide Services in accordance with Medline's obligations under this Agreement, the City must give Medline written notice of such failure. If after ten (10) business days from the date of written notice, Medline has still not provided or made a good faith attempt to provide such Services, then the City may withhold applicable payments due Medline under the invoice(s) for the specific Services giving rise to such failure until such failure to perform is cured, and Medline shall not stop work as a result of City's withholding of payments as provided herein.

**3.4.4 Invoice Format.** Invoices furnished by Medline under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

### 3.5 LBE Payment and Utilization Tracking System. (Reserved)

### 3.6 Getting paid for goods and/or services from the City.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through, the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

### 3.7 Contract Amendments; Budgeting Revisions.

**3.7.1 Formal Contract Amendment:** Medline shall not be entitled to an increase in the Guaranteed Maximum Price (GMP) or an extension of the Term unless the Parties agree to a Formal Amendment in accordance with the San Francisco Administrative Code and Section 11.5 (Modifications of this Agreement).

**3.7.2 City Revisions to Program Budgets:** The City shall have authority, without the execution of a Formal Amendment, to purchase additional Services and/or make non-material changes to the work in accordance with the terms of this Agreement (including such terms that require Medline's agreement), not involving an increase in the GMP or the Term by use of a written City Program Budget Revision.

### **3.8 Audit and Inspection of Records.**

Contractor agrees to maintain and make available to the City, upon reasonable advance written notice and during regular business hours, accurate billing and payment books and accounting records for the fees and expenses relating to its Services. Medline will permit City to—at City's sole expense—audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices and financial, and/or other records required under Administrative Code Section 21.34, related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Medline shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. To the extent required by applicable law or regulation, the State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Medline shall include the same audit and inspection rights and record retention requirements in all subcontracts.

Medline shall annually have its books of accounts audited by a Certified Public Accountant and shall transmit a summary letter from such account to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Medline's fiscal year end date. Notwithstanding anything to the contrary herein, the summary letter shall be considered confidential information of the Contract and City shall not disclose it to any third-party except in accordance with Section 11.4 (Sunshine Ordinance) of this Agreement. If Medline expends \$750,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Said requirements can be found at the following website address: [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl).

If Medline expends less than \$750,000 a year in Federal awards, Medline is exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office. Medline agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A and referred to in the Program Budgets of Appendix B as discrete program entities of the Contractor.

**3.8.1** The Director of Public Health or his / her designee may approve a waiver of the audit requirement in Section 3.4.1 above, if the contractual Services are of a consulting or personal services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the Director ninety (90) calendar days before the end of the Agreement term or Medline fiscal year, whichever comes first.

3.8.2 Any financial adjustments necessitated by this audit report shall be made by Medline to the City. If Medline is under contract to the City, the adjustment may be made in the next subsequent billing by Medline to the City, or may be made by another written schedule determined solely by the City. In the event Medline is not under contract to the City, written arrangements shall be made for audit adjustments.

### **3.9 Submitting False Claims.**

The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any Medline or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that Section. A Medline or subcontractor will be deemed to have submitted a false claim to the City if the Medline or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

## **Article 4 Services and Resources**

### **4.1 Services Medline Agrees to Perform.**

Medline agrees to perform the Services provided for in Appendix A, "Supply Agreement." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Medline for Services beyond the scope listed in Appendix A unless Appendix A is modified as provided in Sections 3.4 above (Contract Amendments; Budgeting Revisions).

### **4.2 Qualified Personnel.**

Medline shall utilize only competent personnel under the supervision of, and in the employment of, Medline (or Medline's authorized subcontractors) to perform the Services. Medline will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Medline. Medline shall commit adequate resources to allow completion within the project schedule specified in this Agreement.

### **4.3 Subcontracting.**

Medline may subcontract portions of the Services only upon prior written approval of City. Such approval may not be unreasonably withheld, delayed, or conditioned. Medline is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

### **4.4 Independent Medline; Payment of Employment Taxes and Other Expenses.**

**4.4.1 Independent Medline.** For the purposes of this Article 4, "Medline" shall be deemed to include not only Medline, but also any agent or employee of Medline. Medline acknowledges and agrees that at all times, Medline or any agent or employee of Medline shall be deemed at all times to be an independent Medline and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Medline, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Medline or any agent or employee of Medline shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Medline or any agent or employee of Medline is liable for the acts and omissions of itself, its employees and its agents. Medline shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Medline's performing services and work, or any agent or employee of Medline providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Medline or any agent or employee of Medline. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Medline's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Medline performs work under this Agreement. Medline agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Medline's compliance with this Section in accordance with San Francisco Administrative Code Section 21.34. Should City determine that Medline, or any agent or employee of Medline, is not performing in accordance with the requirements of this Agreement, City shall provide Medline with written notice of such failure. Within five (5) business days of Medline's receipt of such notice, and in accordance with Medline policy and procedure, Medline shall remedy the deficiency. Notwithstanding, if City believes that an action of Medline, or any agent or employee of Medline, warrants immediate remedial action by Medline, City shall contact Medline and provide Medline in writing with the reason for requesting such immediate action.

**4.4.2 Payment of Employment Taxes and Other Expenses.** Should City, in its reasonable discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Medline is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Medline which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Medline for City, upon notification of such fact by City, Medline shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Medline under this Agreement (again, offsetting any amounts already paid by Medline which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Medline shall not be considered an employee of City. Notwithstanding the foregoing, Medline agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

#### **4.5 Assignment.**

The Services to be performed by Medline are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Medline unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Such approval may not

be unreasonably withheld, delayed, or conditioned. Any purported assignment made in violation of this provision shall be null and void.

**4.6 Warranty.**

Medline warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so that all Services are performed as contemplated in this Agreement as detailed in Appendix A (Supply Agreement).

**4.7 Liquidated Damages. (Reserved)**

**Article 5 Insurance and Indemnity**

**5.1 Insurance.**

**5.1.1 Required Coverages.** Without in any way limiting Medline's liability pursuant to the "Indemnification" Section of this Agreement, Medline must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, and

(c) Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional Liability Insurance, applicable to Medline's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Products Liability / Completed Operations Insurance with minimum limits of \$5,000,000 per claim and \$5,000,000 annual aggregate.

(f) Technology Errors and Omissions Liability (Not Required).

(g) Cyber and Privacy Insurance with limits of not less than \$5,000,000 per occurrence. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form or hardcopy form.

(h) Excess or umbrella coverage may be used to meet any of the requirements in this Section 5.

**5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:**

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 Contractor shall provide thirty (30) days' advance written notice to the City of cancellation for any reason or intended non-renewal. Medline shall provide thirty (30) days prior written notice to the City of any material reduction in the insurance coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 Should any of the required insurance be provided under a claims-made form, Medline shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.6 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.7 Before commencing any Services, Medline shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Medline's liability hereunder.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Medline, its employees, agents and subcontractors.

5.1.9 If Medline will use any subcontractor(s) to provide Services, Medline shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Medline as additional insureds.

## 5.2 General Indemnification.

5.2.1 Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all third party claims for loss, cost, damage, injury, liability, and claims thereof arising directly or indirectly from Medline performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City in which case damages shall be apportioned pro rata under the California doctrine of comparative fault. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related third party costs that the City necessarily incurs.

5.2.2 In addition to Medline obligation to indemnify City, Medline specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which falls within this indemnification provision, while such claim is in effect, even if the

allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Medline by City and continues at all times thereafter.

5.2.3 There shall be no limitation on the ability of either party to bring an action arising from or relating to this Agreement except those set forth in California Law.

5.2.4 Contractor's indemnification obligation applies only if (i) Medline is notified in writing of the claim promptly following City receiving the claim (for clarity, the filing of a California Government Code claim in accordance with Sections 911, *et seq.*, is a jurisdictional prerequisite to a third-party filing suit), and (ii) City reasonably assists Medline in obtaining information about the facts underlying the claim. If Medline agrees in writing to defend, indemnify, and hold the City and its officers and employees harmless without a reservation of rights, Medline may request sole control over the defense subject to City Attorney approval, with the exception that in any case a settlement calls for the payment of City funds or action on the part of the City, such settlement would be subject to final approval of the City Attorney and the San Francisco Board of Supervisors, each acting in its sole discretion.

### 5.3 **Infringement Indemnification.**

5.3.1 Contractor shall indemnify and hold City harmless from all third party claims, loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of United States patent rights existing at the time of delivery of the Product, or any copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of Products supplied by Medline in the performance of this Agreement. The obligation shall not be applicable to the extent that an infringement claim is based solely upon (i) the City's alteration or modification of the Products delivered by the Contractor; (ii) if the City uses the Products in a manner not intended by, or previously approved by Medline or (iii) the City's failure to use corrections or enhancements made available by Contractor.

5.3.2 If any Product is, or in Medline opinion is likely to be, held to be infringing, Medline will at its expense and subject to the approval of the City either: (i) procure the right for the City to continue using it, (ii) replace it with a noninfringing equivalent, (iii) modify it to make it noninfringing, or (iv) direct the return of the Product and refund to City the fees paid for such Product.

## **Article 6 Liability of the Parties**

### 6.1 **City's Liability Limit.**

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN ARTICLE 3 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

### 6.2 **Medline's Liability Limit.**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL DISTRIBUTOR BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN

CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. DISTRIBUTOR'S MAXIMUM LIABILITY FOR ANY DIRECT DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE CAPPED IN THE AGGREGATE AT \$25,000,000.

DISTRIBUTOR'S LIABILITY LIMIT SET FORTH ABOVE SHALL NOT APPLY TO:

(1) DAMAGES CAUSED BY DISTRIBUTOR'S GROSS NEGLIGENCE (FOR PURPOSES OF THIS SECTION, "GROSS NEGLIGENCE" SHALL MEAN A WANT OF EVEN SCANT CARE OR EXTREME DEPARTURE FROM THE ORDINARY STANDARD OF CONDUCT) OR WILLFUL MISCONDUCT;

(2) DISTRIBUTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY AGAINST THIRD-PARTY CLAIMS PURSUANT TO THE GENERAL INDEMNIFICATION AND INFRINGEMENT INDEMNIFICATION PROVISIONS HEREIN;

(3) DAMAGES THAT ARISE FROM THE UNAUTHORIZED USE OR DISCLOSURE OR FAILURE TO MAINTAIN CONFIDENTIALITY OF CITY'S INFORMATION IN THE POSSESSION OR CONTROL OF DISTRIBUTOR RESULTING FROM DISTRIBUTOR'S BREACH OF SECTION 13.1 (NONDISCLOSURE OF PRIVATE, PROPRIETARY, OR CONFIDENTIAL INFORMATION) OR THE BUSINESS ASSOCIATE AGREEMENT (ATTACHED HERETO AS APPENDIX E), INCLUDING ALL OF CITY'S RELATED COSTS OF INVESTIGATION AND NOTIFICATION, AND STATUTORY FINES AND PENALTIES, UP TO AN AGGREGATE LIABILITY CAP OF \$5,000,000; AND

(4) WRONGFUL DEATH CAUSED BY DISTRIBUTOR.

### **6.3 Liability for Use of Equipment.**

City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Medline, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

## **Article 7 Payment of Taxes**

### **7.1 Reimbursement by City.**

Medline shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Medline shall remit to the State of California any sales or use taxes paid by City to Medline under this Agreement. Medline agrees to promptly provide information requested by the City to verify Medline's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement. Medline may invoice City for sales and use taxes paid, and such taxes may be billed against a budget line-item contained in Appendix B (Calculation of Charges).

### **7.2 Possessory Interest Tax (If Applicable).**

7.2.1 Medline acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Medline to possession, occupancy, or use of City property for private gain, other than as provided in this Agreement. If such a possessory interest is created, then the following shall apply.

7.2.2 Medline, on behalf of itself and any permitted successors and assigns, recognizes and understands that Medline, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.3 Medline, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Medline accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

7.2.4 Medline, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Medline accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.5 Medline further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

### **7.3 Withholding.**

Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Medline further acknowledges and agrees that City may withhold any payments due to Medline under this Agreement if Medline is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Medline coming back into compliance with its obligations.

## **Article 8 Termination and Default**

In the event of termination of this Agreement, as set forth herein, unless otherwise agreed by the Parties, Medline understands and agrees that such termination will not become until the City notifies Medline in writing that a replacement Medline membership agreement is in place. In no event shall the effective date of termination exceed twelve (12) months from the date that the Medline issues written notice of termination.

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Medline one hundred twenty (120) days’ prior written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Medline shall use reasonable efforts to commence and perform, with diligence, all actions necessary on the part of Medline to effect the termination of this Agreement on the date specified by City and to minimize the liability of Medline and City to third parties as a result of termination. Medline shall take the following actions, unless otherwise directed in writing by the City:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Medline right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Settling all outstanding liabilities arising out of the termination of orders and subcontracts in support of this Agreement.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Medline and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Medline shall submit a final invoice to City, which shall set forth any outstanding claim for payment.

8.1.4 In no event shall City be liable for costs incurred by Medline or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Medline under this Section, City may deduct: (i) all payments previously made by City for the same Services covered by Medline final invoice; (ii) an amount contested under an applicable invoice which is properly disputed in accordance with and subject to the dispute resolution language of Section 11.6; and (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4. In instances in which the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the City may seek the difference between the invoiced amount and the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement pursuant to the dispute resolution language of Section 11.6.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

## 8.2 Termination for Default; Remedies.

8.2.1 City may terminate this Agreement for material breach by Contractor, by giving one hundred twenty (120) days' prior written notice to Contractor. In such event, Medline shall have the right to cure the breach within the notice period. Each of the following may constitute an event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.6	Submitting False Claims.	11.11	Compliance with Laws
4.13	Assignment	13.1	Nondisclosure of Private, Proprietary or Confidential Information
Article 5	Insurance and Indemnity	13.4	Protected Health Information
Article 7	Payment of Taxes		

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Medline or of any substantial part of Medline property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Medline or with respect to any substantial part of Medline property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. Upon any termination, City shall pay Medline uncontested amounts for Services performed in material conformance to the requirements of this Agreement up to and on the effective date of termination, in accordance with Section 3.3.1.. Any contested amounts shall be subject to the dispute resolution language detailed in Section 11.6 below.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

### 8.3 Non-Waiver of Rights.

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

### 8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.1	Payment		11.6	Dispute Resolution Procedure
3.3.2	Payment Limited to Satisfactory Services		11.8	Agreement Made in California; Venue
3.5	Audit and Inspection of Records		11.9	Construction
3.6	Submitting False Claims		11.10	Entire Agreement
Article 5	Insurance and Indemnity		11.11	Compliance with Laws
Article 6	Liability of Parties		11.12	Severability
Article 7	Payment of Taxes		13.1	Nondisclosure of Private, Proprietary or Confidential Information
8.1.6	Payment Obligation		13.4	Protected Health Information
Article 9	Rights in Products			

### 8.5 Suspension.

Notwithstanding anything to the contrary in this Agreement, Medline retains the right to temporarily suspend performance under this Agreement, acting in its sole discretion, in the event that Medline perceives there to be (i) a patient safety concern; (ii) a violation or potential violation of applicable law; or (iii) City's failure to perform an obligation under the Agreement after Medline provides written notice specifying the nature of City's failure of such obligation. Medline shall resume performance within 24 hours after the City effects a cure to Medline's satisfaction. Medline shall work with the City to effect a cure in order to expedite resumption of Medline performance under this Agreement. For non-payment, Medline agrees to provide the City with a 30-day cure period.

For clarity, in no event can City place orders or will Medline be obligated to fill orders should charges exceed the Guaranteed Maximum Price ("GMP") certified by the Controller. For clarity, in no event can City place orders or will Medline be obligated to fill orders should charges exceed the Guaranteed Maximum Price ("GMP") certified by the Controller. Any orders that exceed the GMP will require a formal Modification of this Agreement.

## Article 9 Rights In Products

### 9.1 Ownership of Results.

Any interest of Medline or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Medline or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City, except to the extent they include works of authorship, material, information, and other intellectual property created before or independently of the performance of the Services, including any modifications or enhancements thereto and derivative works based thereon ("Contractor Materials"). Medline grants City a royalty-free, fully paid-up, non-exclusive perpetual license to use the Medline Materials contained in the Deliverables, for City's internal business purposes, in connection with its use of the Deliverables. However, unless expressly prohibited elsewhere

in this Agreement, Medline may retain and use copies of Deliverables for reference and as documentation of its experience and capabilities.

## 9.2 Works for Hire.

If, in connection with Services, Medline or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City, except to the extent they contain Medline Materials. With the exception of Medline Materials, if any Deliverables created by Medline or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Medline hereby assigns all Medline copyrights to such Deliverables to the City, agrees to execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Medline and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities. The rights granted in this Article 9 to Deliverables are subject to full and final payment by City to Medline hereunder of uncontested amounts, while contested amounts shall be resolved in accordance with the dispute resolution process outlined in Section 11.6. During the period between delivery of a Deliverable by Medline and the due date of payment therefor (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Medline hereby grants City a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Medline Materials contained therein in accordance with the Statement of Work.

## Article 10 Additional Requirements Incorporated by Reference

### 10.1 Laws Incorporated by Reference.

Contractor represents and warrants that it will comply with all applicable laws and regulations in performing the Services. Subject to the foregoing, the full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/)

### 10.2 Conflict of Interest.

By executing this Agreement, Medline certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

### 10.3 Prohibition on Use of Public Funds for Political Activity.

In performing the Services, Medline shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in,

support, or attempt to influence any political campaign for a candidate or for a ballot measure. Medline is subject to the enforcement and penalty provisions in Chapter 12G.

#### **10.4 Consideration of Salary History.**

Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Medline is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Medline is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Medline is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

#### **10.5 Nondiscrimination Requirements.**

**10.5.1 Non Discrimination in Contracts.** Medline shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Medline shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Medline is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Medline does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

#### **10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.**

Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Medline is subject to the enforcement and penalty provisions in Chapter 14B. Medline shall utilize LBE Subcontractors for at least 5% of the Services except as otherwise authorized in writing by the Director of CMD. Medline shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Medline LBE subcontracting commitments.

#### **10.7 Minimum Compensation Ordinance.**

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Medline is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Medline certifies that it is in compliance with Chapter 12P.

#### **10.8 Health Care Accountability Ordinance.**

Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Medline shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Medline is subject to the enforcement and penalty provisions in Chapter 12Q.

**10.9 First Source Hiring Program.**

Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Medline is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.**

City reserves the right to deny access to, or require Medline to remove from, City facilities personnel of any Medline or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.**

By executing this Agreement, Medline acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Medline board of directors; Medline chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Medline certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Slavery Era Disclosure. (Reserved)**

**10.13 Working with Minors. (Reserved)**

**10.14 Consideration of Criminal History in Hiring.**

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of

the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Medline is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

The requirements of Chapter 12T shall only apply to a Medline or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Public Access to Nonprofit Records and Meetings. (Reserved)**

**10.16 Food Service Waste Reduction Requirements.**

Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Sugar-Sweetened Beverage Prohibition.**

**10.17.1 Sugar-Sweetened Beverage Prohibition.** Medline agrees that it shall not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

**10.17.2 Packaged Water Prohibition.** Medline agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement. "Water" does not include: mineral water; carbonated or sparkling water; soda, seltzer, or tonic water; or flavored water, also marketed as fitness water, vitamin water, enhanced water, energy water, or other similar products. "Water" does not include those food ingredients that are listed in ingredient labeling as "water," "carbonated water," "disinfected water," or "filtered water."

**10.18 Tropical Hardwood and Virgin Redwood Ban.**

Pursuant to San Francisco Environment Code Section 804(b), the City urges Medline not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.19 Preservative Treated Wood Products. (Reserved)**

**Article 11 General Provisions**

**11.1 Notices to the Parties.**

Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To CITY: Office of Contract Management and Compliance  
Department of Public Health  
101 Grove Street, Room 410  
San Francisco, California 94102 e-mail: jonathan.lyens@sfdph.org

And: Daisy Aguallo  
DEPARTMENT OF PUBLIC HEALTH  
375 LAGUNA HONDA BLD, A100-ANNEX  
SAN FRANCISCO, CA 94116 e-mail: Daisy.aguallo@sfdph.org

To Medline: MEDLINE INDUSTRIES, INC.  
3 LAKES DRIVE  
NORTHFIELD, IL 60093 Email:: jabele@medline.com &  
Jshepard@medline.com

With a copy to:

MEDLINE INDUSTRIES, INC.  
3 LAKES DRIVE  
NORTHFIELD, IL 60093  
ATTN: GENERAL COUNSEL

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

#### 11.2 Compliance with Americans with Disabilities Act.

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

#### 11.3 Reserved.

#### 11.4 Sunshine Ordinance.

11.4.1 **Public Records Request:** Medline acknowledges that this Agreement and all records related to its formation, Medline performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.4.2 **Contractors Obligations:** If the Department of Public Health receives a Public Records Request pertaining to Contractor, the Department will use its best efforts to notify Medline of the Request and to provide Medline with a description of the material that the Department deems responsive and the due date for disclosure ("Response Date"). If Medline asserts that some or all of the material requested contains or reveals valuable trade secrets or other information belonging to Medline that is exempt from disclosure and directs the City in writing to withhold such material from production ("Withholding Directive"), then the City will comply with the Withholding Directive on the condition that Medline seeks judicial relief on or before the Response Date. If any third-party initiates or threatens to initiate legal action to compel the production of Medline material, Medline shall defend,

indemnify and save harmless City and its officers, agents and employees from any and all such third party claims. Should Medline fail to seek judicial relief on or before Response Date, the City shall proceed with the disclosure of responsive documents.

**11.4.3 Agreement not to Sue:** Medline agrees that it will not sue the City for damages in connection with the disclosure by the City of information that Medline asserts is exempt from disclosure, so long as such disclosure was inadvertent and the City uses reasonable efforts to mitigate the effects of the inadvertent disclosure and/or uses reasonable efforts to retrieve the information as appropriate.

#### **11.5 Modification of this Agreement.**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed by the parties and approved in the same manner as this Agreement. Medline shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

#### **11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Non-Binding Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance or receipt of services under this Agreement, including those related to non-payment or disputed invoices, ("Disputes") in accordance with the following escalation process. Upon written notice by a party to the other party of a Dispute ("Dispute Notice"), such Dispute shall first be referred to Medline lead engagement partner or, principal, or managing director (or designee) and City's Contract Administrator (or designee), as defined in Appendix A-1 (License, Implementation, Maintenance, and Hosting Statement of Work). If they are unable to resolve the Dispute within fifteen (15) days of the Dispute Notice, the Dispute will be escalated to Medline lead client service partner (or designee) and the Department of Public Health Chief Financial Officer (or designee). If the Parties are still unable to resolve the dispute within fifteen (15) additional days, then each party may resort to the formal dispute resolution procedure set forth in Section 11.6.1(b) or, pursuant to San Francisco Administrative Code Section 21.36, Medline may submit to the Contracting Officer a written request for administrative review and documentation of the Medline claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Medline of its right to judicial review

(a) After the parties have exhausted the informal dispute resolution process outlined in Section 11.6.1(a), then, if agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon non-binding alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law.

(b) The status of any Dispute or controversy notwithstanding, Medline shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section

#### **11.7 Government Code Claim Requirement.**

No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this

Agreement shall operate to toll, waive or excuse Medline compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.8 Agreement Made in California; Venue.**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.9 Construction.**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.10 Entire Agreement.**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.11 Compliance with Laws.**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner applicable to Medline performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.12 Severability.**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**11.13 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.14 Order of Precedence.**

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, and the Statement of Work attached as Appendix A, the RFP. The terms of this Agreement are to be read and interpreted together with all other documents, appendices, exhibits, and addenda attached to the Agreement as a single agreement.

## **Article 12 Department Specific Terms**

### **12.1 Third Party Beneficiaries.**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

### **12.2 Materials Review. (Reserved)**

### **12.3 Emergency Response. (Reserved)**

### **12.4 Federal and State Financial Participation**

12.4.1 Contractor acknowledges that some or all of the items, products, or services that Medline furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Medline certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible or otherwise sanctioned from participation in any Federal or State assistance programs. Medline shall notify City, as provided in Section 11.1, within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement.

12.4.2 Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors and permitted assigns from and against any and all (including but not limited to Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Medline and/or Medline workforce (including those who oversee Medline workforce, supervisors and governing body members) from participation in any Federal or State assistance program.

## **Article 13 Confidentiality**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

If this Agreement requires City to disclose "Private Information" to Medline within the meaning of San Francisco Administrative Code Chapter 12M, Medline and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Medline is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of Services, Medline may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Medline in confidence and used only in performing the Agreement, except as required by law, professional rule or regulation. Medline shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

### **13.2 Payment Card Industry ("PCI") Requirements. (Reserved)**

### **13.3 Business Associate Agreement.**

The parties acknowledge that City is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, transmission, and storage of health information and the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act").

**The parties acknowledge that Medline may:**

1.  Do **at least one** or more of the following:
  - A. Create, receive, maintain, or transmit PHI for or on behalf of CITY/SFDPH (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or
  - B. Receive PHI, or access to PHI, from CITY/SFDPH or another Business Associate of City, as part of providing a service to or for CITY/SFDPH, including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or
  - C. Transmit PHI data for CITY/SFDPH and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)

**FOR PURPOSES OF THIS AGREEMENT, DISTRIBUTOR IS A BUSINESS ASSOCIATE OF CITY/SFDPH, AS DEFINED UNDER HIPAA. DISTRIBUTOR MUST COMPLY WITH AND COMPLETE THE FOLLOWING ATTACHED DOCUMENTS, INCORPORATED TO THIS AGREEMENT AS THOUGH FULLY SET FORTH HEREIN:**

- a. **Appendix E** SFDPH Business Associate Agreement (BAA) (04-12-2018)
  1. SFDPH Attestation 1 PRIVACY (06-07-2017)
  2. SFDPH Attestation 2 DATA SECURITY (06-07-2017)
2.  **NOT do any of the activities listed above in subsection 1;** Medline is not a Business Associate of CITY/SFDPH. Appendix E and attestations are not required for the purposes of this Agreement.

**13.4 Protected Health Information.**

Contractor, all subcontractors, all agents and employees Medline and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Medline by City in the performance of this Agreement. Medline agrees that any failure of Contactor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Contract. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, as a result of a demonstrated impermissible use or disclosure of the City's protected health information by Medline or its subcontractors or agents, Medline shall indemnify City for the amount paid of such fine or penalties or damages, including costs of

notification if applicable. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract.

#### **Article 14 MacBride And Signature**

##### **14.1 MacBride Principles -Northern Ireland.**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Medline confirms that Medline has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### **Article 15 Official Actions Relating to the Emergency; FEMA Assistance.**

##### **15.1 Orders of Local, State or Federal Officials.**

City and Contractor mutually acknowledge that local, state, or federal authorities may issue official orders related to the COVID-19 epidemic, or take other official actions, subsequent to the execution of this Agreement that Parties to this Agreement cannot presently predict. City and Contractor mutually acknowledge and agree that this Agreement shall be subject to the provisions of any such official action or order ("Official Actions"), as they may be revised and updated. If the provisions of any such Official Actions materially impact the terms of this Agreement, the provisions of those Official Actions shall govern. Contractor shall stay updated on the status of the City Health Officer orders by checking the Department of Public Health website (sfdph.org) regularly.

##### **15.2 FEMA Assistance.**

This is an acknowledgement that FEMA financial assistance will be requested by City and if provided will be used to fund all or a portion of this Agreement. Contractor shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives, including the FEMA Emergency & Exigency Contracts Requirements attached hereto as Appendix D and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

Recommended by:

DocuSigned by:  
*Greg Wagner* 6/30/2021 | 12:21 PM PDT  
28527524752949E...  
Grant Colfax, MD  
Director of Health  
Department of Public Health

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: DocuSigned by:  
*Louise Simpson* 6/30/2021 | 10:34 AM PDT  
BD54168A4C3E452...  
Louise S. Simpson  
Deputy City Attorney

**DISTRIBUTOR**

MEDLINE INDUSTRIES  
INC

DocuSigned by:  
*Marc Phillips* 6/29/2021 | 11:36  
3F555BF39DA04C2...  
Marc Phillips  
Senior VP of Corporate Sales  
Medline Industries, Inc.

Supplier ID: 0000003192

**Appendices**

- A: Supply Agreement
- B: Calculation of Charges
- C: (Reserved)
- D: FEMA Contract Requirements
- E: HIPAA Business Associate Agreement
- F: Invoice Template

## **Appendix A Scope of Services**

### **1. Terms**

#### **A. Contract Administrator:**

In performing the Services hereunder, Medline shall report to **Daisy Aguallo**, Contract Administrator for the City, or his / her designee.

#### **B. Reports:**

Contractor shall submit written reports as requested by the City. The format for the content of such reports shall be determined by the City. The timely submission of all reports is a necessary and material term and condition of this Agreement. All reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

For services solicited under a Group Purchasing Organization (GPO) the Medline shall report all applicable sales under this agreement to the respective GPO.

#### **C. Evaluation:**

Contractor shall participate as requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Medline Services. Medline agrees to meet the requirements of and participate in the evaluation program and management information systems of the City.

For contracts for the provision of services at San Francisco General or Laguna Honda Hospital and Rehabilitation Center, the evaluation program shall include agreed upon performance measures as specified in the Performance Improvement Plan and Performance Measure Grid which is presented in Attachment 1 to Appendix A. Performance measures are reported annually to the Zuckerberg San Francisco General performance improvement committees (PIPS and Quality Council) or to the Administration Office of Laguna Honda Hospital and Rehabilitation Center.

The City agrees that any final written reports generated through the evaluation program shall be made available to Medline within thirty (30) working days. Medline may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

#### **D. Possession of Licenses/Permits:**

Contractor warrants the possession of all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits shall constitute a material breach of this Agreement.

#### **E. Adequate Resources:**

Contractor agrees that it has secured or shall secure at its own expense all persons, employees and equipment required to perform the Services required under this Agreement, and that all such Services shall be performed by Contractor, or under Medline supervision, by persons authorized by law to perform such Services.

F. Infection Control, Health and Safety:

(1) Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents and subcontractors as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

(2) Contractor must demonstrate personnel policies/procedures for protection of its employees, agents, subcontractors and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.

(3) Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.

(4) Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site.

(5) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(6) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

(7) Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents and subcontractors, including safe needle devices, and provides and documents all appropriate training.

(8) Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

G. Aerosol Transmissible Disease Program, Health and Safety:

(1) Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol Transmissible Diseases (<http://www.dir.ca.gov/Title8/5199.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

(2) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(3) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

(4) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.

H. Acknowledgment of Funding (Reserved)

I. Hospital Policy 16.27:

It is the policy of Zuckerberg San Francisco General (ZSFG) to provide quality patient care and trauma services with compassion and respect, while maintaining patient privacy and safety. ZSFG is committed to providing reasonable opportunities for Health Care Industry Representatives (HCIRs), external representatives/vendors, to present and demonstrate their products and/or services to the appropriate ZSFG personnel. However, the primary objective of ZSFG is patient care and it is therefore necessary for all HCIRs to follow guidelines that protect patient rights and the vendor relationship. Therefore, all HCIR's that will come onto the campus of Zuckerberg San Francisco General Hospital must comply with Hospital Policy 16.27 "PRODUCT EVALUATION AND PHARMACEUTICAL SERVICES: GUIDELINES FOR SALES PERSONNEL, HEALTHCARE INDUSTRY REPRESENTATIVES, AND PHARMACEUTICAL COMPANY REPRESENTATIVES" Before visiting any ZSFG facilities, it is required that a HCIR create a profile with "VendorMate." Vendormate is the company that manages the credentialing process of policy 16.27 for SFGH. For questions, or to register as a HCIR please contact the Director of Materials Management, or designee (during normal business hours) at (415) 206-5315 or sign on to <https://sfdph.vendormate.com> for details.

J. Hospital Policy 3.28:

To ensure that care, treatment, and clinical services provided through contractual agreements are provided safely and effectively. Contractors for Zuckerberg San Francisco Hospital must comply with Hospital Policy 3.28 "CONTRACTING PATIENT CARE SERVICES"

## **2. Description of Services**

Contractor agrees to perform the following Services:

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

Detailed description of services are listed below and are attached hereto

Appendix A-1 Supply Agreement

**3. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney to the City must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**Attachment 1 to Appendix A**

**PERFORMANCE IMPROVEMENT PLAN  
AND PERFORMANCE MEASURE GRID**

**AIM:** All services provided through contractual agreement are provided safely and effectively for patient care and support services, annually.

<b>Contract Name</b>	<b>Services Provided</b>	<b>Measure Name</b>	<b>Metric (What data is being collected? )</b>
Medical & Surgical Distribution Services Supply Agreement	Distribution Services to SFDPH facilities for Medical & Surgical Supplies	Fill Rate	Fill Rate - 99% for Low Unit of Measure Orders and 98% for Bulk Orders*
Medical & Surgical Distribution Services Supply Agreement	Distribution Services to SFDPH facilities for Medical & Surgical Supplies	On time Delivery	On time Delivery - >96%**
Medical & Surgical Distribution Services Supply Agreement	Distribution Services to SFDPH facilities for Medical & Surgical Supplies	Picking Accuracy	Picking accuracy - >99%

**Appendix A-1**  
**Supply Agreement**

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## I. DISTRIBUTION FEE MARKUP

Medline will distribute Products Monday through Saturday at ZSFG and Monday **through** Friday elsewhere at DPH (unless otherwise agreed in writing by the Parties) matching the current delivery days in place on the day of signing the distribution fee markup grid below:

## II. GPO PRICING

For products which Medline has under contract with a GPO of which SFDPH is a member, Medline will charge GPO contract pricing.

## III. MARKUP

<b>Pricing Matrix for ZSFG and Laguna Honda Hospital</b>		
	Tier 1 Markup	Tier 2 Markup
Product Category	<b>Cost Plus Mark Up</b> (current state status quo with no switching to any distributor branded products)	With 40% Medline Branded Product
Endo Mechanicals	1.00%	0.50%
GPO Contracted Products	1.00%	0.50%
Medline Branded Products	0.00%	0.00%

- a. **Tier Medline Brand Purchase Ratio Markup**: After year one of the Agreement, Medline will review the actual ratio of purchases based on the previous year of sales, and annually adjust the Tier achieved accordingly.
- b. **Non-Brand Markup**: In the event that SFDPH does not meet Tier 4 Medline Branded Purchase Ratio within the first 18 months after the effective date of this Agreement, Medline will increase the mark up on all non-Medline Brand Products by ¼ percent. The Tier achieved will be reviewed/adjusted annually and SFDPH will receive a 30 day written notice for any markup changes. Should SFDPH maintain the 30% Medline Branded Purchase level continuously for one year, the markup will decrease by ¼ percent per the Table above.

<b>Pricing Matrix for ZSFG and Laguna Honda Hospital</b>		
	Tier 1 Markup	Tier 2 Markup

LUM Fees (as a percentage and in dollar value)	2.00%	2.00%
--	-------	-------

Low Unit of Measure (“LUM”) rates are based on an average LUM order line value of \$40 or higher.

If average LUM order line value of \$40 or higher is not met, Medline reserves the right to increase the LUM rate. Medline understands and agrees that any increase to the LUM rate may not cause the Guaranteed Maximum Cost to exceed that stated in the Agreement without a formal modification of the Agreement.

<b>OPTIONAL DELIVERY SERVICES TO OTHER THAN ZSFG AND/OR LAGUNA HONDA HOSPITAL</b>		
	Tier 1 Markup	Tier 2 Markup
Delivery to Non Acute Sites/Long Term Care (Additive to base mark-up)	4.00%	3.00%

#### **IV. MEDLINE BRAND PRODUCT SAVINGS ON NON-CONTRACT GPO PRODUCT CONVERSIONS**

Should SFDPH convert the purchase of non-contract GPO products (including Medline Brand Textiles and Environmental Service products, but excluding Medline Brand Sterile Procedure Trays (“SPT”)/Custom Procedure Trays (“CPT”)/Complete Delivery System (“CDS”) to Medline Branded Products, Medline will charge SFDPH an estimated aggregate of 6% less than the City’s current cost. Should SFDPH convert the purchase of non-contract GPO SPT/CPT/CDS to Medline Branded Products, Medline will charge SFDPH an estimated aggregate of 18% less than the City’s current cost.

For clarity, the City is not currently exercising this discount. **To exercise this discount, the City must convert its non-contract GPO products to Medline Brand Product categories.** This is not a discount guarantee, but represents the SFDPH’s estimated cost savings achieved by converting to Medline non-contract GPO products.

To achieve this conversion, Medline’s sales representative will review SFDPH’s non-contract GPO product purchases, including but not limited to Operating Room pack trays inventory and other associated work, as needed, at no cost to the City. Medline’s sales representative must follow the City’s policies and procedures as set forth in Appendix A (Statement of Work) when in patient care areas.

Notwithstanding any other provision of this Agreement to the contrary, Medline reserves the right to adjust at any time the price of any Medline Brand Product sold hereunder if such price is below the prevailing market and/or GPO price for the same or similar product.

## V. DISTRIBUTOR BRANDED PRODUCT OR EQUAL SWAP

SFDPH will provide Medline with the opportunity to convert non Medline Brand Product sales hereunder to Medline Brand Product sales, provided price, quality and service are equal to or better than current product or contract arrangements as mutually agreed by Medline and SFDPH. For clarity, no product swap may be made without written approval by email or otherwise of the City by Materials Management.

## VI. REBATE SCHEDULE

**Medline Brand Growth Rebate** - Medline will pay SFDPH an *annual* rebate of 5% of the total dollar amount of purchases of Medline Brand growth against baseline sales (previous 12 month's sales) of Medline Brand Products ("**Annual Baseline**"). The existing Annual Baseline (previous 12 month's sales) will apply to the first rebate after the effective date of this Agreement. For each year thereafter, Medline will establish a new Annual Baseline for the previous 12 months sales, and the 5% rebate will be paid on the growth of Medline Brand Products.

If Medline Brand Product sales decline below the Annual Baseline at any time during the life of the MOU and a growth rebate was previously earned, SFDPH will not earn on future growth for the same dollars where a previous growth rebate was earned. For clarity, Medline will not pay a rebate twice for the same amount of growth.

For example: If SFDPH has an Annual Baseline of \$1,700,000 and total Medline Brand sales for the next year of the MOU are \$1,900,000, the rebate would be equal to \$10,000 ( $(\$1,900,000 - \$1,700,000) \times 5\%$ ).

If the Annual Baseline is \$1,700,000 and the City's sales declines to \$1,500,000, then no rebate would be paid and the City's Annual Baseline would remain \$1,700,000. To achieve a Medline Brand Growth Rebate, the City's Medline Brand Product growth would need to exceed the \$1,700,000 Annual Baseline.

Should SFDPH achieve a 45% Medline Brand product ratio, then a 5% rebate will be paid on all Medline brand spend (in lieu of growth rebate above).

All rebates will be paid on all classes of trade and all classes of trade of Medline Brand purchases will count toward tier requirements

Medline ReNewal reprocessing and Pharmaceutical purchases will be counted toward all rebate goals hereunder, but the same value of purchases will be excluded from the basis used to calculate rebate payments. The City's use of Medline ReNewal will require a formal modification of this Agreement.

## VII. REBATE PAYMENT TERMS

Rebate will be paid on the aggregate net price. The rebate tracking period will be based on a twelve month calendar year from January 1<sup>st</sup> through December 31<sup>st</sup> (prorated on a monthly basis as appropriate for the first year after the effective date of this Agreement) through December 31, 2020. Thereafter, the rebate payment schedule will follow a calendar year and will be paid on an annual basis. Net rebates greater than \$1,000 per payment will be paid in the form of a credit or direct payment. Net rebates less than \$1,000 per payment will be paid in the form of a credit only to the SFDPH's account.

- a. Medline will pay rebates through this MOU and all standard GPO fees of which SFDPH is a member.
- b. Should the GPO offer standardization programs requiring additional administrative fees for standardization or compliance programs, Medline will count the sales of those specific product categories towards the overall sales volume goals and pay the rebate for such Products only under the GPO program. For clarity, Medline will not duplicate rebate payments on product sales.
- c. Medline will not pay a rebate on Product categories bid through a regional group purchasing organization or regional contracting office including any Products sold through pre-committed bids under SFDPH's current GPO. For clarity, Medline will not duplicate rebate payments on product sales.
- d. Product signed as received through a proof of delivery and shown as packed and shipped from Medline inventory but claimed as not received by the facility will not be counted toward the rebate volume.
- e. All of SFDPH's accounts with Medline must have been current during the entire rebate period in order for SFDPH to qualify for the rebate. Invoices in dispute, that SFDPH notified Medline about in writing within 60 days of invoice date, will not be counted as past due for rebate purposes. Medline reserves the right to off-set any rebate against any outstanding and overdue account balance. Additionally, Medline reserves the right to off-set any rebate to pay for "value added" services, accessories, and software for which a Medline determines a reasonable charge must be assessed. For clarity, SFDPH does not currently use "value added" services. Use of "value added" services would require a formal modification of this Agreement.
- f. At the conclusion of each rebate period, SFDPH shall receive a statement itemizing any such set offs and charges.

## **VIII. PAYMENT TERMS**

Payment terms are net 30 days. Medline shall be entitled at its election to charge SFDPH interest of 1% per month on all unpaid invoices over 60 days. In addition, Medline reserves the right to increase the price or mark-up on products by ½% for every 60 days SFDPH is over terms on each late invoice. SFDPH agrees to partially pay all undisputed portions of invoices within the agreed upon terms and not hold entire invoices from payment that contain disputed line items. The City will use best efforts to submit all claims for adjustments or credits for billing errors and other discrepancies within 180 days of invoice. Medline will only accept payment by check, money order or Automated Clearing House (ACH)/Electronic Funds Transfer (EFT) or any other method as agreed in writing by the parties. Any price change that increases the GMP must be by Formal Amendment in accordance with Section 3.2 of the Agreement.

## **IX. ADDITIONAL SERVICES**

If utilized, the following distribution services apply and are additive to existing base fee(s), unless otherwise noted not as such:

<b>Distribution Service</b>	<b>Fee</b>
Bulk Break down to the lowest manufacturer packing unit (i.e. Case to Each (CA to EA)	Adheres to Pricing Matrix Tier Achievement
Any addition of delivery days compared against existing service. Percent increment based upon annual business volume.	
Monday - Friday	0.25%
Saturday	0.50%
LUM Picked by Department Ship-To Delivered to Dock in totes on carts	0.25%
Bag Liners for Totes	\$0.12/liner
Affix patient charge label	\$0.10/ea
Corrugate Free OR Service	2.00%
Reprocess Order Fulfillment/Inventory Management	5.00%
Lot sequestered inventory – Supplier will purchase, hold, and manage up to six months inventory for a single item(s), account specific	3.00%
<b>Product Related Additional Fees</b>	
Hazardous Products	5.00%
Capital Equipment	Locally Negotiated Net Price
Free infant formula will be assessed a separated distribution fee	\$2.95/cs
<b>Laboratory Class of Trade Mark-Ups</b>	
<b>Distribution Service</b>	<b>Fee</b>
Non-Supplier Contract - Bulk	10.00%
Supplier Manufactured / Private Label - Bulk	0.00%

## X. DEDICATED SERVICE RESOURCES

While working on-site, Medline resources may not work on any account other than the City.

- a. **Dedicated Service Manager (DSM)**. The DSM will support Medline's dedicated onsite resource and the SFDPH hospital. The DSM shall support daily customer service duties associated with a prime vendor account, as well as coordinate the following key functions:
  - i. Order processing
  - ii. RGA/ credit processing
  - iii. Pricing (Specific item pricing and/ or price change modification)
  - iv. Processing new items, making changes and deletions as needed.
  - v. OR pack and tray inventory processing for Medline Brand product conversion
- b. **Onsite Resource**

Medline will provide SFDPH with a dedicated analytical resource. This resource will be expected to work on-site at SFDPH's Facility excluding SFDPH and/or Medline recognized holidays. The resource will be responsible for providing the following services along with any other duties mutually agreed upon between SFDPH and Medline:

- I. Contract maximization analysis,
- II. GPO compliance audit,
- III. Collaborate with Vizient representatives to ensure that SFDPH is on the correct contract tiers,
- IV. Assure purchases have been accurately reported to Vizient and credited to SFDPH,
- V. Conduct cost savings analysis,
- VI. Identify acceptable product substitutions,
- VII. Assist with product conversions,
- VIII. Provide monthly custom distribution reports to include performance dashboards,
- IX. Obtain product samples,
- X. Maintain SFDPH picture product catalog,
- XI. Maintain list of patient charge labels and validate monthly labeling fees,
- XII. Review and address backorders, monitor purchasing history and partner with SFDPH buyer to adjust as needed,
- XIII. Handle return goods authorization process according to the procedures and assures proper credit is given to the SFDPH,
- XIV. Review SFDPH orders on hold due to errors;
- XV. Corrects and releases orders to be picked and shipped and acts as liaison between SFDPH and Medline to report any service related requirements.

Medline agrees that this resource will assist with Medline related business and SFDPH supply chain business initiatives that directly benefit the SFDPH. Furthermore, Medline and SFDPH represent and warrant that the Onsite Resource shall only perform or assist in services directly related to the distribution Services contemplated under this Supply Agreement. Notwithstanding anything contained herein to the contrary, the Dedicated Onsite Full-time Resource shall not engage in activities ordinarily performed by SFDPH's employees or contractors or otherwise relating to SFDPH's general business operations. The On-site Resource is not an employee of SFDPH. Medline is responsible for all payments associated with the On-site Resource including state and federal taxes, workers compensation, and any other related insurance.

## **XI. FREIGHT**

FOB destination, risk of loss passes on delivery, on combined scheduled shipments per class of trade and order minimum grid below, on all stock Products located at Provider's primary shipping branch in the United States. Freight charges will be added without markup to emergency overnight shipments and stock Products where usage is in excess of 125% of communicated forecast which are required to be stock transferred or shipped overnight, and to any Product that is not stocked for

the Provider in their primary shipping branch. Manufacturer drop ship charges and FOB shipping point terms of distributed manufacturers will be assessed by Medline to the Provider, together with all other applicable freight charges.

<b>Class of Trade</b>	<b>FOB Destination Order Volume Minimum</b>
Acute Care	\$750
Ambulatory Surgery Center	\$500
Physician Office/Clinic	\$150 (\$9.95 per order for less than \$150 orders)
Post-Acute/Long Term Care	\$500
Home Care / Patient Home Direct	To be negotiated under separate agreement

## **XII. PRODUCT COMPLIANCE/QUALITY.**

- a. **Product Compliance:** Medline represents and warrants as follows, which representations and warranties shall survive the expiration or earlier termination of this Agreement:
- i. The Products shall be distributed and sold by Medline in compliance with applicable Federal, state and local laws; and
  - ii. Medline represents and warrants Medline's Private Label Products against defects in design and manufacturing. Furthermore, as of the date of delivery to City, Medline Brand Products shall not be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, nor shall any Medline's Private Label Products violate any applicable law, ordinance, rule, regulation or order.
  - iii. From the time of Medline's receipt of Products from the applicable supplier to the date of delivery to the City, Products shall not be adulterated or misbranded by Medline within the meaning of the Federal Food, Drug and Cosmetic Act, as amended.
- b. **Product Condition.** Unless otherwise agreed upon by City, all Products shall be new and shall not be delivered to City if expired unless City accepts delivery after receiving prior notice from Medline (which notice may be through Medline's McKesson Connect or any subsequent online ordering system) of the condition of such Products.
- c. **Product Shelf Life.** With limited exceptions for specialty items, Medline shall otherwise deliver Products to City at least three (3) months prior to the expiration date of such Products. Medline shall use its best efforts to deliver Products with the longest possible shelf life and the latest possible expiration dates. In the event that the only Product available is six (6) of its expiration date, Medline shall notify City in writing of such dating. Upon receiving such notice, City may choose whether to accept any such Product.

- d. **Product Integrity; Source of Products.** Medline shall purchase all (i) Products (except for OTC Products) distributed and sold to City pursuant to this Agreement directly from the applicable manufacturer or the applicable manufacturer's exclusive distributor (as such terms are defined under the Drug Supply Chain Security Act), and (ii) all over-the-counter ("OTC") Products distributed and sold to City pursuant to this Agreement directly from the applicable manufacturer or from a distributor(s) approved by the applicable manufacturer. Nothing in this Agreement restricts a third-party logistics provider from providing Pharmaceutical Products to Medline on behalf of either the manufacturer or the exclusive distributor, or a re-packager who purchased direct from the manufacturer or the exclusive distributor from providing Pharmaceutical Products to Medline. Medline reserves the right to exclude any of the above entities that Medline in its sole discretion determines is a gray market distributor.
- e. **Pass Through of Warranties, Representations, and Indemnity Obligations.** Medline shall pass through to City any representations, warranties and rights and claims to defense and indemnity made by each supplier of a Product (including representations, warranties and rights and claims to defense and indemnity, relating to intellectual property, product liability or negligence) with respect to such Product, to the fullest extent permitted to be passed through by supplier. Nothing herein limits or obviates any right or remedies Medline may have under its agreements with such suppliers. Furthermore, Medline represents and warrants that it will make commercially reasonable efforts to (i) cooperate with all requests made by City to enforce such representations, warranties and rights and claims to defense and indemnity against such manufacturers and (ii) obtain consents from the manufacturers in passing through to the GPO and City such representations, warranties, and rights to defense and indemnification.
- f. **Recall.** Medline will not ship a Product for which it has received notice of recall.

### **XIII. NOVAPLUS PRODUCTS**

Medline shall: (i) use commercially reasonable efforts to market and promote NOVAPLUS products to the City, as applicable, and (ii) use commercially reasonable efforts to maintain a 30-day on hand supply of each NOVAPLUS Product stocked at each distribution centers.

### **XIV. PRICE CHANGE NOTIFICATION:**

If Medline receives at least 60 days' notice of a price or Product change from a Supplier, Medline shall notify the City in writing at least 45 days before such price or Product change effective date. However if Medline receives less than 60 days' notice of such price or Product change from a Supplier, Medline shall use commercially reasonable efforts to provide the City with at least 15 days' prior written notice of such price or Product change.

### **XV. NON-VIZIENT CONTRACT PURCHASES:**

In order to (i) ensure that the City's purchasing decisions are fully and accurately implemented; (ii) ensure transparency that allows the City to make informed purchasing decisions; and (iii) respect and adhere to the City's prior designation of Vizient as their GPO, Medline shall extend Vizient contract pricing to the City pursuant to applicable Supplier Agreements. Provided, however, that such Vizient contract pricing shall not apply to the City's bona fide local contracts.

### **XVI. DEFINITION OF COST; MEMBER MARKUP:**

- a. **Contract Products:** Medline shall invoice the City for the GPO contract price, under the applicable Supplier Agreement, of any Contract Product, plus the applicable Member Markup;

- b. **Non-Contract Products**: Medline shall invoice the City for Non-Contract Products at an established market net delivered price (i.e., inclusive of all discounts, rebates, markup, Freight Charges, Terms Changes, etc.)
- c. **Member Markup**: Medline shall invoice the City for purchases of Products at Cost plus the applicable percentage markup (the “Member Markup”).
- d. **Member Markup on Non-Traditional Products**: Nontraditional Products are Products in the categories listed below. The Member Markup for Nontraditional products is provided on a case-by-case basis:
  - i. Housekeeping/Janitorial Products
  - ii. Food Service Products
  - iii. Paper Products
  - iv. Office Supplies
  - v. Miscellaneous Products
- e. **Equipment Purchases**

**XVII. INVOICES**

- a. Medline to follow City invoicing protocol.

**XVIII. INVOICE CORRECTIONS**

- a. **Denied Chargebacks**: Denied Chargebacks are invoices to the City resulting from chargebacks (Supplier rebates) for Products provide to the City under Applicable Supplier Agreements that are ultimately uncollectible from Supplier despite Medline’s good faith efforts to collect from Supplier. The City shall not be responsible from any Denied Chargebacks dated later than 90 days from an applicable Product’s original invoice date.
- b. **Overcharges**: Medline shall thoroughly research the City’s reported price overcharges and respond to the City with findings within 5 business days of receipt of such report. If the City was overcharged for a Contract Product, Medline shall promptly either credit the City for the difference or credit the entire original purchase and deliver to the City a revised invoice stating the correct contract price.
- c. **Global Correction for Overcharges**: If Medline discovers a price overcharge on a Contract Product, Medline shall implement Billing Corrections for the City.

**XIX. PRODUCT FILL RATES**

- a. **Product Fill Rates**. Medline shall calculate a monthly Adjusted Fill Rate for the City. Adjusted Fill Rates shall be calculated using the following formula:

$$\frac{A-B}{A-(C+D)} \times 100$$

= Product Fill Rate

Where:

A = Number of pieces ordered

B = Number of pieces not shipped by Medline in “first truck” (i.e., not filled by Medline and delivered on the same date as the City’s next regularly scheduled delivery, and pieces fulfilled at a later date in Medline’s “backorder” process do not count), except for Suture Projects, where those Products are not necessarily shipped on the “first truck.”

C = Number of pieces not shipped by Medline due to Supplier backorder, Supplier limiting supply, Supplier discontinuing the Product, or Supplier Product recall.

D = Number of pieces not stocked at Medline’s distribution center.

**b. Minimum Adjusted Fill Rates; Liquidated Damages**

- i. **Failure to maintain 96%:** Medline’s failure to maintain a minimum of (i) 96% for the City using Medline’s LUM or JIT service for any month shall result in the liquidated damages set forth below owed by Medline to the City.
- ii. **93-95%:** If the City’s Adjusted Fill Rate is between 93% and 95.9% for any month, Medline shall pay the City, as liquidated damages and not as a penalty, 1% of the cost of the backordered product.
- iii. **92% and below:** If the City’s Adjusted Fill Rate is 92.9% or below for any month, Medline shall pay the City, as liquidated damages and not as a penalty, 2% of the cost of the backordered product.
- iv. **Below 99.0%.** If the City uses Medline’s LUM or JIT service, IF the Adjusted Fill Rate is below 99.0% for any month, Medline shall pay the City, as liquidated damages and not as a penalty and in lieu of other liquidated damages, 1% of the cost of the backordered product. Substitute supply proposed by Medline and rejected by the City during extraordinary circumstances, including but not limited to Pandemics and other force majeure situations, are exempt.
- v. **Due Date:** Liquidated damages for failure to meet Adjusted Fill Rates shall be due 40 days following the end of the applicable month. Liquidated damages paid to the City shall be paid as a credit to the City.

b. **Product Returns** – See attached. (Exhibit A)

c. **Product Recalls:** If a product recall occurs after shipment, Medlines shall notify the City and Vizient thereof in writing within two (2) business day of receipt of notification from supplier. Medline’s obligations in this section shall survive the expiration or earlier termination of this Agreement.

d. **Disaster Response Plan** – (Exhibit B): Medline shall adhere to the terms of its disaster response plan in Exhibit B attached hereto (“Disaster Response Plan”). The Disaster Response Plan shall be reviewed annually by Vizient and Medline and amended as required. As requested by a member, Medline shall assist Members in developing a plan

for delivery of Products in the event of a Force Majeure (as defined herein) or community emergency in a Member's geographical area.

**XX. MEDLINE SALES REPRESENTATIVES AND CUSTOMER SERVICE:**

- a. **Vendor Credentialing**. In connection with this section, Medline shall consult with each Member to identify such Member's policies relating to access to facilities and personnel. Medline agrees to comply with Member's policies and procedures regarding access to facilities and personnel, including without limitation policies relating to vendor registration and credentialing.
- b. **Medline Customer Service**. Medline shall provide telephone customer service to respond promptly to Member's questions and issues during normal business hours. Medline shall adequately train its telephone customer service agents in Medline's operations, medical and surgical product categories, price verification research and inventory supply research policies and procedures.
- c. **Medline National Accounts Manager**. Medline shall assign a National Account Manager ("NAM") to serve as Vizient's primary liaison to Medline. The NAM shall be responsible for resolving Member issues that have been escalated to Vizient and for providing timely follow-up and effective problem-solving in response to Vizient requests. The NAM shall be available for on-site visits to Vizient's office, typically once per month but as often as once per week, and shall conduct quarterly business review meetings with Vizient staff and provide on-site training for Vizient staff on Medline's technology and programs. The NAM shall oversee the implementation of this Agreement, including Medline's compliance with its material obligations as set forth herein.
- d. **Medline National Accounts Customer Service Liaison**. Medline shall assign a customer service liaison to Vizient to promptly research and respond to Vizient's questions, issues, and ad-hoc report requests. Such Liaison shall have expert knowledge of Medline's operations and prior experience supporting customers similar to Vizient.
- e. **Reports to City**. In addition to the foregoing, at no additional charge Medline shall provide each Member with reports in either paper format or Excel or other electronic format acceptable to the Member, and at a minimum those reports shall be available monthly and include the following report options. For purposes of clarification, once a Member requests such report, Medline shall automatically continue delivering the report to such Member at the frequency reasonably required by the Member.
  - i. **Member Payment Performance Report**. This report shall include City's on-time payment trend, including calculated days sales outstanding.
  - ii. **Purchases by Supplier**. This report shall summarize City's purchases at the supplier level.
  - iii. **Sales by Product Category**. This report shall summarize City's purchases by key Product category, showing trends over time.
  - iv. **Sales by Contract-Type**. This report shall summarize City's purchases by contract-type (Vizient pricing, other GPO pricing, local contract pricing, etc.) and summarize the purchases of Non-Contract Products.

- v. **Sales from Diversity Suppliers.** This report shall summarize the City's purchases of Products from suppliers qualified as a diversity Supplier, such qualification as determined by Medline, and will include Medline's description of each Supplier's diversity classification (e.g., African American-owned business, veteran-owned business, woman-owned business).

**XXI. MARKET COMPETITIVENESS:**

**Market Competitive Pricing and Terms.** Medline represents, warrants, covenants, and agrees that, during the Term, Member Markups, fees charged to the City (i) at the national level, shall be equal to or better than what the Medline offers to any of its similarly situated non-Member customers or other GPO's and (ii) at the regional or local level, shall be better than what Medline offers to similarly situated non-Member customers or other GPO's. Medline shall decrease the Member Markup and any other Member fees as necessary to assure market competitiveness among its similarly situated customers (including Members).

## Service Level Agreement

This Service Level Agreement (“SLA”) supplements and is made a part of the contract by and between the City and County of San Francisco and Medline (“Agreement”), to which it is attached.

### 1. Ordering and Delivery

- a. **On-Site Representatives:** Medline shall assign two (2) representatives to work onsite with City. These representatives shall work onsite at ZSFG and at LHH throughout the week
- b. **Stocking Lists:** Medline shall share up to date stocking lists with both ZSFG and LHH. Upon request, ZSFG and LHH shall share current bulk and just-in-time (JIT) needs and Medline shall keep appropriate stocking levels of each item to meet the needs of each facility.
- c. **Ordering Deadline:** The ordering deadline shall be 2 p.m. for both ZSFG and LHH. delivery. Medline will make best efforts to include orders placed between 2 p.m. and 4 p.m. in the next regularly scheduled delivery.
- d. **Delivery Time:** The Parties shall mutually agree in writing on a delivery arrival time for each facility that best meets the needs of the facility. Medline must notify the impacted facility of any deviation from the agreed upon delivery time by the 2 p.m. ordering deadline. The parties agree that delays impacting delivery outside of Medline’s control (e.g., traffic) shall not be held against Medline as long as Medline keeps the impacted facility informed of the status of the delay and takes any readily achievable measures to mitigate the impact of the delay on ZSFG and/or LHH operations.
- e. **GPS:** Medline shall provide real time location (GPS location) access of deliveries in rout to both ZSFG and LHH where available. If unavailable, Medline shall provid delay notice by text or telephone to ZSFG and/or LHH at no less than 15 minute intervals.
- f. **Drivers:** Medline shall provide advanced notice when either facility is assigned a driver other than the regularly scheduled driver. Any driver scheduled to deliver to either ZSFG or LHH five (5) or more days in a calendar month shall participate in facility specific training.
- g. **Delay:** Medline guarantees delivery of all items to the specific delivery locations as provided for in the order. Items not delivered on time to the correct delivery location shall be deemed by City to be a missed shipment, regardless if the items are delivered to a different City location.

## 2. Shipping and Receiving

- a. **Master List:** The parties shall agree on a process to ensure that the master list of all items actually being shipped by Medline are made available to the shift staffing the facility during the scheduled delivery time.
- b. **Pallets and Totes:** Medline shall ensure that pallets and totes are packed in a safe and orderly manner. Proper packing of pallets and totes consists of the following: shall not be mixed, individual items shall be wrapped or bagged where appropriate, and heavier items will be packed at the bottom. Medline shall also ensure that packing complies with the order. By way of example, an order for 10 30 count boxes shall mean 10 boxes and not 300 individual items packed unboxed in a tote.
- c. **Cleanliness:** The inside and outside of all Medline shipping containers (e.g. totes and boxes) will be clean and sanitary upon arrival.
- d. **Packing List:** Medline shall include a packing list in each tote and will ensure each box is appropriately labeled.
- e. **Weight:** The maximum weight for each packed tote shall not exceed 35 pounds (inclusive of the tote), and/or shall be otherwise Union and OSHA compliant, and Medline guarantees each tote will not exceed that weight.

## 3. Service Credits

- a. **Late and/or Missed:** For each late or missed delivery, Medline shall provide the City a credit of \$100 for each late or missed delivery. For the avoidance of doubt, City may earn only one Service Credit per delivery.
- b. **Overweight:** For each overweight packed tote in any given delivery, Medline shall provide the City with a credit of \$15 / tote.
- c. **Improper Packing:** In the event a pallet or tote is improperly packed by Medline, contrary to the guidelines in Section 2(b) above, City shall provide photos and other documentary evidence of the improperly packed pallet(s) or tote(s), and Medline shall provide the City with a credit of \$5 per each improperly packed tote and \$15 per each improperly packed pallet.

## **Exhibit A Return Goods Policy**

### **I. Authorization**

All returns must be authorized by Supplier prior to receipt. Product must be returned within ninety (90) days of purchase. Authorizations are valid for thirty (30) days. Return goods authorizations (RGAs) may be arranged either phoning Customer Service at 1 800-307-8386 or by contacting a Supplier sales representative. Unauthorized returns may be returned to Provider at Provider's expense, destroyed by Supplier at Supplier's discretion, or subject to additional charges without credit being issued to Provider. This policy applies to all Providers unless superseded by a separate written agreement that includes specific return goods terms and conditions.

### **II. Return Procedure**

After obtaining an RGA, each return must include the following information:

- i. Provider's name, address and account number.
- ii. RGA number.
- iii. Original PO number or original Supplier order number.
- iv. Lot number and expiration dates where applicable.

### **III. Return Policy**

Defective Products are returnable with prior authorization. Non-defective Products may be returned, provided Provider has obtained prior authorization from Supplier, if such Products are in salable condition and suitable for restocking. Freight and restocking may apply as noted in the Restocking Fee Scheduled listed below. Product must be returned within ninety (90) days of receipt.

The following conditions will not be considered for return.

- i.** Products purchased more than three months prior to return request.
- ii.** Products considered hazardous materials.
- iii.** Special or custom Products made to Provider specifications or sold as non-returnable.
- iv.** Products returned in altered or damaged packaging, or in packaging other than original packaging.
- v.** Refrigerated items.
- vi.** Packs broken, breached or damaged.
- vii.** Products in unsalable units of measure where product cannot be resold.
- viii.** Returns prohibited by state law\*.
- ix.** Products with less than 3 months shelf life remaining based on expiration dates.
- x.** Third party vendor Products that require a vendor return authorization are subject to the

vendor's return policy and applicable fees.

- xi. Issuance of an RGA number does not guarantee credit. Credit issuance is dependent on confirmed receipt/review of returned Products and is subject to the other terms of this policy.

\*Each state has individual Pharmacy laws, all returns are subject to approval of Medline Regulatory Affairs.

#### **IV. Damages or Shortages**

In an effort to minimize any delay in resolving a damage or shortage claim, Provider is required to count all receipts prior to Provider's acceptance of delivery from the carrier. All damages or shortages must be noted on the carrier's freight bill or bill of lading and be countersigned by the Provider. The damaged Products must remain in the original carton, in the event inspection is required by the transportation company. Provider must notify Supplier of any damages in transit or product shortages within two (2) business days of receipt, or Supplier shall have no obligation to process credit or arrange for Product replacement. Contact Customer Service at 1-800- MEDLINE or a Supplier sales representative to report damages or shortages.

#### **V. Products Shipped in Error by Supplier**

Provider must notify Supplier of any shipping errors or disputes within two (2) business days of receipt. Products shipped in error by Supplier are freely returnable for full credit, provided that such returns are made within thirty (30) days of receipt.

#### **VI. Defective Product**

Defective Product, properly noted damaged Product and returns that are the result of a Supplier error may be returned at Supplier's expense and for a full credit, subject to the other provisions of this policy.

#### **Restocking Fee Schedule**

<b>Return from Date of Invoice</b>	<b>Re-Stocking Fee Percentage</b>
0 – 30 Days	5.00% / \$25.00 minimum + Freight
31 – 60 Days	10.00% / \$25.00 minimum + Freight
61 – 90 Days	20.00% / \$25.00 minimum + Freight
Greater than 90 Days	Not returnable unless expressly approved prior to receipt – contact your Sales Representative for additional information.

For authorized returns to Provider's primary branch returning via MedTrans, no freight charges will be assessed.

## **Disaster Preparedness and Response Plan**

### **Purpose and Scope**

Medline Industries, Inc. is committed to our customers' needs in time of crisis. Our substantial investment in specialized equipment, systems and other resources has allowed us to actively and immediately respond to a wide range of disasters over the past years, playing a key or leading role for our customers in many of them. This Disaster Preparedness and Response Plan contains general, but key, information pertaining to Medline's readiness, capabilities, and service parameters in the event and/or anticipation of a disaster including a pandemic epidemic. Medline maintains a proprietary, internal, detailed plan that is used during activation of the Disaster Response Team.

This Disaster Preparedness and Response Plan provides guidance for customers who are developing their own response plan. This information should be used in conjunction with your own Internal Supply Chain Team and your Director of Emergency Preparedness, along with any of your other internal (Infection Control, Legal, Occupational Health, etc.) and external (Governmental, Homeland Security, State Police, Other 3rd Parties, etc.). Medline is available to coordinate with these internal and external teams and resources for discussion and planning purposes, in addition to working with them in times of disaster.

A Disaster Preparedness checklist can be found on Page 6 of this document. The checklist was developed to help customers prepare for a catastrophic event and includes pre- and post-event recommendations.

There is a Medline Customer Service and Operations Key Contact List on page 7. This list identifies individuals within our organization who are dedicated to meeting your needs. Branch information on page 8 is included to reassure you that Medline is well positioned to protect continuity of service. Combined, this information should help your customer partner with Medline before, during, and after catastrophic events.

Medline Operations and Inventory Management encourage you to escalate calls whenever you experience a breakdown in communication. Our expert team is dedicated to serving your needs.

# Medline Capabilities

Medline's experience includes leading air and ground efforts to move both supplies and patients during Hurricane Katrina, middle of the night inventory replenishment for customers who have experienced floods and fires, as well as massive efforts to support customers in specific geographic regions who were hit by fire; floods, ice storms, tornados and hurricanes. We've assisted customers in bringing their own facilities back online after catastrophic damage.

Our greatest strengths include our network of 40+ distribution centers with 2.0+ million SF, thousands of dedicated Team Members, 950 power units in our owned fleet, \$2+ billion in domestic inventory, critical disaster response equipment, and our detailed internal disaster response plan. This is in addition to strategic contractual agreements with third party transportation providers and world class emergency preparedness and response partners that we train and work with.

MedTrans is our private truck fleet, which can provide Medline with complete control over delivery capabilities, particularly in an emergency period when there is severe competition for transportation resources. In addition to our private fleet, Medline has contractual agreements with over 100 transportation providers throughout the country, including the highest-rated, same-day/emergency delivery carriers, both ground and air.

Medline's inventory management system helps us achieve the highest service levels in the Healthcare industry. In the event of a disaster the same system can be used to redirect any portion of more than \$2,000,000,000 of inventory into a targeted geographic area. For the Southwest, our distribution centers in Tolleson, AZ; Aurora, CO; Salt Lake City, UT; and Temecula, CA; combined with the Rialto, CA and Tracy, CA distribution center (two of our largest central stocking locations or "Hubs"), offer a logistical advantage in times of crisis. As situations occur, inventory is immediately re-directed to the areas with the most critical need.

We have also developed programs which allow our customers the option of stockpiling inventory on items of their choosing without incurring the additional expense of self-storage. Please let us know if you would like to review this option for your facility.

We have expanded our production facilities which are now strategically located across three continents. We also have exclusive partnerships with leading suppliers of domestic branded raw materials.

Medline is a major contractor with the Department of Defense, FEMA and the CDC National Stockpile programs.

From our Disaster Response Centers in Mundelein, IL and Dubuque, IA, we have repeatedly demonstrated our ability to successfully marshal action across our entire network of resources: products, facilities, trucks, and team members. In the event of a pandemic or other major disaster, Medline Industries, Inc. will work closely with your facility, as well as other medical facilities in the area, to ensure all customer needs are responded to as promptly as possible.

## **MEDLINE EMERGENCY ACTION PLAN**

In the event of a disaster or other crisis, Medline will activate its Emergency Action Plan or EAP. The Corporate Disaster Response Team (DRT) is preapproved by the Medline Board of Directors to take whatever actions and commit whatever resources (financial and operational) are required to respond in a manner consistent with Medline's Mission, Vision, and Core Values.

### **Medline's Disaster Response Team (DRT)**

The DRT will meet in our Disaster Response Center to determine the nature and scope of the event and initiate an appropriate response.

The DRT consists of the following: President of Global Operations, CIO, Sales EVP, VPs' Operations, VP Inventory Management, VPs' Transportation, Director of Customer Service, and the Director Operations and Warehouse Manager of affected, distribution centers and their back-up centers.

The President Global Operations or Region VP Operations will lead the DRT and utilize the detailed internal disaster plan for the specific disaster and assign action items to each member of the DRT, who will then engage all internal and external resources that are part of their response plan.

The DRT or members of the team will be dispatched to the affected site by air, if it is determined that would be more effective.

The DRT will continue to meet twice daily to reassess the situation and redirect resources when and where appropriate. This will include communications discussed below.

### **Customer Communications**

1. Once the nature and scope of the event is determined, the VP of Operations and the local Distribution Center Director will contact Senior Sales person(s) for the geographical area. Please note that Medline Operations sends notifications to Customer Service and Field Sales in advance and tracks any disasters that can be anticipated.
2. The Senior Sales person and VP Operations will contact customers (contacts and methods of communication vary by Customer and Request) to determine short and long term critical needs.
3. Based on Customer requirements and intensity of event, plans will be developed to ensure the requested inventory is delivered as early as possible to ensure continuity of business. All members of the DRT will be utilized (Transportation, Inventory Management, IS, Customer Service.) Please note that before we even get customer orders (except for Standing Emergency Orders which we strongly encourage customers to consider), we have already begun redirecting additional inventory to the affected area.
4. If any portion of the plan changes for any reason, the Medline VP Operations is accountable to notify Medline Senior Sales and the customer to discuss cause of change and develop alternative actions. Most of these communications occur during the twice daily Internal Medline DRT Calls and pre or post calls can also be made to any Customers who so request.

In the event that a natural or other disaster destroys or renders a Medline facility inoperable, the following procedures are in place to maintain continuity of service:

1. One of three assigned back-up distribution centers will act as a temporary distribution center for a designated service area. Within 2 (two) hours all orders will be moved to the back-up branch until such time as the primary branch can resume operations.
2. MedTrans fleet assets, distribution personnel, and additional third party transportation assets may be repositioned to provide additional transportation and support services in areas with the most critical need.
3. As the situation dictates, inventory will be reallocated to the appropriate back-up distribution center to accommodate the increased demand.

Medline will extend its hours of operation in all appropriate locations to ensure all customers' needs are met. Medline has contractual agreements with both LTL (common) carriers and same-day express – ground and air delivery services – that will also flex their hours of operation as required.

Medline will continue to process orders and make deliveries as long as the safety of our employees is not jeopardized and local authorities do not impede service. Please note that there are varying levels of notification from local and state authorities and we monitor a number of web sources to help us make these decisions, in addition to contacting the respective agencies from our specific call list. We do move our trucks during times that agencies request all traffic to be off the roads, if there is an urgent need and after we discuss with the agencies. This need will be determined via customer discussions (Customer calls are initiated to Prime Vendor and other customers whose deliveries could be more critical) after discerning the anticipated timing of the road delay or closure and the customers determination of the criticality of their supply needs. This criticality could allow for a delay in delivery, could require a smaller part of an order to be expedited using available premium delivery methods or re-routing to other Medline DC's if delivery options are available. Our Customer Communication is preferred via our Customer Service Team or Sales Reps, but can also be delivered via email.

The DRT will provide updates to our Sales and Customer Service Teams twice daily, or any time there is a significant change in our service capabilities. These teams will then handle customer communications. As noted above, there are customers who may specifically request Medline and their DRT to provide direct updates or direct participation in their internal planning, and these will be handled as they arise.

In times of crisis, customer pickups will be available as long as the distribution facility is secure and operational. In the event of a pandemic, some other restrictions may apply in an effort to protect our employees, our customers, and their needs.

## Disaster Preparedness Checklist

- Identify your needs now. What are the special needs of your patient population? Will that population change in the event of a disaster (i.e. more long-term care needs vs. outpatient surgery)? What happens when the nursing home around the corner gets shut down or can no longer accommodate patients?
- Establish product formularies for multiple contingencies. Try to have alternates or pre-approved or “qualified” substitutes for the most critical items.
- Work with your Medline rep to prepare a pre-approved substitution list for any critical custom sterile or non-sterile kit.
- Prepare your emergency order(s) in advance. Your Medline rep can help you develop a par level of commonly ordered items or those most likely needed in responding to a particular disaster. Medline has systems in place to block, for review, orders that exceed historical usage for a customer, distribution center or geographic region. This mechanism is in place to prevent hoarding during the response phase of any disaster. Stockpiling in preparation of a disaster is encouraged and your Medline rep can help you with programs designed to mitigate the expense of carrying additional inventory. Many customers prefer the security of having additional inventory on-hand but lack the storage space to “stock-up”. Medline can help arrange a trailer with supplies of your choosing and stage it at your facility. (Account will be responsible for trailer detention and appropriate return/restocking fees should the inventory not be utilized.)
- Place standing purchase orders. Medline will retain standing orders to release under a set of prior agreed to circumstances unless otherwise notified.
- Make copies! Keep hardcopies of all product formularies and their corresponding par levels, emergency orders ready to be placed and standing PO’s you may have already placed. Make sure others that need to know will know where to find them and what needs to be done.
- If a disaster is imminent place your orders early - 96 hours in advance if possible, 72 hours at the latest. The closer we get to an impending disaster or a known danger the more difficult it becomes for us to do everything for everyone.
- Consolidate your orders. Multiple orders can potentially slow operations.
- Think about how supplies will get to you. Identify a back-up receiving area. Make sure other plans don’t get in the way of your own. Are you prepared to handle alternate or flexible delivery times (after hours, weekends, etc.)?
- Designate a point person. Who in your facility is responsible for your disaster preparedness plan? Who is the person that will lead your facility’s response? Who in your facility is responsible for coordinating with your suppliers for supply chain continuity? Your Medline rep will continue to be your primary contact for the coordination of all orders, deliveries, backorder relief as well as special needs just as they are today. Make sure your rep knows who to contact and how, and if that person isn’t available, and that person, ...
- Provide a list of all facility emergency contact numbers to your Medline representative. This will ensure communication channels remain open.
- Know who to call at Medline. In addition to your Medline sales rep the only number you need is 1-800-MEDLINE.

## Key Contacts

Name	Organization/Position	Primary	Secondary
Customer Service	Monday – Friday 8:00 AM – 8:00 PM (EST)	800-633-5463	563-589-7977
Customer Service Extended Hours	Monday – Friday 8:00 PM – 8:00 AM (EST) & 24 Hours Sat. – Sun.	563-543-0558	
Bill Abington	President, Global Operations	847-949-2002	847-922-3882
Joel Bain	AVP, Operations	209-239-0020	209-587-3382
Brian Bevers	SVP, Operations	847-643-4830	847-708-7676
Jeff Brennan	VP, Transportation – Outbound	847-643-4147	847-372-7352
Duane Carter	AVP, Operations	360-491-0241	253-888-2297
Larry Corrigan	VP, Operations	847-643-4251	847-903-9661
Nick Dow	VP, Operations	847-643-4852	773-392-1704
Raymond Hamilton	Sr. Dir. Emergency Preparedness	773-308-4685	224-931-7334
Efrem Hawkins	AVP, Operations	909-429-4734 x2235	951-317-2769
Harry Hays	AVP, Operations	972-572-1001 x2223	253-468-5252
Chris Johnson	AVP, Operations	224-931-1480	847-532-4889
Paul Niederkorn	AVP, Operations	224-931-7668	214-762-6385
Brandon Reeder	VP, Operations	847-643-3093	206-290-5802
Ben Roedl	AVP, Operations	224-931-1067	920-210-0447
Dave Sevenikar	AVP, Operations	951-296-2600 x1232	909-376-3052
Kent Siedle	AVP, Operations	305-882-1099 x2236	954-325-2575
Shawn Simpson	AVP, Operations	812-256-2199 x2230	502-930-3766
Wes Swearingin	SVP, Operations	847-643-4255	847-445-7120

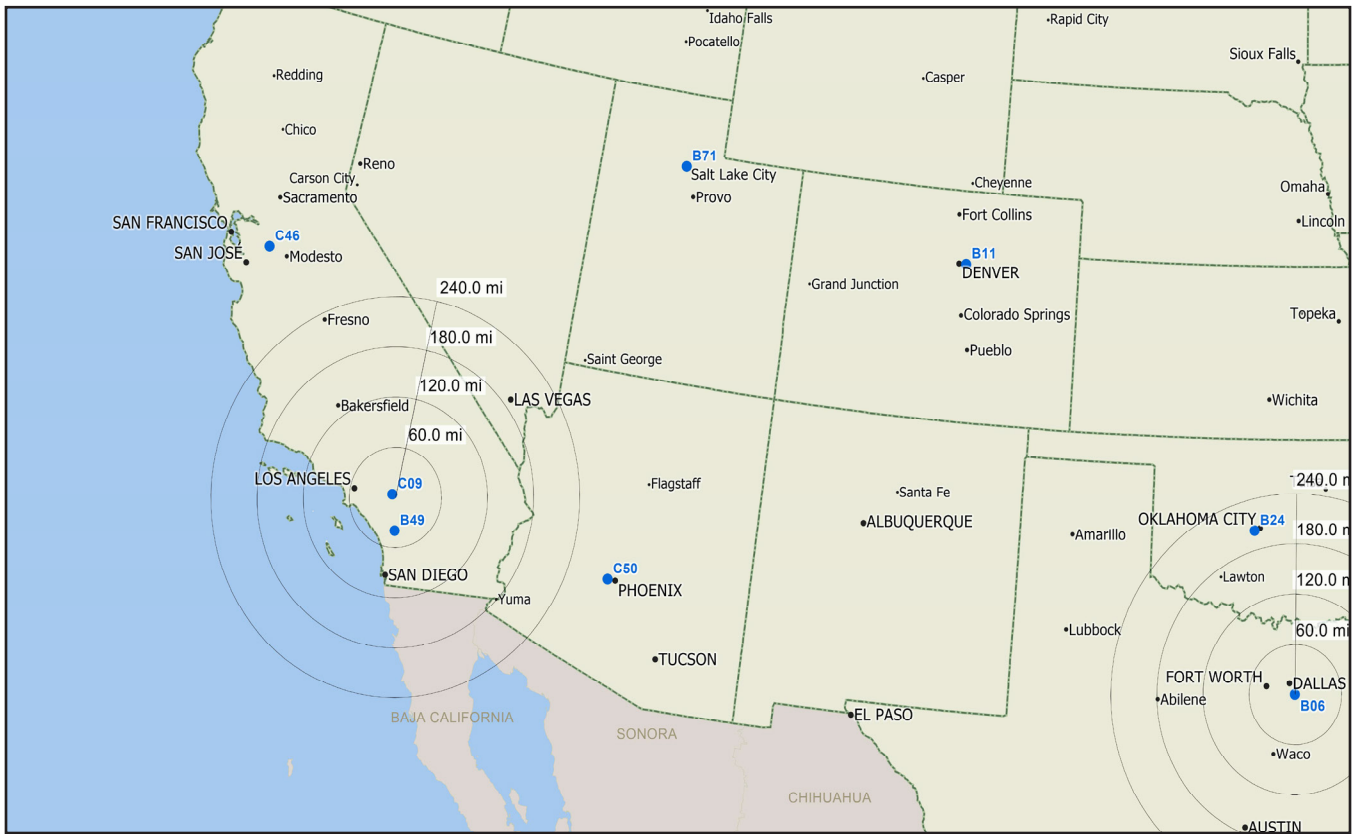
## Medline Customer Service

Medline's customer service department is available 24 hours a day, 365 days a year for assistance with emergency orders.

Customer service representatives have access to all DRT members as well as the most senior management of the company. Rest assured these representatives will get you to the right person within Medline to handle your special needs during a crisis.

Often the ability to dial toll-free exchanges is disrupted following a service outage. If you are unable to connect with a service representative using the toll-free number please use the secondary (direct exchange number).

# SOUTHWEST DISTRIBUTION CENTERS



**Rialto, CA – C09**  
1960 W. Miro Way  
Rialto, CA 92376

**Aurora, CO – B11**  
21111 E. 36th Drive  
Aurora, CO 80011

**Tracy CA –C46**  
24550 Hansen Road  
Tracy, CA 95377

**Temecula, CA – B49**  
42500 Winchester Road  
Temecula, CA 95950

**Tolleson, AZ – C50**  
8787 W. Buckeye Road  
Tolleson, AZ 85353

**Salt Lake City, UT – B71**  
1820 S. 5200 W.  
Salt Lake City, UT 84104

## **Appendix B Calculation of Charges**

### **1. Method of Payment, Purchase Order, and Invoicing**

A. Covered and Non Covered Items:

Medline shall submit invoices for Covered and Non Covered items that are shipped and accepted by the City in the format attached in Appendix F.

B. Distributor Mark Up Fee:

Medline shall submit monthly invoices by the fifteenth (15th) working day of each month, for the Distributor Mark Up, for the immediately preceding month in the format attached in Appendix F. The Distributor Mark Up fee shall be at the rate established in Appendix A-1, Section II of the Supply Agreement.

C. PO Submission and Invoicing through GHX Network:

The City shall transmit Purchaser Orders (PO) through the GHX Network.

Per the request of SFDPH, Medline utilizes the GHX Supplier Exchange service to support SFDPH's order process using the following standard EDI ANSI X12 transactions: PO/850, Order Ack/855, ASN/856, invoice/810 and price catalog/832. This is an automated order management process with visibility and collaboration to improve order accuracy and contract price alignment of the orders we receive from SDDPH. GHX enables and increase electronic ordering in an efficient manner. It automates the process of managing contract price notifications and get alignment on pricing between manufacturers, Medline, and SFDPH to ensure price accuracy.

### **2. Program Budgets and Final Invoice**

A. Program Budgets are listed below and are attached hereto.

1) Appendix B-1 Budget

B. **Contingency:** Medline understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, **\$10,093,186.20** is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Medline without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. Medline further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Medline agrees to fully comply with these laws, regulations, and policies/procedures.

C. Contractor agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Medline agrees to comply fully with that policy/procedure.

D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those Services rendered during the referenced period of performance. If Services are not invoiced during this period, all

unexpended funding set aside for this Agreement will revert to City. City's final reimbursement to the Medline at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in the Program Budgets attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

**3.** No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**Appendix B-1  
Budget**

<b>Line No.</b>	<b>Charge Description</b>	<b>FY 2021-2022</b>	<b>FY 2022-2023</b>	<b>FY 2023-2024</b>	<b>FY 2024-2025</b>	<b>FY 2025-2026</b>	<b>Totals by Charge Description</b>
1	ZSFG Bulk Spend	\$ 7,250,000.00	\$ 7,975,000.00	\$ 8,772,500.00	\$ 9,649,750.00	\$ 10,614,725.00	\$ 44,261,975.00
2	ZSFG Bulk Fees	\$ 72,500.00	\$ 79,750.00	\$ 87,725.00	\$ 96,497.50	\$ 106,147.25	\$ 442,619.75
3	ZSFG Taxes	\$ 652,500.00	\$ 717,750.00	\$ 789,525.00	\$ 868,477.50	\$ 955,325.25	\$ 3,983,577.75
4	LHH Bulk Spend	\$ 4,500,000.00	\$ 4,950,000.00	\$ 5,445,000.00	\$ 5,989,500.00	\$ 6,588,450.00	\$ 27,472,950.00
5	LHH Bulk Fees	\$ 45,000.00	\$ 49,500.00	\$ 54,450.00	\$ 59,895.00	\$ 65,884.50	\$ 274,729.50
6	LHH Taxes	\$ 405,000.00	\$ 445,500.00	\$ 490,050.00	\$ 539,055.00	\$ 592,960.50	\$ 2,472,565.50
7	Clinics Bulk Spend	\$ 30,000.00	\$ 33,000.00	\$ 36,300.00	\$ 39,930.00	\$ 43,923.00	\$ 183,153.00
8	Clinics Bulk Fees	\$ 300.00	\$ 330.00	\$ 363.00	\$ 399.30	\$ 439.23	\$ 1,831.53
9	Clinics Taxes	\$ 2,700.00	\$ 2,970.00	\$ 3,267.00	\$ 3,593.70	\$ 3,953.07	\$ 16,483.77
<b>Totals by FY</b>		<b>\$ 12,958,000.00</b>	<b>\$ 14,253,800.00</b>	<b>\$ 15,679,180.00</b>	<b>\$ 17,247,098.00</b>	<b>\$ 18,971,807.80</b>	
10					<b>Total Bulk Spend (All Facilities)</b>	\$	<b>71,918,078.00</b>
11					<b>Total Bulk Fees (All Facilities)</b>	\$	<b>719,180.00</b>
12					<b>Total Taxes Allowance (All Facilities)</b>	\$	<b>6,472,627.00</b>
13					<b>Emergency Surge</b>	\$	<b>5,000,000.00</b>
14					<b>Contingency (12%)</b>	\$	<b>10,093,187.00</b>
15					<b>Not To Exceed</b>	\$	<b>94,203,072.00</b>

**Notes:**

10% Year over year increase to cover anticipated increase in demand, cost of goods and continued transition to utilization Of prime distributor services.

Line 12: Taxes are an allowance. Contractor will bill only actuals for reimbursement.

Line 13: Emergency Surge is an allowance to enable DPH to continue procuring goods and supplies in the wake of any unanticipated emergency.

**Appendix C**  
**Reserved**

## **APPENDIX D FEMA CONTRACT REQUIREMENTS**

**1. Contract Requirements.** This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. The Parties must comply with these provisions as a minimum. In the event of a conflict with other provisions in this contract that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.

**2. Remedies for Breach.** In addition to all other remedies included in this contract, Contractor shall, at a minimum, be liable to the City for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor's services and/or the additional expenses to complete Contractor's services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**3. Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs reasonably necessary to effectuate demobilization from the work.

**4. Termination for Cause.** On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this contract for cause or to seek specific performance of all or any part of this contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this contract or any other contract.

**5. Work Hours and Safety Standards.** If this contract is for a price in excess of \$100,000, and involves the employment of mechanics or laborers, Contractor agrees as follows:

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed

on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

E. This Section 5 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**6. Rights to Inventions.** If FEMA's funding for this contract meets the definition of "funding agreement," and if this contract constitutes a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work, the City agrees to comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by FEMA.

**7. Clean Air Act.** If this contract is for a price in excess of \$150,000, Contractor agrees as follows:

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

B. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**8. Federal Water Pollution Act.** If this contract is for a price in excess of \$150,000, Contractor agrees as follows:

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**9. Debarment and Suspension.** If this contract is for a price in excess of \$25,000, Contractor agrees as follows:

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of

any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**10. Procurement of Recovered Materials**

A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

**11. Time and Material Contracts.** To the extent this contract includes work that is paid on a time and material basis, such work must have a guaranteed maximum price (GMP). The GMP is set forth in the body of this contract. The GMP constitutes a ceiling price that Contractor exceeds at its own risk.

**12. MBE/WBE Outreach.** Contractor must, at a minimum, take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used as Subcontractors on this Project:

A. Place qualified small and minority businesses and women's business enterprises on Contractor's solicitation list for this Project;

B. Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources for this Project;

C. Divide the subcontracts, when feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

D. Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

E. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**13. Access to Records.** The following access to records requirements apply to this contract:

A. The Contractor agrees to provide City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

D. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**14. Department of Homeland Security Seal, Logo, and Flags.** The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**15. Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**16. No Obligation by Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

**17. Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**18. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment** (*applicable to all contracts and subcontracts; 2 CFR §200 Appendix II(l) and 2 CFR 200.216*)

A. Contractor is prohibited from obligating funds from this Agreement to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by

Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

B. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

C. See Public Law 115-232, section 889 for additional information.

**19. Domestic Preferences for Procurements** *(applicable to all contracts and subcontracts; 2 CFR §200 Appendix II(l) and 2 CFR 200.322)*

As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable under this Agreement, use a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

A. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

B. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**20. Byrd Anti-Lobbying Certification.**

A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

B. If this contract is for a price of \$100,000 or more, Contractor, and its lower tiers, must sign and submit to the City the following certification:

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who

fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, **Medline Industries, Inc.** Certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date



## San Francisco Department of Public Health

## Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract by and between the City and County of San Francisco, the Covered Entity (“CE”), and Contractor, the Business Associate (“BA”) (the “Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

**RECITALS**

A. CE, by and through the San Francisco Department of Public Health (“SFDPH”), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. For purposes of the Agreement, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the “California Regulations”).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

**1. Definitions.**

**a. Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

**b. Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.



## San Francisco Department of Public Health

## Business Associate Agreement

**c. Business Associate** is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

**d. Covered Entity** means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

**e. Data Aggregation** means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**f. Designated Record Set** means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**g. Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

**h. Electronic Health Record** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

**i. Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

**j. Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

**k. Protected Health Information or PHI** means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

**l. Protected Information** shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.



## San Francisco Department of Public Health

## Business Associate Agreement

**m. Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

**n. Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

**o. Unsecured PHI** means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

## 2. Obligations of Business Associate.

**a. Attestations.** Except when CE's data privacy officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall retain such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

**b. User Training.** The BA shall provide, and shall ensure that BA subcontractors, provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

**c. Permitted Uses.** BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2), and 164.504(e)(4)(i)].

**d. Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the



## San Francisco Department of Public Health

## Business Associate Agreement

Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

**e. Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

**f. Appropriate Safeguards.** BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

**g. Business Associate's Subcontractors and Agents.** BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

**h. Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to



## San Francisco Department of Public Health

## Business Associate Agreement

provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least seven (7) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

**i. Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

**j. Amendment of Protected Information.** Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

**k. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

**l. Minimum Necessary.** BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to



## San Francisco Department of Public Health

## Business Associate Agreement

what constitutes “minimum necessary” to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

**m. Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

**n. Notification of Breach.** BA shall notify CE within 5 business days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

**o. Breach Pattern or Practice by Business Associate’s Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent’s obligations under the Contract or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent’s obligations under the Contract or this BAA within five (5) business days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination.

**a. Material Breach.** A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

**b. Judicial or Administrative Proceedings.** CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.



## San Francisco Department of Public Health

## Business Associate Agreement

**c. Effect of Termination.** Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

**d. Civil and Criminal Penalties.** BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure of Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

**e. Disclaimer.** CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

#### 4. Amendment to Comply with Law.

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### 5. Reimbursement for Fines or Penalties.

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible access, use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties or damages.

APPENDIX E



San Francisco Department of Public Health

Business Associate Agreement

Attachment 2 – SFDPH Data Security Attestation, version 06-07-2017

Office of Compliance and Privacy Affairs  
San Francisco Department of Public Health  
101 Grove Street, Room 330, San Francisco, CA 94102  
Email: [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org)  
Hotline (Toll-Free): 1-855-729-6040

Medline Industries, Inc.  
Privacy Office  
Three Lakes Drive, Northfield, IL 60093  
[MedlinePrivacyOffice@medline.com](mailto:MedlinePrivacyOffice@medline.com)  
(p) 844-249-1979

Contractor Name:		Contractor City Vendor ID	
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### PRIVACY ATTESTATION

**INSTRUCTIONS:** Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

**Exceptions:** If you believe that a requirement is Not Applicable to you, see instructions below in Section IV on how to request clarification or obtain an exception.

**I. All Contractors.**

<b>DOES YOUR ORGANIZATION...</b>							Yes	No*	
A	Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?								
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?								
	If yes:	Name & Title:		Phone #		Email:			
C	Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH privacy training materials are available for use; contact OCPA at 1-855-729-6040.]								
D	Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]								
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?								
F	Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so <b>AND</b> that health information is <b>only transferred or created on encrypted devices approved by SFPDH Information Security staff?</b>								

**II. Contractors who serve patients/clients and have access to SFPDH PHI, must also complete this section.**

<b>If Applicable: DOES YOUR ORGANIZATION...</b>							Yes	No*
G	Have (or will have if/when applicable) evidence that SFPDH Service Desk (628-206-SERV) was notified to de-provision employees who have access to SFPDH health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?							
H	Have evidence in each patient's / client's chart or electronic file that a <a href="#">Privacy Notice</a> that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from SFPDH.)							
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?							
J	Document each disclosure of a patient's/client's health information for purposes <u>other than</u> treatment, payment, or operations?							
K	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained <b>PRIOR</b> to releasing a patient's/client's health information?							

**III. ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Privacy Officer or designated person	Name: (print)		Signature		Date	
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**IV. \*EXCEPTIONS:** If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	
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Contractor Name:		Contractor City Vendor ID	
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### DATA SECURITY ATTESTATION

**INSTRUCTIONS:** Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

**Exceptions:** If you believe that a requirement is Not Applicable to you, see instructions in Section III below on how to request clarification or obtain an exception.

#### I. All Contractors.

DOES YOUR ORGANIZATION...						Yes	No*
A	Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years? [Retain documentation for a period of 7 years]						
B	Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?						
	Date of last Data Security Risk Assessment/Audit:						
	Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report:						
C	Have a formal Data Security Awareness Program?						
D	Have formal Data Security Policies and Procedures to detect, contain, and correct security violations that comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)?						
E	Have a Data Security Officer or other individual designated as the person in charge of ensuring the security of confidential information?						
	If yes:	Name & Title:	Phone #	Email:			
F	Require Data Security Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH data security training materials are available for use; contact OCPA at 1-855-729-6040.]						
G	Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]						
H	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?						
I	Have (or will have if/when applicable) a diagram of how SFPDH data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?						

**II. ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Data Security Officer or designated person	Name: (print)		Signature		Date	
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**III. \*EXCEPTIONS:** If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at **1-855-729-6040** or [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)		Signature		Date	
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**Appendix F  
Invoice**

**Invoices to be submitted in a format acceptable by the Contract Administrator and contain all required elements by the City.**