

**City and County of San Francisco
Office of Contract Administration
Purchasing Division**

First Amendment

THIS AMENDMENT (this “Amendment”) is made as of July 29, 2021 in San Francisco, California, by and between Medline Industries, Inc., a corporation with corporate offices located at Three Lakes Drive, Northfield, IL 60093 (“Medline”) and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

Recitals

WHEREAS, City and Medline have entered into the Agreement (as defined below); and

WHEREAS, City and Medline desire to modify the Agreement on the terms and conditions set forth herein to update Appendix A-1 (Supply Agreement), update the City Supplier number, update Appendix B (Calculation of Charges), and update standard contractual clauses; and

NOW, THEREFORE, Medline and the City agree as follows:

Article 1 Definitions

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated April 5, 2021 between Medline and City.

1.2 **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

Article 2 Modifications to the Agreement

The Agreement is hereby modified as follows:

2.1 Delete Appendix A-1 and replace in its entirety with the attached Appendix A-1, dated July 29, 2021.

2.2 Delete Appendix B and replace in its entirety with the attached Appendix B, dated July 29, 2021.

2.3 Wherever Medline is referenced as City Supplier number 0000003192 in the Agreement, it shall be universally changed as City Supplier number 0000029887.

Article 3 Effective Date

Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

Article 4 Legal Effect

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Medline and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

DocuSigned by:
Greg Wagner 8/18/2021 | 5:30 PM PDT
28527524752949F...
Grant Colfax, MD
Director of Health
Department of Public Health

DISTRIBUTOR

MEDLINE INDUSTRIES INC

DocuSigned by:
Marc Phillips 8/10/2021 | 1:15 PM PDT
3F535BF99DA04C2...
Marc Phillips
Senior VP of Corporate Sales
Medline Industries, Inc.

Approved as to Form:

City Supplier number: 0000029887

Dennis J. Herrera
City Attorney

By: DocuSigned by:
Louise Simpson 8/16/2021 | 2:05 PM PDT
8D54188A4C3B452...
Louise S. Simpson
Deputy City Attorney

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

Pricing Matrix for ZSFG and Laguna Honda Hospital		
	Tier 1 Markup	Tier 2 Markup
Product Category	Cost Plus Mark Up (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.

Pricing Matrix for ZSFG and Laguna Honda Hospital		
	Tier 1 Markup	Tier 2 Markup

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

OPTIONAL DELIVERY SERVICES TO OTHER THAN ZSFG AND/OR LAGUNA HONDA HOSPITAL		
	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 1st through December 31st (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:

Distribution Service	Fee
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%
Product Related Additional Fees	
Hazardous Products	5.00%
Capital Equipment	Locally Negotiated Net Price
Free infant formula will be assessed a separated distribution fee	\$2.95/cs
Laboratory Class of Trade Mark-Ups	
Distribution Service	Fee
Non-Supplier Contract - Bulk	1.00%
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.

Class of Trade	FOB Destination Order Volume Minimum
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:

$$\frac{A-B}{A-(C+D)} \times 100 = \text{Product Fill Rate}$$

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

Return from Date of Invoice	Re-Stocking Fee Percentage
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.

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 3.4.1 of this Agreement, **\$15,569,094** 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.