

Third Amendment

THIS AMENDMENT (this “Amendment”) is made as of **November 17, 2023**, 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 add standard contractual clauses and update scope of services; and

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

WHEREAS, approval for the original Agreement was obtained on May 17, 2021 from the Civil Service Commission under PSC number 43503 - 20/21 for the period commencing July 1, 2021 and ending June 30, 2026; 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, as amended by the:

First Amendment, dated July 29, 2021, and

Second Amendment dated October 12, 2021.

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

Article 2 Modifications of Scope to the Agreement

The Agreement is hereby modified as follows:

2.1 **Attachment 2 “True Price Program”.** Attachment 2 “True Price Program” dated April 5, 2021 is hereby added to Appendix A-1 of the Original Agreement.

2.2 **Appendix G.** Appendix G dated, August 1, 2022 is hereby added to the original Agreement.

Article 3 Updates of Standard Terms to the Agreement

3.1 **Definitions.** *The following is hereby added to the Agreement as a Definition in Article 1:*

1.17 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

3.2 **Contractor Vaccination Policy.** *The following is hereby added to Article 7 of the Agreement:*

4.8 **Contractor Vaccination Policy (Reserved – DPH’s Policy Governs)**

3.3 **Management of City Data and Confidential Information.** *The following sections are hereby added and incorporated in Article 13 of the Agreement, adding to and replacing the previous Section 13.4 in its entirety:*

13.4 **Management of City Data and Confidential Information.**

13.4.1 **Use of City Data and Confidential Information.** Medline agrees to hold City’s Data received from, or collected on behalf of, the City, in strictest confidence. Medline shall not use or disclose City’s Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City’s Data outside the United States is subject to prior written authorization by the City. Access to City’s Data must be strictly controlled and limited to Medline’s staff assigned to this project on a need-to-know basis only. Medline is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Medline’s own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Medline, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.2 **Disposition of Confidential Information.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Medline shall promptly, but in no event later than thirty (30) calendar days, return all data given to or collected by Medline on City’s behalf, which includes all original media. Once Medline has received written confirmation from City that City’s Data has been successfully transferred to City, Medline shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Medline has used in performance of this Agreement, including its subcontractors environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Medline in

whatever medium. Medline shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

Article 4 Effective Date

Each of the modifications set forth in Articles 2 and 3 shall be effective on and after August 1, 2023.

Article 5 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, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

**MEDLINE INDUSTRIES
INC**

DocuSigned by:
Greg Wagner
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11/15/2023 | 9:23 AM PST

Grant Colfax, MD
Director of Health
Department of Public Health

DocuSigned by:
Marc Phillips
3F555BF99DA04C2...
11/06/2023 | 4:18 PM PST

Marc Phillips
Senior VP of Corporate Sales
Medline Industries, Inc.

City Supplier Number: 0000003192

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
Louise Simpson
BD54168A463B452

Louise S. Simpson
Deputy City Attorney

**Attachment 2
True Price Program
Requirements and Processes**

I. Definition of True Price Program and Requirements:

1. The City is eligible to enter into a program called True Price Program (“TPP”). TPP is a program where Medline accepts payment of invoices based off the product prices the City has loaded in their product database. If there is a discrepancy between the price that Medline has loaded for an item vs. what the City has loaded for the same item, Medline will accept payment based upon the City’s pricing database. Payment process is outlined in Section 3.4.1 of Medline’s distribution agreement with the City.
2. TPP will be adopted within sixty (60) calendar days from the Effective Date of this First Amendment to the Master Distribution Agreement.
3. The City must achieve and sustain price accuracy that matches at least ninety-five percent (95.00%) to Medline’s price database for a minimum of sixty (60) days prior to initializing TPP. Price accuracy of ninety-five percent (95.00%) must be maintained for the duration of the program.
4. The City must utilize a two (2) decimal system when loading and transmitting price data.
5. The City must make updates to product pricing in their database based on the Price Change Notifications (“PCNs”) (outlined in Section XIV of the Master Distribution Agreement) received from Medline. These notifications are a compilation of any price changes Medline has received from the City’s Group Purchasing Organization (GPO) Vizient, and the manufacturers the City requests Medline distribute to their facilities. The City commits to provide weekly feedback to Medline.

6. Only Electronic Data Interchange (EDI) orders are eligible.

7. The City must process updates following terms as communicated by the PCN with disputes not exceeding thirty (30) days.
8. The following are subject to credit and rebill, otherwise there is no reconciliation.
 - a. Unit of Measure issues (Provider orders a case and submits an “each” price, etc.)
 - b. \$0.01 or \$1.00 Provider Purchase Order (“PO”) prices (excluding Nutritional contracts)
 - c. \$0.00 or no price submitted via EDI (Supplier will invoice at Supplier price)
 - d. Variances of significant magnitude
 - e. Unresolved issues pending greater than 30 days

9. If requirements outlined above are not met, the TPP program is subject to termination.

II. True Price Process:

1. All Medline Brand lines stay on price confirmation process up to two (2) weeks following move to TPP in order to allow for price management, validation, and migration to program
2. The City’s purchase order (PO) Price submitted via EDI will be honored on invoice.
3. Medline’s Dedicated Service Manager (“DSM”) will enter the City’s PO Price in replacement orders to allow for TPP to transpire.
4. When the City is on TPP, the existing price confirmation process will no longer be an accurate measure of price accuracy. Medline’s Distributed Pricing Group will monitor the report in order to catch UOM issues, \$0.01 and \$1.00, prior to billing.

5. Notes are included in “Actions Needed” column of TPP report. Responses are expected from the facilities’ materials management department to Medline’s local account team within one (1) business week. Misalignments on pricing of individual product will not exceed thirty (30) days.
6. The City agrees to proactively review PCN reports and update product pricing in their system on a weekly basis.

Appendix G

**Protected Information Destruction Order
Purge Certification - Contract ID # 1000021243**

In accordance with section 3.c (Effect of Termination) of the Business Associate Agreement, attached as Appendix E to the Agreement between the City and Contractor dated April 5, 2021 (“Agreement”), the City hereby directs Contractor to destroy all Protected Information that Contractor and its agents and subcontractors (collectively “Contractor”) still maintain in any form. Contractor may retain no copies of destroyed Protected Information.” Destruction must be in accordance with the guidance of the Secretary of the U.S. Department of Health and Human Services (“Secretary”) regarding proper destruction of PHI.

Electronic Data: Per the Secretary’s guidance, the City will accept destruction of electronic Protected Information in accordance with the standards enumerated in the NIST SP 800-88, Guidelines for Data Sanitization (“NIST”).

Hard-Copy Data: Per the Secretary’s guidance, the City will accept destruction of Protected Information contained in paper records by shredding, burning, pulping, or pulverizing the records so that the Protected Information is rendered unreadable, indecipherable, and otherwise cannot be reconstructed.

Contractor hereby certifies that Contractor has destroyed all Protected Information as directed by the City in accordance with the guidance of the Secretary of the U.S. Department of Health and Human Services (“Secretary”) regarding proper destruction of PHI.

So Certified

Signature

Title:

Date:
