

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY**

This Contract is between the State of Minnesota, acting through its Commissioner of Administration, on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and **EXP Pharmaceutical Services Corp., 48021 Warm Springs Boulevard, Fremont, California 94539 ("Vendor")**.

Under Minnesota Statutes Sections 16C.03 and 16C.11, the Commissioner of Administration on behalf of MMCAP is empowered to engage such assistance as deemed necessary.

MMCAP is a group purchasing organization as defined in 42 U.S.C. § 1320a-7b(b)(3)(c) and maintains that it is structured to comply with the requirements of the Safe Harbor regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. § 1001.952(j). MMCAP consists of government-run health care facilities and contracts for pharmaceuticals and certain health care products for its members' use. Participation in MMCAP is limited to government facilities such as state agencies, counties, cities, townships, and school districts.

Vendor wishes to contract with MMCAP to provide pharmaceutical returned goods processing services according to all applicable federal and state laws, to all current and future participating Members; and represents that it is qualified and agrees to perform all services described in this Contract.

1. Term of Contract

1.1 *Effective date:* May 1, 2014, or the date MMCAP obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.

1.2 *Expiration date:* April 30, 2016, or as cancelled pursuant to Article 29. The Contract may be extended for up to three additional one-year periods, on written acceptance and fully executed amendment by both parties, for a total term not to exceed five years.

1.3 *Survival of Terms.* The following clauses survive the expiration or cancellation of this Contract: 11. Administrative Fee; 15. Liability; 16. State Audits; 17. Government Data Practices and Intellectual Property; 18. Publicity, Marketing, and Endorsement; 19. Governing Law, Jurisdiction, and Venue; and 24. Data Disclosure.

2. Required Licenses, Permits, and Registration

Vendor and any of its subcontractors must comply with all federal, state, and local laws when providing services under this Contract, including, but not limited to: United States Drug Enforcement Administration (DEA), United States Federal Drug Administration (FDA), United States Environmental Protection Agency (EPA), United States Department of Transportation (DOT), and United States Occupational Safety and Health Administration (OSHA). Vendor will maintain all required licenses, permits, and registrations required by federal, state, and local governments related to the services provided under this Contract. Vendor will make such compliance documentation available upon request by MMCAP or its Members.

Vendor warrants to MMCAP that: (i) it provides returned goods processing services; and (ii) neither Vendor nor any employee or subcontractor has been sanctioned by any federal, state, or local government.

3. Scope of Work

3.1 *Purpose.* The purpose of this Contract is to provide Members with a mechanism to receive credit for returned pharmaceutical products. This Contract is not a hazardous waste disposal contract and therefore, Vendor will not knowingly accept hazardous waste for processing. In the event Vendor does either inadvertently accept or later

discovers a product is hazardous, Vendor will process the hazardous pharmaceutical according to applicable federal, state, and local hazardous pharmaceutical waste requirements. References in this Contract to hazardous waste mean that Vendor has acquired these items unknowingly.

3.2 Returned Goods Services

Vendor will provide comprehensive on- and off-site pharmaceutical returned goods processing services for pharmaceutical products including providing all equipment, materials, and labor needed to process credit, return, store, dispose of, and transport products for proper disposal to Vendor's processing facility from all requesting Members for the term of the Contract. These services will include:

- a. Providing a method for Members to transport unusable pharmaceuticals (including controlled substances and hazardous pharmaceutical materials) to Vendor for the intention of obtaining credit;
- b. Returning and/or reporting to the original manufacturer all potential creditable unusable pharmaceuticals in accordance with the guidelines and procedures established by the manufacturer, DEA, and in accordance with all federal, state and local laws and applying for the appropriate credit on behalf of the Member;
- c. Documenting and reporting to each Member the amount of the credit applied for;
- d. Providing and maintaining a detailed process and reporting methodology for the pharmaceutical manufacturer to pay the credit to the Member;
- e. Providing and maintaining a reporting method for the Member to determine the amount of credit estimated to be received and actually received;
- f. Disposing of any non-creditable unusable products (including controlled substances and hazardous pharmaceutical materials) in the manner required by all applicable local, state, and federal rules and regulations;
- g. Providing detailed documentation and reports to Members of the disposal of all hazardous pharmaceutical materials and controlled substances including but not limited to a Certificate of Destruction to the ordering Member after product has been destroyed; and
- h. Providing prompt responses to MMCAP and Members' inquiries pertaining to contracted manufacturers' return and credit policies.

Vendor will provide the same level of service and use the same service fee structure for all Members regardless of the Member's geographic location or practice type. Vendor will not limit or restrict in any way the number or size of shipments or require a minimum number of shipments made by a Member.

3.3 Account Set Up and Conversions

Members will contact Vendor's customer service number (800-350-0397) with the following information:

- a. Current DEA license
- b. Current State Board of Pharmacy license
- c. Copy of wholesaler invoice that is not more than 90 days old
- d. MMCAP Member ID
- e. Facility contact information, with e-mail address

3.4 On-site Reverse Distribution and Destruction Services

Vendor will provide on-site reverse distribution and destruction services to Members consisting of:

- a. Packaging expired, damaged, recalled, short dated, or overstocked Products from inventory under the direction of the Member's pharmacist in charge.
- b. Providing assistance with inventory outdates prior to shipping, if requested by the Member.

- c. Separating all creditable product from non-creditable product. Creditable means a product that is within a manufacturer's return guidelines at the time the product is processed by Vendor. Processing will consist of counting the number of product units received, verifying its contents, and determining its value.
- d. Preparing all required paperwork that allows for the return of unusable non-controlled products.
- e. Preparing all required paperwork that allows for the return of unusable controlled substances and/or hazardous pharmaceutical waste products, as further described in Section 3.7 below.
- f. Preparing return shipments for shipping to the Vendor's destruction facility including preparation, packaging, labeling, and sealing return shipments to the Vendor or manufacturer, as applicable.
- g. Assigning a shipping tracking number (e.g., FedEx) to all products.
- h. Providing itemized invoices showing all charges for services and how they are computed. All service fees will be deducted from the actual credit received and will be processed through the Member's applicable wholesaler.
- i. Online tools (e.g., customer web portal) to allow all Members to monitor credits received, fees subtracted, and monies deposited into the Members' wholesaler accounts. All invoices must include line item charges including order number, MMCAP contract number, description of services, service fee, quantity, unit price, extensions, and any other discounts; shipping and billing addresses, bill code, MMCAP ID number or account number, anticipated returns value (ARV, as defined in Section 3.10 below), account number, DEA number, and HIN number.

3.5 Off-site Reverse Distribution and Destruction Services

Vendor will provide off-site destruction services consisting of:

- a. Online forms, labels, and instructions for Members to prepare required paperwork which allows for the return of non-controlled products.
- b. Online forms, labels, and instructions for Members to prepare required paperwork which allows for the return of controlled substances and/or hazardous pharmaceutical waste products.
- c. Online forms, labels, and instructions regarding the shipping process so that Members are able to securely package, label, and ship a return shipment to the reverse distribution facility or manufacturer, if applicable.
- d. Itemize invoice showing charges for services and how they are computed. All service fees will be deducted from the actual credit received and shall be processed through the applicable wholesaler.
- e. Online access and tools to allow all Members to monitor the credits received, fees subtracted, and the monies deposited into the Members' wholesaler accounts. All invoices must include line item charges including order number, contract number, description of services, service fee, quantity, unit price, extensions, and all other discounts; shipping and billing addresses, bill code, MMCAP ID number or account number, ARV (as defined in Section 3.10 below), account number, DEA number, and HIN number.
- f. Online ability to inventory outdates prior to shipping, if requested by the Member.
- g. Provide for complete documentation of the transfer and destruction of all controlled substances.

3.6 340B Product Returns

Members may return products purchased under the 340B Drug Pricing Program by working with Vendor to set up a separate account number specifically for 340B returns. Products purchased under the 340B program must be returned using this specially coded account number and a Return Authorization form. For additional assistance, Members must contact their assigned customer service representative or Vendor's general customer service number.

3.7 Controlled Substances.

3.7.1 Processing Controlled Substances – On-Site Service

- a. All controlled substances CII to CV must be inventoried with exact counts to the tablet/capsule level. Liquid controls are estimated on site. Counts are confirmed with the Member's count.

- b. If the Member has a controlled inventory sheet/manifest, Vendor must confirm the counts, make any necessary adjustments, add NDC numbers if needed and sign.
- c. The Member must confirm accuracy, verify, sign and date the manifest. If there are any discrepancies, they must be resolved before Vendor leaves the Member's location.
- d. All CII's are to be placed in a Tamper Proof Bag. The DEA Form 222 and return authorization form copy must be placed in a separate sealable plastic bag within the CII Tamper Proof Bag.
- e. All CIII – CV products are to be placed in a separate sealable plastic bag. The CIII – CV manifest copy and return authorization copy must be placed in a plastic bag within the CIII – CV bag.
- f. All controlled substances are to be boxed separately from non-controlled products. CII and CIII- CV bags can be placed together in the same box.
- g. Vendor provides for all required documentation of the transfer and destruction of all controlled substances. This includes a paper and electronic inventory of all Schedule II – Schedule V controlled substances.
- h. Vendor warrants that all of its on-site representatives have a Durable Power of Attorney.

3.7.2 Reconciling Mis-matched Controlled Substance Amounts Returned.

If an item is verified missing, the Vendor will take appropriate DEA-approved steps to account for the discrepancy.

3.8 Transport of Returned Products

Vendor will arrange and pay for all costs associated with the transport of returned products to Vendor. Transportation/shipping will be FOB Destination, prepaid and allowed, with freight included in the price, from the Member. No other freight charges or fuel surcharge will be allowed.

3.9 Service Arrangements

- a. Vendor must provide service to all Members that request service.
- b. Vendor will provide Members with returnable and non-returnable reports and provide the certificate of destruction online no less than 10 business days from when the product was received and properly destroyed.
- c. For products that do not qualify for manufacturers' return, the Vendor will:
 - 1. Provide a separate, detailed waste report of all Scheduled non-returnable products. The report shall indicate the contract number, manufacturer, product name, lot number, expiration date, National Drug Code (NDC), quantity, and estimated value.
 - 2. Provide a separate, detailed waste report of all Non-Scheduled non-returnable products. The report shall indicate the contract number, manufacturer, product name, lot number, expiration date, National Drug Code (NDC), quantity and estimated value.
 - 3. Provide a separate, detailed waste report of all Hazardous non-returnable products. The report shall indicate the contract number, manufacturer, product name, lot number, expiration date, National Drug Code (NDC), quantity and estimated value.
 - 4. The Vendor will become the waste generator and assume responsibility for the legal handling of all non-returnable products.
 - 5. The Vendor is required to select a licensed commercial carrier for the legal transport of non-returnable, non-hazardous products and arrange for incineration at an EPA licensed facility.
 - 6. The Vendor is required to select a licensed hazardous waste hauler for the legal transport of non-returnable hazardous pharmaceutical products and arrange for incineration at an EPA licensed facility.
 - 7. Destroy all products in accordance with applicable federal, state, and local (EPA, DEA, FDA, DOT, and OSHA) laws and regulations.
 - 8. Vendor's representative shall witness the destruction of all Scheduled and Non-Scheduled pharmaceuticals, per the requirements of the DEA.

3.10. Credit Reconciliation and Anticipated Return Value

The Anticipated Return Value (ARV) will be calculated using the most current available pricing or discounted "First Data Bank" pricing for open market items.

Within 5 business of receipt at the Vendor's processing facility, all products are processed for potential return credit.

Vendor must also supply a detailed list of manufacturers, with Anticipated Return Value (ARV).

Vendor must ensure that every effort is made to obtain maximum return credit for Members by:

- a) Providing a mechanism for separate recalled product return processing with separate detailed reports, at no additional charge to the Member.
- b) Pursuing credit recovery for all vaccines. When a vaccine is deemed non-returnable, an aggressive protocol is to be utilized for the pursuit of a Federal Excise Tax refund.
- c) Holding all potentially returnable in-dated products until such a time that they qualify for return, at no additional charge to the Member.
- d) Return processing, with the Member's assistance in obtaining return authorization from the applicable wholesaler, for all products not normally returnable unless processed through the prospective wholesaler, at no additional charge to the Member.
- e) Providing a procedure for pursuing return privilege, on an exception basis, of typically non-returnable products-

4. MMCAP Wholesalers

Vendor must have agreements with all MMCAP contracted wholesalers (currently, AmerisourceBergen, Morris-Dickson Co., and Cardinal Health) and all future wholesalers serving Members. Under these agreements the Members' wholesale accounts can be used to receive credits.

5. Reporting

Vendor will provide all detailed reports necessary to successfully manage and limit unusable pharmaceuticals. Vendor will supply to any requesting Members a summary report of the return policies of each pharmaceutical manufacturer and their non-returnables with reason codes for each product. These reports are mailed or emailed after the actual service date. Changes in a manufacturer's policy will be communicated to the Members on a monthly basis.

6. Personnel Requirements

- 6.1 Vendor will have qualified experienced personnel in positions of authority and responsibility including:
- a. A department of sales/service representatives to assist with the coordination of activities necessary for the Members to ship its return orders to Vendor for processing. Vendor will provide customer service personnel phone numbers or an online mechanism to request contracted services.
 - b. Personnel trained and experienced in handling controlled substances and pharmaceutical hazardous materials, and knowledgeable of regulatory requirements governing returned goods processing cycle "cradle to grave." Vendor will submit resumes detailing qualifications and experience upon MMCAP's request.
 - c. If Vendor utilizes subcontractors for any part of this work MMCAP must be notified. Subcontractors will abide by all terms in this Contract.

6.2 Vendor must notify in advance and in writing to MMCAP any changes in Vendor's key personnel.

7. Emergency Preparedness/Stockpiling Services

Vendor will provide creditable and non-creditable DEA and EPA approved disposal for all pharmaceuticals, including stockpiled in a cache for emergency preparedness purposes. Members may return bulk or stockpiled products by working with Vendor. Members must contact their assigned customer service representative or Vendor's general customer service number to obtain return authorizations for this service. Separate fees are attached to this service.

8. Value-Added Programs. Members must be offered any programs normally offered to the Vendor's general customer base at the same or lower cost as that offered to the general customer base.

Currently Vendor offers the following:

8.1 Credit Assurance Plus Program – Vendor's wholesaler consolidation returns program.

The returnable products for a group of customers that utilize the same wholesaler are consolidated and shipped as an entity to the manufacturer for credit issuance. Assuming the pharmacy's participation is in Vendor's wholesaler consolidation program, no payable invoice is generated; rather, an Order Estimate is created which estimates the billing for the order with the fees calculated based on the contracted fee components multiplied by the corresponding elements. The fees are paid by deducting from the manufacturer credits received.

8.2 Optional Credit-Maximizing Program

1. Federal Excise Tax (FET) Refund Program - Specialized processing seeks to obtain a refund of the previous paid FET for the non-dispensed vaccines
2. Exception Program – Specialized processing for typically non-returnable products per the manufacturer policy

8.3 Optional Waste Handling Programs

1. Schedule Waste Handling Program – To process the receipt of non-creditable schedule waste received at Vendor.
2. Non-Schedule Waste Handling Program – To process the receipt of non-creditable non-schedule waste received at Vendor

9. Vendor's Service Fee and Invoicing

Off Site Pharmacy Returns:

Non-Schedule drugs processing	4.80% of actual credits received
Schedule drugs processing	4.80% of actual credits received
Controlled Substances CII Processing	Included
DEA 222 Form Fee	Included
Controlled Substances CIII - CV Processing	Included
Recall Program	Included
In-date Program	Included
Disposal of received non-hazardous waste	\$0.56 per lb
Disposal of generated hazardous waste	\$3.85 per lb
Disposal of generated non- hazardous waste	\$0.56 per lb
Disposal of controlled waste	\$1.25 per lb
Freight charges: Pharmacy to EXP	EXP
Freight charges: EXP to Manufacturer	EXP
Product & Regulatory Accountability Fee	Invoice to \$500 = \$5; \$500 + = \$15
Minimum Invoice Amounts	\$150

On-Site Pharmacy Returns:

Non-Schedule drugs processing	7.60% of actual credits received
Schedule drugs processing	7.60% of actual credits received
Controlled Substances CII Processing	Included
DEA 222 Form Fee	Included
Controlled Substances CIII - CV Processing	Included
Recall Program	Included
In-date Program	Included
Disposal of non-hazardous waste	\$0.56 per lb
Disposal of hazardous waste	\$3.85 per lb
Disposal of non-controlled waste	\$0.56 per lb
Disposal of controlled waste	\$1.25 per lb
Freight charges: Pharmacy to EXP	EXP
Freight charges: EXP to Manufacturer	EXP
Product and Reg Accountability Fee	Invoice to \$500 = \$5; \$500+ = \$15
Minimum Invoice Amounts	\$300

Optional Credit-Maximizing Programs

Federal Excise Tax (FET) Refund Program	45% of successfully obtained refunds
Exception Program	45% of successfully obtained credits

Optional Waste Handling Programs

Scheduled Waste Handling Program	\$0.12/inventoried item
Non-Scheduled Waste Handling Program	\$0.08/inventoried item

- Vendor reserves the right to reimbursement for direct costs of compliance from off-contract customer-imposed requirements.
- Pricing is based on the understanding that all potentially returnable items are made available to Vendor. Some manufacturers do not participate in wholesaler consolidation programs, and where the customer has elected to enroll in Vendor's optional Credit Assurance Plus Program, Vendor reserves the right to deduct fees for services rendered from all available manufacturer credits. Should the anticipated manufacturer return values be insufficient to satisfy billing amounts, Vendor reserves the right to forward a payable invoice to the Member.
- Where the Member has elected to enroll in Vendor's optional Credit Assurance Plus program, should the anticipated manufacturer return values be insufficient to satisfy billing amounts, Vendor reserves the right to forward a payable invoice to the Member.

Service fees and all prices will be firm for the term of the Contract. The service fee is an all-inclusive percent and will be deducted from the lump sum credit being issued to the Member's wholesaler account. All service fees apply to both products eligible and not eligible for credit. There will be no additional fees or charges.

The return processing procedure will be consistent with the protocol required by each wholesaler's consolidation program. A processing Service Estimate will be provided detailing all service fees of an order. There will not be a payable invoice; all service fees will be deducted from the actual credits received.

10. Member Facilities.

10.1 Vendor must allow new Members access to the contract services and prices throughout the term of this Contract. MMCAP will provide Vendor with monthly e-mail notices announcing that a new Membership List has been posted online.

10.2 MMCAP reserves the right to add and delete Members during the term of this Contract.

10.3 Member-requested Additional Terms.

Vendor may be required to prepare an MMCAP "Member-requested Participation Agreement" (MPA) to amend this Contract to provide for laws specific to a state or local jurisdiction. If these circumstances exist, Vendor must work with MMCAP and the Member to prepare the MPA. An MPA must clearly apply only to the requesting location and will not affect the rights of the other Members. Member-requested Participation Agreements containing fees must be defined and agreed upon by all parties. No verbal or written instructions from Members or any of their staff or officials may be used to change any provision of this Contract. Vendor will immediately report any such requests to MMCAP. MMCAP will not be bound by non-Minnesota state-specific terms contained in an MPA.

11. Administrative Fee. In consideration for the reports and services provided by MMCAP, Vendor will pay on a quarterly basis, an administrative fee of 3% of the total actual credit returned to the Member during that quarter. The administration fee will be remitted to MMCAP within 30 days of the end of the quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31 of given year. Vendor must provide a report detailing the total credit to all Members. The report must be submitted with the check on or before the required 30 days after the end of the quarter.

In the event Vendor is delinquent in any undisputed administrative fees, MMCAP reserves the right to cancel this Contract and reject any proposal submitted by Vendor in any subsequent solicitation. In the event the contract is cancelled by either party prior to the contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

12. Customer Service.

12.1 Primary Account Representative. Vendor will assign a Primary Account Representative to MMCAP for this Contract and must provide a minimum of 72 hours advanced notice to MMCAP if that person is reassigned. The Primary Account Representative will be responsible for:

- a. Proper maintenance and management of the MMCAP Contract, including timely execution of all amendments
- b. Timely response to all MMCAP inquiries
- c. Performance of business reviews

In the event that the Primary Account Representative is unresponsive and does not meet MMCAP's needs, Vendor will assign another Primary Account Representative upon MMCAP's request.

12.2 Business Reviews. Vendor will perform at least one business review with MMCAP staff per contract year. The review will be at a time that is mutually agreeable to Vendor. It will include:

- a. Assistance on maximizing credit reimbursement potential.
- b. Tips and tricks will be implemented to improve the creditworthy products and reduce the quantity of non-creditworthy items.
- c. An annual trending business review to evaluate process outcomes related to reverse distribution.

12.3 Dispute Resolution Vendor and MMCAP will handle dispute resolution for unresolved contract eligibility issues using the following procedure:

12.3.1 Notification. The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. And if necessary, MMCAP and Vendor will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.

12.3.2 Escalation. If parties are unable to resolve the issue in a timely manner, as specified above, either MMCAP

or Vendor may escalate the resolution of the issue to a higher level of management. A meeting will be scheduled with MMCAP and Vendor's MMCAP Primary Account Representative to review the briefing document and develop a proposed resolution and plan of action. Vendor will have 30 calendar days to cure the issue.

12.3.3 *Performance while Dispute is Pending.* Notwithstanding the existence of a dispute, Vendor must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If Vendor fails to continue without delay to perform its responsibilities under the contract, in the accomplishment of all undisputed work, any additional costs incurred by MMCAP and/or Members as a result of such failure to proceed will be borne by Vendor.

12.3.4 *MMCAP Rights.* In the event MMCAP cannot resolve a dispute with Vendor, MMCAP may cancel this Contract upon 60 days' written notice to the other party.

13 Authorized Agent

MMCAP's Authorized Representative is the MMCAP Managing Director, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155.

Vendor's Authorized Agent is Timothy Fahy.

14 Assignment, Amendments, Waiver, and Contract Complete

14.1 *Assignment.* Neither Vendor nor MMCAP may assign or transfer any rights or obligations under this Contract without the prior consent of the parties and a fully executed Assignment Agreement which will not be unreasonably withheld. If Vendor assigns a Product during the term of this Contract, Vendor must provide written notice to MMCAP at least 30 days prior to the assignment.

14.2 *Amendments.* Any amendment to this Contract must be in writing and will not be effective until it has been executed by both parties. Vendor agrees to use the amendment process set forth in Article 2.7 above.

14.3 *Waiver.* If MMCAP fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.

14.4 *Contract Complete.* This Contract contains all negotiations and agreements between MMCAP and Vendor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

15. Liability

Vendor must indemnify, save, and hold MMCAP, MMCAP Participating Facilities, including their agents, and employees harmless from any claims or causes of action, including attorneys' fees incurred by MMCAP, arising out of the performance of this Contract by Vendor or Vendor's agents or employees. This clause will not be construed to bar any legal remedies Vendor may have for MMCAP's failure to fulfill its obligations under this Contract. Pursuant to the Minnesota Constitution Article XI Section 1, MMCAP is not permitted to indemnify Vendor.

16. State Audits

Minnesota Statutes Section 16C.05, subdivision 5, requires that the books, records, documents, and accounting procedures and practices of Vendor relevant to this Contract are subject to examination by MMCAP and either the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

17. Government Data Practices and Intellectual Property

17.1 *Government Data Practices.* Vendor and MMCAP must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by MMCAP under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Vendor under this Contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minnesota Statutes Chapter 13, by either Vendor or MMCAP.

If Vendor receives a request to release the data referred to in this article, Vendor must immediately notify MMCAP, and consult with the agency as to how Vendor should respond to the request. Vendor's response to the request will

comply with applicable law.

17.2. *Intellectual Property.* Vendor warrants that any materials or products provided or produced by Vendor or utilized in the performance of this Contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against MMCAP, MMCAP will promptly notify Vendor.

If such a claim of infringement has occurred, or in Vendor's opinion is likely to occur, Vendor must either procure for MMCAP the right to continue using the material or product or replace or modify materials or products. If an option satisfactory to MMCAP is not reasonably available, MMCAP will return the materials or products to Vendor, upon written request of Vendor, and at Vendor's expense.

18 Publicity, Marketing, and Endorsement

18.1 *Publicity.* Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Vendor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

18.2 *Marketing, Advertising, and Offers with Member Facilities.* Any direct advertising, marketing, or direct offers with MMCAP Participating Facilities must be approved by MMCAP. Violation of this Article may be cause for immediate cancellation of this Contract and/or MMCAP may reject any proposal submitted by Vendor in any subsequent solicitations for pharmaceutical returned goods services.

18.3 *Endorsement.* Vendor must not claim that MMCAP endorses its products or services.

19. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

20. Antitrust

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

21. Force Majeure

Neither party to this Contract will be held responsible for delay or default caused by fire, riot, war, or acts of God.

22. Severability

If any provision of the resulting Contract, including items incorporated by reference, is found to be illegal, unenforceable or void, then both MMCAP and Vendor will be relieved of all obligations arising under such provisions; if the remainder of the resulting Contract is capable of performance it will not be affected by such declaration or finding and must be fully performed.

23. Default and Remedies

Either of the following constitutes cause to declare the Contract or any order under this Contract in default:

- (a) Nonperformance of contractual requirements, or
- (b) A material breach of any term or condition of this Contract.

Written notice of default, and a reasonable opportunity to cure, must be issued by the party claiming default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages.

If the default remains after the opportunity for cure, the nondefaulting party may:

- (a) Exercise any remedy provided by law or equity; or
- (b) Terminate the Contract or any portion thereof, including any orders issued against the Contract.

24. Data Disclosure

In the event MMCAP obtains Vendor's Federal Tax Identification Number, Vendor consents to disclosure of its federal employer tax identification number to federal and State of Minnesota agencies and personnel involved in the payment of State of Minnesota obligations. These identification numbers may be used in the enforcement of federal and State of Minnesota laws that could result in action requiring Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

25. Insurance Requirements

25.1 Vendor must maintain the following insurance (or a comparable program of self-insurance) in force and effect throughout the term of the Contract.

25.2 Vendor is required to maintain and furnish satisfactory evidence of the following insurance policies (or of their program of self-insurance):

- 1. **Workers' Compensation Insurance:** Vendor will provide Workers' Compensation insurance at statutory minimums for all its employees, including Coverage B, Employer's Liability below and, in case any work is subcontracted, Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the same:

Insurance **minimum** limits are as follows:

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

- 2. **Commercial General Liability Insurance:** Vendor will maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by Vendor or by a subcontractor or by anyone directly or indirectly employed by Vendor under the Contract.

Insurance **minimum** limits are as follows:

- \$5,000,000 – per occurrence
- \$5,000,000 – annual aggregate
- \$5,000,000 – annual aggregate -- Products/Completed Operations

The following coverages must be included:

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

- 3. **Commercial Automobile Liability Insurance (If Applicable):**

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

Vendor will maintain insurance protecting it from claims for damages for bodily injury as well as from

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

Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

25.3 Additional Insurance Conditions:

- Vendor's policy(ies) must be primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of Vendor's performance under this Contract;
- If Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Vendor will notify MMCAP within 5 business days with a copy of the cancellation notice, unless Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least 30 days' advance written notice to MMCAP;
- Vendor is responsible for payment of Contract related insurance premiums and deductibles;
- If Vendor is self-insured, a Certificate of Self-Insurance must be attached;
- Vendor's policy(ies) will include legal defense fees in addition to its liability policy limits;
- Vendor will obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement Vendor's policy limits to satisfy the full policy limits required by the Contract.

25.4. MMCAP reserves the right to immediately terminate the Contract if Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against Vendor. All insurance policies must be open to inspection by MMCAP, and copies of policies must be submitted to MMCAP's authorized representative upon written request.

26. Minnesota Statutes Section 181.59. Vendor will comply with the provisions of Minnesota Statutes Section 181.59 which requires:

Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;
- (3) that a violation of this section is a misdemeanor; and
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under

the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.

27. Affirmative Action Requirements for Contracts in Excess of \$100,000 and if Vendor has More than 40 Full-time Employees in Minnesota or its Principal Place of Business

- 27.1 **Covered Contracts and Vendors.** If the contract exceeds \$100,000 and Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then Vendor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600. A Vendor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.
- 27.2 Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- 27.3 Minn. R. Parts 5000.3400-5000.3600.
- (A) General. Minn. R. Parts 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Vendor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. Parts 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
 - (B) Disabled Workers. Vendor must comply with the following affirmative action requirements for disabled workers.
 - (1) Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 - (2) Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of Vendor’s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state Vendor’s obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

- (5) Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that Vendor is bound by the terms of Minnesota Statutes Section 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (C) Consequences. The consequences for Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this contract by the Commissioner or the State.
- (D) Certification. Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. Parts 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

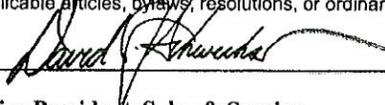
28. Employee Status

In accordance with Minn. Stat. § 16C.075, for services valued in excess of \$50,000, Vendor certifies that as of the date of services performed on behalf of the MMCAP, Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify Program for all newly hired employees in the United States who will perform work on behalf of MMCAP. Vendor is responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at: <http://www.mmd.admin.state.mn.us/doc/EVerifySubCertForm.doc>. All subcontractor certifications must be kept on file with Vendor and made available to MMCAP upon request.

29. Cancellation. MMCAP or Vendor may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. In the event of such a cancellation, Vendor will be entitled to payment, determined in a pro rata basis, for work or services satisfactorily performed or Products supplied through the Contract cancellation date.

1. EXP PHARMACEUTICAL SERVICES CORP.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: 
Title: Vice President, Sales & Service
Date: April 25, 2014

2. STATE OF MINNESOTA FOR MMCAP

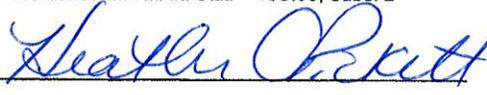
In accordance with Minn. Stat. § 16C.03, Subd. 3

By: 
Title: SPA-P
Date: 4-25-2014

3. COMMISSIONER OF ADMINISTRATION

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

By: _____
Title: _____
Date: _____

By: 
Title: _____
Date: April 25, 2014

EXP Pharmaceutical
Services Corp.
Contract MMS14015

Amendments 1-2
are not posted for
viewing

AMENDMENT NO. 3 TO MMCAP CONTRACT NO. MMS14015

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration ("State") on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy ("MMCAP") and EXP Pharmaceutical Services Corp., 48021 Warm Springs Boulevard, Fremont, CA 94539 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS14015 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment
(HP)

Effective November 24, 2014, EXP Pharmaceutical Services Corp. will become a wholly-owned subsidiary of Med-Turn, Inc., a wholly-owned subsidiary of Inmar Holdings, Inc. All rights and obligations under the Agreement will continue as currently in effect as to both State of Minnesota and EXP following the Merger. EXP's name will continue to be "EXP Pharmaceutical Services Corp."

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

1. EXP PHARMACEUTICAL SERVICES CORP.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature]
Title: CEO
Date: 12/03/14

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: Pharmacy Analyst
Date: 12-3-14

3. COMMISSIONER OF ADMINISTRATION

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

By: _____
Title: _____
Date: _____

By: [Signature]
Title: _____
Date: Dec. 03, 2014
(HP)