

**STATE OF MINNESOTA
DEPARTMENT OF ADMINISTRATION
MINNESOTA MULTISTATE CONTRACTING ALLIANCE FOR PHARMACY
PHARMACEUTICALS RETURNED GOODS SERVICES CONTRACT**

This contract is between the State of Minnesota, acting through its Commissioner of Administration on behalf of Minnesota Multistate Contracting Alliance for Pharmacy ("State" or "MMCAP") and Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741 ("Vendor").

Recitals

1. Under Minn. Stat. § 15.061 and Minn. Stat. §16C.03 the State is empowered to engage such assistance as deemed necessary.
2. MMCAP is a group purchasing organization which contracts for pharmaceuticals for its members' use. Participation in MMCAP is limited to facilities within member states that are specifically permitted by the member state's statutes to purchase goods from the member state's contracts. Participation is generally available to facilities run by state facilities, cities, townships, and counties.
3. The Vendor wishes to contract with MMCAP to supply pharmaceuticals returns services according to all applicable federal and state laws, to all current and future participating MMCAP members; and
4. The Vendor represents that it is duly qualified and agrees to perform all services described in this contract to the satisfaction of the State.

Definitions

Vendor: Guaranteed Returns, a commercial entity, engaging in the provision of reverse distribution of pharmaceuticals for purposes of obtaining monetary return to the member facility from the manufacturer of the product. Vendor also classifies any non-creditable pharmaceutical according to applicable federal, state and local pharmaceutical waste disposal rules and regulations and SOW.

MMCAP Members: All participating MMCAP member facilities regardless of the member's geographic location or practice type and any new MMCAP member facilities joining MMCAP during the contracted period.

Contract Terms & Conditions

1 Term of Contract

- 1.1 **Effective date:** November 1, 2008, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, subdivision 2, whichever is later.
The Vendor must not begin work under this contract until this contract is fully executed and the Vendor has been notified by the State to begin the work.
- 1.2 **Expiration date:** November 1, 2010, or until all obligations have been satisfactorily fulfilled, whichever occurs first with the option to extend an additional 3 years in one (1) year increments as determined solely by the State.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this contract: 9 Liability; 10 State Audits; 11 Government Data Practices and Intellectual Property; 13 Publicity and Endorsement; 14. Governing Law, Jurisdiction, and Venue; and 16 Data Disclosure.

2 Scope of Work

The Vendor, who is not a state employee, will:

Perform the tasks in the attached Scope of Work Specifications which shall hereby be incorporated into this contract ("SOW"). Performance shall start immediately upon full execution of this contract. Should the Vendor fail to commence work at the agreed upon time, MMCAP upon five (5) days written notice to the Vendor, the State reserves the right to terminate the contract.

3 Time

The Vendor must comply with all the time requirements described in this contract. In the performance of this contract, time is of the essence.

4 Consideration and Payment

4.1 Consideration.

The State will pay for all services performed by the Vendor under this contract as follows:

- (A) **Compensation.** The Vendor will be paid in accordance with the provisions contained in the SOW.
- (B) **Total Obligation.** The State has no direct compensation and reimbursements to the Vendor under this contract.
- (C) **Orders.** Purchase orders issued by MMCAP participating facilities shall constitute a binding contract with Vendor. MMCAP requires that there will be no minimum order requirements or charges to process an individual purchase order or service request unless otherwise stated in the special terms. There may be no minimum invoice.
- (D) **MMCAP Administrative Fee.** On a quarterly basis, the Vendor must return to MMCAP an administrative fee of 3% of the total actual credit returned during that quarter (not the Estimated Return Value). The fee is in consideration for assisting with the cost of administering the Contract. The administration fee will be remitted to MMCAP within thirty (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. The Vendor must provide a report detailing the total credit to all MMCAP members. The report must be submitted with the check on or before the required thirty (30) days after the end of the quarter.

- (E) **Vendor's service fee to MMCAP members.** Service fees and all prices shall be firm for the term of the contract. The service fee is an all-inclusive percent, based on actual credits received from the manufacturer and will be deducted from the lump sum credit being issued to the MMCAP member's wholesaler account as further described in the SOW, Section 13. All service fees apply to both products eligible and not eligible for credit. There will be no additional fees or charges except as set forth below and/or has further detailed in the attached SOW including but not limited to the destruction of pharmaceutical hazardous material, inventory of nonreturnable waste, paperwork, postal to manufacturers and/or to Vendors shipping to processing center, handling, destruction of controlled substance, incineration, customer service, reporting waste, waste tracking, shipping cartons, shipping to manufacturer, shipment of non returnable's back to customer, preparation and DEA Form 222 fee, DEA Form 41 fee, emergency preparedness fees, pharmaceutical hazardous waste disposal fees, fees for distributor handling charges, processing non-creditable products.

SERVICE FEES	PERCENT
OFF-SITE SERVICE FEE	5.7 %
ON-SITE SERVICE FEE	7.2 %
FREIGHT CHARGE	included in service fee
HAZARDOUS MATERIAL FEES	included in service fee
DISPOSAL FEES	see the SOW, Section 20
LICENSE FEES FOR SOFTWARE and ACCESS TO GUARANTEED RETURNS WEBSITE	included in the service fee
Shipping Fees	included in the service fee
Shipping to Manufacture Fees	included in the service fee
Emergency Preparedness Fees	included in the service fee
Special Charges for Physician Samples	included in the service fee

**Guaranteed Returns must provide reporting to MMCAP on a monthly basis of all disposal fee's billed at stockpiling disposal rates in a format and content to be conveyed by MMCAP.*

- (F) **Credit Decreases.** During the life of the contract, any or all temporary credit reductions, promotional offers, introductory credit, or any other offers or promotions that provide credit higher than or discounts lower than those stated in the contract, must be given immediately to the MMCAP participating facilities eligible to receive service from the contract. Invoices or credits for goods shipped or services performed during the decrease, or promotion, must immediately reflect such changes.
- (G) **Transportation.** All prices must be FOB Destination, prepaid and allowed (with freight included in the price), from the MMCAP participating facilities receiving dock or pharmacy unless otherwise stated in the SOW. Price reductions must be passed on immediately to MMCAP whenever they become effective.

5 Conditions of Payment

All services provided by the Vendor under this contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's authorized representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Vendor will not receive payment and/or credit for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 Authorized Representatives

The State's authorized representative is the MMCAP Manager, Materials Management Division, Department of Administration, 50 Sherburne Avenue, St. Paul, MN 55155, or his/her successor, and has the responsibility to monitor the Vendor's performance and the authority to accept the services provided under this contract.

The Vendor's authorized representative is Michael Baumann, Director of Corporate Accounts or his/her successor. If the Vendor's authorized representative changes at any time during this contract, the Vendor must immediately notify the State in writing.

7 **Administrative Personnel Changes.** The Vendor must notify MMCAP of changes in the Vendor's key administrative personnel, in advance and in writing. Any employee of the Vendor, who, in the opinion of MMCAP, is unacceptable, will be removed from the project upon written notice to the Vendor. In the event that an employee is removed pursuant to a written request from MMCAP's authorized representative, the Vendor will have ten (10) working days in which to fill the vacancy with an acceptable employee.

8 **Assignment, Amendments, Waiver, and Contract Complete**

8.1 **Assignment.** The Vendor may neither assign nor transfer any rights or obligations under this contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this contract, or their successors in office. After the effective date of the contract, the Vendor must not, without prior written approval of MMCAP, subcontract for the performance of any of the Vendor's obligations. The provisions of the contract will apply with equal force and effect to all subcontractors engaged by the Vendor and approved by MMCAP. Notwithstanding approval by MMCAP, no subcontractor must serve to terminate or in any way affect the primary legal responsibility of the Vendor for timely and satisfactory performance of the obligations contemplated by the contract. Notwithstanding the foregoing, the Vendor hereby assigns to MMCAP any and all claims for overcharges as to goods and/or services provided in connection with the contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.

8.2 **Amendments.** Any amendment to this contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original contract, or their successors in office. Either party reserves the right to request, during the term of the contract, changes to the product or services offered and/or propose adjustments. If the Vendor seeks an adjustment, evidence of the need to add products or services should be demonstrated and approved in writing by MMCAP prior to implementation. Products or services introduced during the term of the contract must go through a formal review process. MMCAP will require the Vendor to provide a summary of its research of product or service changes being recommended for inclusion in the contract as well as defining how changes will enhance the contract. MMCAP may request that product, or services other than those recommended are added to the contract. The contract will be modified via supplement or amendment. No products or services will be added to the contract without MMCAP's prior written approval.

Notwithstanding the foregoing, at any time MMCAP may make changes within the general scope of the contract by issuing a written contract amendment duly executed by an authorized representative of MMCAP and the Vendor. If any such change causes an increase or decrease in the time required for the performance of any part of the work under the contract, an adjustment must be made in the contract delivery schedule and cost, and the Vendor will be notified in writing accordingly. Any claim by the Vendor for adjustment under this clause must be asserted within 30 days from the date of receipt of the notification of change.

The Vendor is required to provide a certain level of effort in producing the analysis and documentation. MMCAP will not compensate the Vendor for changes in requirements that do not result in a corresponding change in the level of effort. MMCAP must receive credit for reductions in level of effort due to changes and will pay for increases in the level of effort.

8.3 **Waiver.** If the State fails to enforce any provision of this contract, that failure does not waive the provision or its right to enforce it.

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

9 Liability

The Vendor at its own expense must indemnify, save, and hold the State, its agents, and employees harmless against any loss, cost expense or liability (including legal fees) to the extent permitted by the Minnesota Attorney General's Office, arising out of or in connection with any actual or alleged claims resulting from the performance of this contract by the Vendor or the Vendor's agents, subcontractors, or employees; or injury or death to person(s) or property, alleged to have been caused by some defect in products or services provided under this contract, when the product has been supplied by and dispensed strictly in accordance with federal, state, and local regulations and the applicable provisions of the package insert. In the event of any such claim by any third party against the State, the State will promptly notify the Vendor. This remedy shall be in addition to any other remedy provided by law.

Pursuant to the Minnesota Constitution Article XI § 1, the State is not permitted to indemnify the Vendor.

10 State Audits

Under Minn. Stat. § 16C.05, subd. 5, the Vendor's books, records, documents, and accounting procedures and practices relevant to this contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this contract.

11 Government Data Practices and Intellectual Property

11.1. Government Data Practices

The Vendor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Vendor under this contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Vendor or the State.

If the Vendor receives a request to release the data referred to in this clause, the Vendor must immediately notify the State in writing. The State will give the Vendor instructions concerning the release of the data to the requesting party before the data is released.

11.2. Intellectual Property Rights

If applicable, the State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this contract*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Vendor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Vendor, its employees, agents, or subcontractors, in the performance of this contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Vendor upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Vendor assigns all right, title, and interest it may have in the Works and the Documents to the State. The Vendor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

(A) **Obligations**

1. *Notification.* If applicable, whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Vendor, including its employees and subcontractors, in the performance of this contract, the Vendor will immediately give the State's authorized representative written notice thereof, and must promptly furnish the authorized representative with complete information and/or disclosure thereon.

2. *Representation.* If applicable, the Vendor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Vendor nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Vendor represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 9, the Vendor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Vendor's expense, from any action or claim brought against the State to the extent that it is based out of or in connection with any actual or alleged claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Vendor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Vendor's or the State's opinion is likely to arise, the Vendor must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

12 **Insurance Requirements**

Vendor's policy (ies) will be the primary insurance to any other valid and collectible insurance available to MMCAP with respect to any claim arising out of the contract. Vendor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this contract and Vendor will provide a certificate of insurance for each type of insurance as part of this contract acceptable to MMCAP. Each policy must contain; (i) a thirty (30) day advance notice of cancellation, nonrenewal to MMCAP, or material change to all named and additional insured, (ii) include legal defense fees in addition to its liability policy limits, (iii) obtain insurance policies from an insurance company having a "AM BEST" rating of A-(minus); Financial Size Category (FSC) VII or better, (iv) validation Vendor's insurance company is authorized to do business in the State of Minnesota; (v) a statement that Vendor's insurance company waives its right to assert the immunity of MMCAP as a defense to any claims made under said insurance.

Further, Vendor shall certify that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Vendor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

Vendor is responsible for payment of all contract related insurance premiums and deductibles and Vendor shall maintain all insurance in force and effect throughout the term of the contract. The failure of MMCAP to obtain Certificates of Insurance, for the policies required under this contract or renewals thereof, will not constitute a waiver by the Vendor to provide such insurance. MMCAP will reserve the right to immediately terminate the contract if the Vendor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the Vendor.

13 **Publicity and Endorsement**

13.1 *Publicity.* Any publicity regarding the subject matter of this contract must identify the State or MMCAP as the sponsoring agency and must not be released without prior written approval from the State. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Responders/Vendor individually or jointly with

others, or any vendors, with respect to the program, publications, or services provided resulting from this contract.

13.2 **Endorsement.** The Vendor must not claim that the State or MMCAP endorses its products or services.

14 **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. Except to the extent that the provisions of this contract are clearly inconsistent therewith, this contract will be governed by the Uniform Commercial Code ("UCC") as adopted by the State of Minnesota. To the extent this contract entails delivery or performance of services, such services will be deemed "goods" within the meaning of the UCC except when to do so is unreasonable.

15 **Performance while Dispute is Pending**

Notwithstanding the existence of a dispute, except as set forth in Section 25 of this contract, the Vendor must continue without delay to carry out all of their responsibilities under the contract that are not affected by the dispute. If the 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 MMCAP members as a result of such failure to proceed must be borne by the Vendor.

16 **Data Disclosure**

Under Minn. Stat. § 270C.65, and other applicable law, the Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Vendor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

17 **Minn. Stat. § 181.59**

If applicable, the Vendor will comply with the provisions of Minn. Stat. § 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 Vendor agrees: (1) That, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no Vendor, 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 Vendor, 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.*

18 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 non defaulting 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.

19 Termination

19.1 Termination by the State. The State or Commissioner of Administration may cancel this contract at any time, with or without cause, upon thirty (30) days' written notice to the Vendor. Upon termination, the Vendor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

19.2 Termination for Insufficient Funding. The State may immediately terminate this contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Vendor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Vendor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Vendor notice of the lack of funding within a reasonable time of the State's receiving that notice.

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

20.1 Covered Contracts and Vendors. If the contract exceeds \$100,000 and the 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 the 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.

20.2 Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the 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 (Attachment 4). 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.

20.3 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.* The Vendor must comply with the following affirmative action requirements for disabled workers.
- (1) The 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. The 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) The 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 the 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) The 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 the 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) The Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the 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 the 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.* The 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.

21 Foreign Outsourcing

Vendor agrees that the disclosures and certifications made in its Location of Service Disclosure and Certification Form submitted with its proposal are true, accurate and incorporated into this contract by reference.

22 Employee Status

By order of the Governor's Executive Order 08-01, if this contract, including any extension options, is or could be in excess of \$50,000, Vendor certifies that it and its subcontractors:

1. Comply with the Immigration Reform and Control Act of 1986 (U.S.C. 1101 et. seq.) in relation to all employees performing work in the United States and do not knowingly employ persons in violation of the United States' immigrations laws; and
2. Vendor and all its subcontractors have implemented or are in the process of implementing the *E-Verify* program for all newly hired employees in the United States who will perform work on behalf of the State of Minnesota.

Vendor shall obtain certifications of compliance with this section from all Vendor subcontractors who will participate in the performance of this contract. Vendor subcontractors certifications shall be maintained by Vendor and made available to the state upon request. If Vendor or its subcontractors are not in compliance with 1 or 2 above or have not begun or implemented the *E-Verify* program for all newly hired employees performing work under the contract, the state reserves the right to determine what action it may take including but not limited to, cancelling the contract and/or suspending or debaring the Vendor from state purchasing.

23 Contingency Fees Prohibited:

Pursuant to Minn. Stat. § 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

24 Laws and Regulations:

All products proposed and furnished must comply fully with the laws in the states in which the products are sold and federal laws and regulations.

25 Force Majeure. Neither party hereto will be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

26 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 the 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.

1. GUARANTEED RETURNS

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: EVP
Date: 10-31-08

2. STATE OF MINNESOTA for MMCAP

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

By: Sara Turbow, PharmD, BCPS
Title: MMCAP Pharmacist
Date: 10-31-08

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]
Date: Oct 31, 2008

STATEMENT OF WORK ("SOW")

1. SCOPE OF WORK

Vendor will provide comprehensive alternative on and off site returned goods processing services for unusable pharmaceuticals including providing all equipment, materials and labor needed to process credit return, arrange, store/dispose of, interstate transport of pharmaceutical product (unusable, recalled, physician samples, hazardous and non-hazardous, damaged, controlled substances, and non-returnable items or returns) for proper disposal of designated pharmaceuticals to Contractor's processing facility from all requesting MMCAP member facilities for the life of the contract. These services will include:

- Providing a method for participating MMCAP member facilities to transport unusable pharmaceuticals (including controlled substances and hazardous pharmaceutical materials) to the returned goods vendor;
- Returning and/or reporting to the original manufacturer all potential creditable unusable pharmaceuticals in

accordance with the guidelines and procedures established by the DEA, and in accordance with all federal, state and local laws and applying for the appropriate credit on behalf of the MMCAP member facility;

- Documenting and reporting to each participating MMCAP member facility the amount of the credit applied for;
- Providing and maintaining a detailed process and reporting methodology for the pharmaceutical manufacturer to pay the credit to the MMCAP member facility;
- Providing and maintaining a reporting method for the participating MMCAP member facility to determine the amount of credit estimated to be received and actually received;
- 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 ; and
- Providing detailed documentation and reports to participating MMCAP members of the disposal of all hazardous pharmaceutical materials and controlled substances including but not limited to a Certificate of Destruction to the ordering MMCAP facility after product has been destroyed.
- Providing prompt responses to MMCAP and MMCAP Members inquiries pertaining to contracted manufacturers return and credit policies.

2. **REGULATORY COMPLIANCE**

The Vendor and all Vendor Subcontractors must meet the following requirements by providing removal and destruction and reverse distribution of pharmaceutical product -offsite and onsite - in accordance with all procedures and regulations established by the Drug Enforcement Administration (DEA), the Federal Drug Administration (FDA), the Environmental Protection Agency (EPA), Department of Transportation (DOT), Occupational Safety and Health Administration (OSHA) and all other Local, State and Federal regulations and the Minimum Federal Regulatory Standards (Nov. 1999 Edition) approved by the Returns Industry Association as the accepted standard of practice for reverse distributors with respect to regulatory compliance.

3. **ON-SITE REVERSE DISTRIBUTION and DESTRUCTION SERVICES**

Vendor shall provide on-site reverse distribution and destruction services to MMCAP members consisting of:

i) Vendor's on-site service representative pulling expired Pharmaceutical product from inventory under the direction of the MMCAP member's pharmacist in charge.

ii) Preparation of all required paperwork which allows for the return of unusable non-controlled products.

ii) Preparation of all required paperwork which allows for the return of unusable controlled substances and/or hazardous pharmaceutical waste products.

iii) Preparation of return shipments for shipping to the destruction facility including preparation, packaging, labeling, and sealing return shipments to the reverse distributor and manufacturer, as applicable.

iv) Itemized invoice showing 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 applicable wholesaler.

v) Online access (e.g., customer web portal such as GR-XtraNET) and tools to allow all MMCAP member facilities to monitor the credits received, fees subtracted and the monies deposited into the facility's wholesaler account. 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, estimated return value, all addresses, account number DEA and HIN number.

vi) The ability to inventory outdates prior to shipping, if requested by MMCAP or MMCAP member facilities.

vii) Provide for all required documentation of the transfer and destruction of all controlled substances. This includes a paper and electronic inventory of all CII-CV. Guaranteed Returns warrants that all of their on-site representatives have Durable Power of Attorney.

4. OFF-SITE REVERSE DISTRIBUTION AND DESTRUCTION SERVICES

Vendor shall provide off-site destruction services consisting of:

- i) On-line forms, labels, and instructions for MMCAP member facilities to prepare required paperwork which allows for the return of unusable non-controlled products.
- ii) On-line forms, labels and instructions for MMCAP member facilities to prepare required paperwork which allows for the return of unusable controlled substances and/or hazardous pharmaceutical waste products.
- iii) On-line forms, labels, and instructions regarding the shipping process so that MMCAP member facilities are able to securely package, label and ship a return shipment to the reverse distribution facility or manufacturer, if applicable.
- iv) 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.
- v) Online access (e.g., customer web portal such as GR-XtraNET) and tools to allow all MMCAP member facilities to monitor the credits received, fees subtracted and the monies deposited into the facility's wholesaler account. 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, estimated return value, all addresses, account number DEA and HIN number.
- vi) On-line ability to inventory outdates prior to shipping, if requested by MMCAP or MMCAP member facilities.
- vii) Provide for complete documentation of the transfer and destruction of all controlled substances.

5. TRANSPORT OF UNUSABLE PHARMACEUTICAL PRODUCT

Arranging for and paying all costs directly or indirectly associated with the transport of unusable pharmaceutical products to Vendor and shipping to the manufacturer. MMCAP member facilities shall pay no shipping. All shipping shall be FOB destination, pre-paid and allowed. Freight costs shall be included in the pricing set forth in this Agreement. No other freight charges or fuel surcharge will be allowed except in the case of a declared national emergency by an authorized federal or state representative and must be billed as actual and be prior approved in writing by the MMCAP office.

6. SHIPPING /PROCESSING ARRANGEMENTS

6.1 Providing the service to all MMCAP member facilities that request it. Pick-up by Vendor shall be within ten (10) business days of requested service by MMCAP member facilities. The Vendor must also agree to service any new MMCAP member facilities joining MMCAP during the contracted period.

6.2 Vendor will cross-reference each returned product with the respective manufacturers return policy to determine what is creditable/returnable and what is non-creditable/non-returnable. In addition, the Vendor will identify all "toxic" and "acute" codes for material deemed to be hazardous in accordance with 40 C.F.R. 261.33(e and f).

6.3 Vendor will provide MMCAP members with returnable and non-returnable reports and provide the certificate of destruction on-line no less than ten (10) business days from when the product was received and properly destroyed. Notwithstanding the foregoing, Vendor will also make these reports available via Vendor's GRX Extranet within the timeframe set forth in the preceding sentence.

7. LEVEL OF SERVICE

Providing the same level of service and use the same service fee structure for all participating MMCAP member facilities regardless of the member's geographic location or practice type. If a minimum service fee is required per reverse distribution service event, it shall be clearly set forth in the pricing proposal.

8. ACCEPTANCE AND PROCESSING

In accepting and processing unusable controlled substances according to all United States Drug Enforcement Administration (DEA) and/ or any other applicable state, federal, or local governmental regulatory agency, the Vendor will:

- i) Provide a DEA approved inventory form for use in transporting Schedule III – V unusable controlled substances.
- ii) Provide and use fully executed DEA Form 222 prior to legally transferring all Schedule II unusable controlled substances from the MMCAP member facility.
- iii) Inventory and reconcile all controlled substance shipments upon arrival. MMCAP member facilities will be notified in writing if any discrepancies are found, using appropriate DEA forms.

- iv) Provide a DEA approved and inspected secure storage location for the controlled substances until they are destroyed or transported to the manufacturer.
- v) Assure that nonhazardous and hazardous nonreturnable scheduled drugs are transported, destroyed, and witnessed via a DEA approved method.
- vi) Destroy all controlled substances documented on to DEA Form 41 and assure that documentation of controlled substance destruction is sent to the MMCAP member facility.

9. REGULATORY COMPLIANCE

The Vendor and all Vendor Subcontractors must meet the following requirements by providing removal and destruction and reverse distribution of pharmaceutical product offsite and onsite in accordance with all procedures and regulations established by the Drug Enforcement Administration (DEA), the Federal Drug Administration (FDA), the Environmental Protection Agency (EPA), Department of Transportation (DOT), Occupational Safety and Health Administration (OSHA) and all other local, state and federal regulations and the Minimum Federal Regulatory Standards (Nov. 1999 Edition, or as amended) approved by the Returns Industry Association as the accepted standard of practice for reverse distributors with respect to regulatory compliance.

10. LICENSES, PERMITS, REGISTRATION

10.1. The Vendor and all Vendor Subcontractors must transport and dispose of all nonreturnable unusable pharmaceuticals received in a manner meeting or exceeding all regulatory mandates of the EPA, U.S. DOT, DEA or any other applicable state, federal, or local governmental regulatory agency.

- i) The Vendor will classify non creditable unusable pharmaceuticals according to hazardous pharmaceutical waste classification set forth in on 40 C.F.R. 261.33 (e & f) and any applicable classification requirements promulgated during the term of this Agreement.
- ii) All hazardous and nonhazardous pharmaceutical materials will be transported via DOT licensed transporters only.
- iii) Disposal of hazardous and nonhazardous pharmaceutical waste will occur at EPA licensed facilities only.
- iv) The disposal of hazardous and nonhazardous pharmaceutical waste will be documented and this documentation will be provided to participating MMCAP member facilities in writing.

10.2. The Vendor and all Vendor Subcontractors must hold all required regulatory licenses, permits, registration, insurance to provide the required returns processing services for all MMCAP member facilities for the life of the contract term, and must immediately notify MMCAP in writing of any suspensions or violations thereof including but not limited to:

- i) DEA controlled substance registration and any renewals thereof (renewals to be forwarded to MMCAP member facilities for retention in the contract file).
- ii) Vendor must be an EPA licensed hazardous waste generator;
- iii) Drug distributor license in every member MMCAP state that requires such licensing for returned goods processors;
- iv) Any and all required permits and licenses for interstate transport, and storage/disposal of both hazardous and non-hazardous unserviceable pharmaceutical items or returns;
- v) Vendor's representative must be an authorized employee of the Vendor and carries a DEA-approved Power-of-Attorney authorization letter allowing for the execution of the Vendor's DEA registration;
- vi) Valid insurance coverage, including environmental remediation and listing MMCAP and its members as additional insured if awarded the contract, no later than the contract execution date of the Agreement.
- vii) On-Site representatives are bonded and insured and have a current Durable Power of Attorney allowing them to execute a DEA 222 form.

10.3. The Vendor will provide to the participating MMCAP member facility reports listing the credit value of each returnable item, the nonreturnable items discarded, and a report itemizing and verifying that all hazardous pharmaceutical waste has been disposed of according to all regulatory requirements.

10.4. The Vendor warrants to MMCAP (i) it has been providing returned goods processing services for a minimum of two years; (ii) neither the Vendor nor any employee thereof has been sanctioned by any federal, state or local governmental jurisdiction.

11. CREDIT RECONCILIATION

11.1. The Vendor must track, audit, reconcile, and assure that, for each shipment, the MMCAP member facility receives from the pharmaceutical manufacturers the full credit amounts. The first lump sum credit issued through the wholesaler is scheduled between 90 -120 days after the actual processing date. The actual processing date is the same time MMCAP members receive their inventory reports from the vendor.

11.2. The Vendor will charge the MMCAP member a service fee based on actual credits remitted by a pharmaceutical manufacturer. The Vendor will apply an adjustment to the MMCAP member any service fee based on an estimated credit the MMCAP member did not receive.

12. VENDOR INCENTIVE

The Vendor will have an incentive due to fee structure or process to maximize the amount of net credits received by MMCAP member facilities. During the life of the contract, Vendor does not get paid until the MMCAP member gets their credit.

13. MMCAP WHOLESALERS

The Vendor will be responsible for having a current working agreement with all MMCAP contracted wholesalers (currently, AmerisourceBergen, Morris-Dickson Co., and Cardinal Health) and all future wholesalers serving MMCAP members. Under these agreements the MMCAP members' wholesale accounts can be used to receive credits from the manufacturers and can be used by the vendor to charge for return services provided. These agreements also will allow the Vendor to return MMCAP members' unusable items purchased through a wholesaler to a manufacturer allowing returns of direct purchased items only. If the Vendor does not have a working agreement with a future MMCAP wholesaler, MMCAP reserves the right to add a returned goods processor that is able to serve MMCAP Members served by that wholesaler.

14. REPORTING

The Vendor will provide all detailed reports necessary to successfully manage and limit unusable pharmaceuticals. The Vendor will supply to any requesting MMCAP member facilities a summary report of the return policies of each pharmaceutical manufacture 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 policies will be communicated to the MMCAP member facilities on a monthly basis. The Vendor shall provide MMCAP on a monthly basis contract savings and usage reports in the format reflected in Attachment A to this agreement.

15. MINIMUM SHIPMENT SIZE AND NUMBER

15.1. The Vendor will not limit or restrict in any way the number or size of shipments of unusable pharmaceuticals an MMCAP member facility may submit for processing..

15.2. The Vendor will not require any MMCAP member facility to submit a minimum number of shipments of unusable pharmaceuticals within any period of time to be eligible for contracted services and fees.

16. PERSONNEL REQUIREMENTS

16.2. The Vendor will have qualified experienced personnel in positions of authority and responsibility including: (i) a department of sales/service representatives to assist with the coordination of activities necessary for the MMCAP member facilities to ship its return orders to the Vendor for processing. The Vendor will provide customer service personnel phone number (800) 472.2138 or online mechanism www.guaranteedreturns.com to request contracted services (ii) 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." The Vendor will submit resumes detailing qualifications and experience upon MMCAP's request.

16.3. Vendor must notify in advance and in writing to the MMCAP office of changes in the Vendor's key administrative personnel. For the purposes of this Agreement, experienced personnel is defined as completely knowledgeable in the areas of all current certifications and licenses throughout the life of the contract, ability to provide all required forms and authorizations for manufacturers, copies of the hazardous waste hauler's transport licenses and incineration sites' disposal permits, compliance with all federal, state and local laws and regulations , and be completely knowledgeable of all manufacturers' return policies and procedures and maintain appropriate liaisons with all manufacturers, and their representatives.

17. IMPLEMENTATION PLAN

The Vendor implementation plan, to contact, and supply MMCAP member facilities with information and supplies necessary to utilize the Vendor's service within ten (10) days of contract execution by all signatories to the Agreement shall include a contract awareness campaign that will include but not be limited to direct mailing, email notification to all current MMCAP members of new contact and service procedures, pricing schedules, shipping labels, all return forms necessary to coordinate a return, contact directory that includes name, numbers and email address of key Vendor personnel for issue questions for all return good services provided to MMCAP member facilities including; regularly scheduled service dates, on-Site/ off-Site service, emergency preparedness, credit and re-bill questions, manufacturer contract communications, new account set-up/inquiries, return goods policy changes, reporting, service guarantee, problem escalation procedures, service option, and written offer to set up a visit in order to further introduce the Vendor's programs offered.

18. SERVICE GUARANTEE

The Vendor must provide, in writing, a service guarantee that is comprehensive in scope. It must include all aspects of the Vendor's service, not simply on product, but all facets of performance. It must include specific information about the recourse to be rendered in any circumstance of unresolved problems by the MMCAP member facility or the MMCAP office. Vendor's service Guarantee is listed below:

SERVICE PROVIDED	PERFORMANCE GUARANTEE	GUARANTEED RETURNS* ACTION	CUSTOMER RECOURSE
REGULARLY SCHEDULED SERVICE DATES.	SERVICE DATES OFFERED EVERY 60 DAYS. * MORRIS DICKSON EVERY 120 DAYS.	SCHEDULE AND COORDINATE CYCLE PROCESSING WITH WHOLESALER	CONTACT ACCOUNT MANAGER IF SERVICE NEEDS ARE NOT MEET.
ON-SITE SERVICE	APPOINTMENT SCHEDULED WITHIN 10 BUSINESS DAYS OF REQUEST.	CUSTOMER SERVICE SCHEDULES AN APPOINTMENT WITHIN THIS TIME FRAME.	CONTACT ACCOUNT MANAGER IF SERVICE NEEDS ARE NOT MEET.
PROCESSING ACCURACY	WE RECORD EACH ITEM BASED ON MFG. RETURN POLICY.	ACCURACY PROVIDED MEETS THE MFG. POLICY TO MAXIMIZE CREDIT.	DISCREPANCIES WILL BE ADJUSTED IF IT AFFECTS CUSTOMER CREDIT AND IT IS REASONABLY DOCUMENTED.
REPORTING	PROVIDE ALL MANDATORY REPORTING TO MMCAP MEMBERS AND CONTRACTING OFFICE	PROVIDE RETURNABLE, NON-RETURNABLE, ACTUAL CREDIT, DISPOSAL REPORTING...	CONTACT ACCOUNT MANAGER IF SERVICE NEEDS ARE NOT MEET.
QR-XTRANET™	OUR WEB SITE WILL REFLECT ACCURATE PROCESSING AND CREDIT INFORMATION.	ONLINE REPORTING AND CREDIT TRACKING TOOL MAINTAINED BY OUR IT DEPARTMENT.	CONTACT ACCOUNT MANAGER IF SERVICE NEEDS ARE NOT MEET.
BILL PROCESSING FEE THROUGH WHOLESALER.	OFFER ESTABLISHED PROGRAMS WITH ALL CONTRACTED WHOLESALERS.	BUILD AND MAINTAIN WORKING RELATIONSHIPS WITH ALL CONTRACTED WHOLESALERS.	CONTACT ACCOUNT MANAGER IF SERVICE NEEDS ARE NOT MEET.
ACCOUNT SUMMARY (MONTHLY)	MONTHLY MEETING WILL ENSURE WE ARE PROVIDING THE EXPECTED LEVEL OF SERVICE.	SHARE CUSTOMER FEEDBACK AND QUESTIONS WITH MMCAP.	
ACCOUNT REVIEW (QUARTERLY)	QUARTERLY MEETINGS WILL IDENTIFY POTENTIAL AREAS OF IMPROVEMENT FOR MEMBERS.	GENERATE AND REVIEW REPORTS ON A QUARTERLY BASIS WITH MMCAP.	

*account summary and account reviews will be held with MMCAP

20. DISPOSAL & STOCKPILING DISPOSAL

Vendor shall provide creditable and non-creditable DEA and EPA approved disposal for all pharmaceuticals, over the counter and health and beauty product (including stockpiled in a cache for emergency preparedness purposes), non-creditable schedule merchandise CII-CV's and non -schedule items both hazardous and/or non-hazardous.

20.1 Vendor shall receive and inspect MMCAP facility product to determine if product is waste and will be solely responsible for ensuring the waste (creditable and non-creditable) is manifested for transportation to the incinerator under the Medical Waste Tracking Act. Volume transportation discounts shall be discussed with each MMCAP member facility.

20.2. If the product is creditable product (returnable to the manufacturer) then only the standard processing fee as set forth in Section 4.1(E) applies, The following is a breakdown of fees for **non creditable** product(not returnable to the manufacturer) that exceeds 6.5% of the service fee described in Section 4.1.(E). There will be no additional fees, except as outlined below.

DISPOSAL SERVICE DESCRIPTION	RATE
Waste tracking fee	included
Disposal with inventory (non-hazardous, non-scheduled)	\$0.75 per pound
Disposal without inventory (non-hazardous, no scheduled)	\$0.49 per pound
Disposal of hazardous materials	\$3.95 per pound
Disposal of scheduled CII-CV	\$1.25 per pound
Executed DEA 222 Forms	\$5.00 per form
UPS A.R.S. shipping labels	\$09.85 per label
Shipping per pallet (based on 500lbs)	\$400 per pallet*

** actual cost for shipment(estimate \$400)*

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Attachment A

Monthly Savings and Usage Report - Fixed Length Fields

Field Name	Data Type	Format (note decimals are to be included)	Size	Nulls	Begin Column	End Column
Required Data Field Full Name						
MMCAP-assigned facility ID	Alpha Numeric		7	1	1	7
MMCAP Facility Name	Alpha Numeric		30	1	8	37
Vendor Distribution Center Code	Alpha Numeric		3	1	38	40
Vendor-assigned Account number for the MMCAP Facility	Alpha Numeric		10	1	41	50
Invoice Number	Alpha Numeric		15	1	51	65
Invoice Line Number	Alpha Numeric		4	1	66	69
Purchase Order Number	Alpha Numeric		15	1	70	84
Invoice date (mmddccyy)	numeric	mmddccyy	8	1	85	92
Buyer name or equivalent of buyer ID for person submitting the invoices	Alpha Numeric		20	1	93	112
Vendor's (distributor) SKU item number	Alpha Numeric		13	1	113	125
NDC of purchased product in 5-4-2 format as stored in First DataBank, Inc.	numeric	999999999	11	1	126	136
Label Name	Alpha Numeric		40	1	137	176
Unit Dose	numeric	9	1	1	177	177
Pack Size	numeric	99999.999	9	1	178	186
Unit	Alpha Numeric		2	1	187	188
Case Size	numeric	9999	4	1	189	192
Dose	Alpha Numeric		10	1	193	202
Strength	Alpha Numeric		10	1	203	212
Route	Alpha Numeric		10	1	213	222
Unit Price (99999.9999)	numeric	99999.9999	10	1	223	232
Quantity ordered (not Vendor repackaged or re-bundled quantity)(99999.9999)	numeric	99999.9999	11	1	233	243
Quantity shipped (not Vendor repackaged or re-bundled quantity)(99999.9999)	numeric	99999.9999	11	1	244	254
Extension (unit price multiplied by the quantity shipped) EXTENDED PRICE (9999999.999)	numeric	9999999.999	13	1	255	267
Type of transaction (MMCAP contract purchase, other contract purchase (340B, PHS), not on contract purchase) 1=contract item, 2=other contract, 3=not on contract						
Bill to Address 1	Alpha Numeric		1	1	268	268
Bill to City	Alpha Numeric		30	1	269	298
Bill to State (2 alpha postal code)	Alpha Numeric		20	1	299	318
Ship to Address 1	Alpha Numeric		2	1	319	320
Ship to City	Alpha Numeric		9	1	321	329
Ship to State (2 alpha postal code)	Alpha Numeric		30	1	330	359
Ship to Zip (standard 5-4 format, no dash necessary)	Alpha Numeric		20	1	360	379
Service Fee (9999.9999)	Alpha Numeric		9	1	380	381
MMCAP Contract Number (MMSxxxx)	numeric	9999.9999	9	1	391	399
Admin fee for not-on-contract items (9999.9999)	Alpha Numeric		10	1	400	409
Credit Indicator (C for credit)	Alpha Numeric		9	1	410	418
MMCAP Assigned Wholesaler Code (AmeriSource-Bergen=0401, Cardinal Health=0301, Morris-Dickson=0701, Bergen=0201)	Alpha Numeric		1	1	419	419
Manufacturer Name (MFG Name)	Alpha Numeric		4	0	420	423
Class of Trade	Alpha Numeric		40	1	424	463
340b Purchase	Alpha Numeric		4	1	464	467
	Alpha Numeric		1	1	468	468

**AMENDMENT NO. 1 TO MMCAP CONTRACT NO. MMS28015,
State of California Agreement NO.1-08-65-54-A**

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 **Guaranteed Returns**, 100 Colin Drive, Holbrook, NY 11741 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015. The Original Contract is being amended to include terms and conditions required by the State of California in order to participate in the contract. MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment

The following terms and conditions are added to the Original Contract and are applicable only to the provision of pharmaceuticals returns services to facilities within the State of California:

1.0 INTRODUCTION

This amendment is required pursuant to the Agreement of Understanding and Joint Powers Agreement, California Agreement No. 1-08-65-54, between the State of California and MMCAP. This Amendment confirms the mutual understanding of the State of California, Department of General Services (DGS), acting on behalf of the State of California, and Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741, and the of Minnesota, Department of Administration, MMCAP, located at 50 Sherburne Avenue, room 112, St. Paul, MN 55155.

It is the intent of this Amendment to incorporate the laws of the State of California into MMCAP Returned Good Services Contract, Contract No. MMS28015.

2.0 DEFINITIONS

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

Term	Definition
AMS	Acquisition Management Specialist with MMCAP
Calendar Quarters	The quarters to be used for calculating the Calendar Quarters of this Agreement will be those ending on March 31, June 30, September 30, and December 31 of each calendar year during the term of this Agreement.
Contract Administrator	The State's authorized contracting official designated to manage this contract or agreement. Contract Administrator shall be synonymous with "Buyer."
DGS Administrative Fee	An amount equal to one percent (0.01) of the value of the total actual credit returned (not the Estimated Return Value) for the quarterly period assessed on all product returned through this Agreement by State or Local Governmental Agencies. The DGS Administrative Fee covers the DGS cost of doing business.
Eligible Entities	State and Local Governmental Agencies completing the

	MMCAP California Facility Membership Application and Facility Membership Agreement, Attachment A of the Agreement of Understanding and Joint Powers Agreement, California Agreement No. 1-08-65-54; and approved by the DGS.
Local Governmental Agency	A city, county, city and county, district, or other local governmental body or corporation, including the California State Universities (CSU) and University of California (UC) systems, K-12 schools and community colleges, empowered to expend public funds (California Public Contract Code 10298).
Master Agreement	MMCAP Pharmaceutical Returned Goods Services Contract No. MMS28015.
MMCAP Participating Facility	The definition of MMCAP Participating Facility in Contract No. MMS28015 is augmented with the following: Any State or Local Governmental Agency which competes the MMCAP California Facility Membership Application, Attachment A to the Agreement of Understanding and Joint Powers Agreement, between the State of California and MMCAP, Agreement No. 1-08-65-54, and approved by the DGS and MMCAP.
State Agency	The California State Departments of Corrections and Rehabilitations (CDCR), Mental Health (DMH), Developmental Services (DDS) and other State Agencies under the DGS authority.

3.0 TERMS AND CONDITIONS

3.1 CONTRACT TERMS & CONDITIONS

- 3.1.1 This Contract is non-mandatory for State and Local Governmental Agencies.
- 3.1.2 This Contract has no guarantee of contract expenditure.
- 3.1.3 Participating State and Local Governmental Agencies reserve the right to purchase pharmaceutical returned goods and destructions services available through the Master Agreement from other sources.
- 3.1.4 The DGS may contract on behalf of State and Local Governmental Agencies for pharmaceutical returned goods and pharmaceutical services available through the Master Agreement.
- 3.1.5 The California General Provisions section 4.0 of this amendment shall prevail if there is a conflict between the terms and conditions of the Master Agreement.
- 3.1.6 Invoices shall include the Agreement Number and shall be submitted in triplicate not more frequently than monthly in arrears to the contact designated by the State or Local Governmental Agency.
- 3.1.7 The DGS may terminate this Agreement at any time upon 30 days' prior written notice. Upon termination or other expiration of this contract, each party will assist the other party in orderly termination of the contract and transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party. This provision shall not relieve the contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.
- 3.1.8 At the State's sole option, the DGS reserves the right to invoke negotiations pursuant to

California Public Contract Code Section 6611, in accordance with existing guidelines and procedures adopted by the DGS.

3.2 CONTRACT ADMINISTRATION

Any notice required to be given pursuant to the terms and provision of this Agreement will be in writing and will be sent by certified mail, return receipt requested to:

Guaranteed Returns

Michael R. Baumann
Director of Corporate Accounts
Guaranteed Returns
100 Colin Drive
Holbrook, NY 11741
Contact PHONE (800) 473-2138 Ext 172
mbaumann@guaranteedreturns.com

State of California

Gregory B. Doe, Pharm.D.
Pharmaceutical Program Consultant
Department of General Services
707 3rd Street, 2nd Floor, Cube 02-208
West Sacramento, CA 95605-2811
(916) 375-4533
Greg.Doe@dgs.ca.gov

State of Minnesota, MMCAP Program

Heather C. Pickett
Acting Manager
MMCAP
50 Sherburne Avenue, Suite 112
St. Paul, MN 55155
(651) 201-2412
Heather.Pickett@state.mn.us

3.3 PURCHASE EXECUTION

This section augments the Ordering Instructions from Contract Release M-487(5).

3.3.1 State departments must use the Purchasing Authority Purchase Order (Std. 65). An electronic version of the Std. 65 is available at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms). All Purchasing Authority Purchase Orders (Std. 65) must contain the following:

- Agency Order Number (Purchase Order Number)
- Ordering Agency Name
- Agency Billing Code
- Purchasing Authority Number
- Leveraged Procurement Number (Contract Number)
- Supplier Information (Contact Name, Address, Phone Number, Fax Number, E-mail)

- Line Item number

- Quantity
- Unit of Measure
- Commodity Code Number
- Product Description
- Unit Price
- Extension Price

3.3.2 Local Governmental Agencies may use their own purchase document. The purchase documents must include the same data elements as listed above (Exception: Purchasing Authority Number is used by state departments only). Guaranteed Returns will not accept purchase documents from local agencies without a state issued billing code.

3.4 PARTICIPATING FACILITIES MEMBERSHIP PROCESS

The DGS will notify the MMCAP Office of facilities wishing to participate in the Master Agreement by providing them with a DGS executed MMCAP California Facility Membership Application. The MMCAP Office will approve these applications, provide the MMCAP Participating Facility ID Number to the DGS and advise Guaranteed Returns of the MMCAP Participating Facilities. The DGS and the MMCAP will maintain and reconcile a list of participating facilities. Guaranteed Returns and MMCAP shall refer any contacts for facilities not approved by the DGS to California Contract Administrator.

3.5 PROBLEM RESOLUTION

Participating Facilities shall inform the California's Contract Administrator of any technical or contractual difficulties encountered during contract performance in a timely manner. This includes and is not limited to informal disputes, supplier performance, outstanding deliveries, etc.

3.6 REPORTS & ADMINISTRATIVE FEES

Guaranteed Returns shall submit a report to the California Contract Administrator and MMCAP for all California purchases, returns or destructions by State and Local Governmental Agencies providing the following information:

- Agency Name
- Purchase Order Number
- Purchase Order Date
- Total Purchase Order Amount
- The DGS Administrative Fee Dollar Amount
- Agency contract Name
- Agency Address
- Agency Telephone Number
- Total Dollars for the quarter

Guaranteed Returns shall submit a check, in addition to the report, payable to the State of California for the calculated DGS Administrative Fee for an amount equal to one percent (0.01) of the total actual credit returned during the quarterly period (not the Estimated Return Value). Guaranteed Returns shall begin reporting the DGS Administrative Fee for Calendar Quarter beginning January 1, 2009. This fee shall be paid to the DGS and deducted from the lump sum credit being issued to the State or Local Governmental Agency. The DGS Administrative Fee shall not be invoiced or charged separately to the State or Local Governmental Agencies participating in this Agreement.

A report is due even when there is no activity. Any report that does not follow the required format or that excludes information will be deemed incomplete. Failure to submit reports and fees on a timely basis shall constitute grounds for suspension of this agreement. Reports and fee delivery will be in accordance with the following schedule.

Calendar Quarter 1 (JAN 1 to MAR 31) **Due APR 30**
Calendar Quarter 2 (APR 1 to JUN 30) **Due JUL 31**
Calendar Quarter 3 (JUL 1 to SEP 30) **Due OCT 31**
Calendar Quarter 4 (OCT 1 to DEC 31) **Due JAN 31**

Payment of the DGS Administrative Fee by Guaranteed Returns shall be made to the DGS irrespective of payments on orders by each Participating Entity to Guaranteed Returns.

The Administrative fee check and report shall be submitted to the California Contract Administrator.

ADDITIONAL REPORTS - Guaranteed Returns shall submit reports required in the format as may be requested by the DGS and agreed to by Guaranteed Returns. Guaranteed Returns shall make all reporting identified in Contract No. MMS28015 available to the DGS for all State and Local Governmental Agencies participating from under this amendment.

3.7 AGENCY ELIGIBILITY

The MMCAP shall approve the MMCAP California Facility Membership Applications received from the DGS and provides the DGS with the MMCAP Participating Facility ID Number.

3.8 LICENSING

Guaranteed Returns shall provide, keep and maintain DEA registration and California State Board of Pharmacy licensure.

3.9 CALIFORNIA CODE

Guaranteed Returns must comply with:

- The California Division of Occupational Safety and Health (Cal/OSHA) regulations
- The California Environmental Protection Agency (Cal/EPA) regulations
- The California Vehicle Code

3.10 EFFECTIVE DATES

This Amendment shall be effective upon approval by the DGS and will continue until the Termination Date of the MMCAP Pharmaceuticals Returned Goods Services Contract, Contract No. MMS28015, unless terminated early in accordance with the terms and conditions of the Master Agreement or this Amendment. Guaranteed Returns may not commence performance until such approval has been obtained.

3.9 STATE OF CALIFORNIA GENERAL PROVISIONS –NON-IT COMMODITIES

The following State of California Standard Terms and Conditions are hereby included into the agreement and are applicable only to products and services provided to the State of California:

1. DEFINITIONS: The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a) **“Business entity”** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- b) **“Buyer”** means the State’s authorized contracting official.
- c) **“Contract”** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- d) **“Contractor”** means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with “supplier”, “vendor” or other similar term.
- e) **“Goods”** (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
- f) **“State”** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.

2. CONTRACT FORMATION: General Provision No. 2 is hereby deleted.

- ~~a) If this contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then contractor’s bid is a firm offer to the State which is accepted by the issuance of this contract and no further action is required by either party.~~
- ~~b) If this contract results from a solicitation other than described in paragraph a), above, contractor’s quotation or proposal is deemed a firm offer and this contract document is the State’s acceptance of that offer.~~
- ~~e) If this contract resulted from a joint bid, it shall be deemed one indivisible contract. Each such joint contractor will be jointly and severally liable for the performance of the entire contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint contractors.~~

3. COMPLETE INTEGRATION: General Provisions No. 3 augments Section 8.4, “Contract Complete,” of MMCAP Agreement No. MMS28015. This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

4. SEVERABILITY: General Provision No. 4 augments Section 26, “Severability,” of MMCAP Agreement No. MMS28015. The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR: Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. APPLICABLE LAW: General Provision No. 6 augments Section 14, “Governing Law, Jurisdiction, and Venue” of MMCAP Agreement No. MMS28015. This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.

7. COMPLIANCE WITH STATUTES AND REGULATIONS:

- a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor’s violation of this provision.
- b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).

8. CONTRACTOR'S POWER AND AUTHORITY: The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.

The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and

Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

9. ASSIGNMENT: General Provision No. 9 is hereby deleted. Refer to Section 8.1, "Assignment," of MMCAP Agreement No. MMS28015.

~~This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.~~

10. WAIVER OF RIGHTS: General Provision No. 3 augments Section 8.3, "Waiver" of MMCAP Agreement No. MMS28015. Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. ORDER OF PRECEDENCE: In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) these General Provisions – Non-IT Commodities;
- b) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
- c) statement of work, including any specifications incorporated by reference herein;
- d) special terms and conditions; and
- e) all other attachments incorporated in the contract by reference.

12. PACKING AND SHIPMENT: General Provision No. 12 is hereby deleted.

- a) ~~All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:~~
 - i) ~~Show the number of the container and the total number of containers in the shipment; and~~
 - ii) ~~The number of the container in which the packing sheet has been enclosed.~~
- b) ~~All shipments by contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.~~
- e) ~~Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.~~

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES: No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.

a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.

General Provision No. 13 parts b and c are hereby deleted.

~~b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.~~

~~e) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.~~

14. TIME IS OF THE ESSENCE: **General Provision No. 14 is hereby deleted. Refer to Section 3, "Time" of MMCAP Agreement No. MMS28015.** Time is of the essence in this contract.

15. DELIVERY: **General Provision No. 15 is hereby deleted.** Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.

16. SUBSTITUTIONS: **General Provision No. 16 is hereby deleted.** Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.

17. INSPECTION, ACCEPTANCE AND REJECTION:

a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.

b) All goods may be subject to inspection and test by the State or its authorized representatives.

c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.

d) All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.

e) The State shall give written notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days, unless otherwise specified in the Statement of Work, of delivery, such

goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

18. SAMPLES: General Provision No. 18 is hereby deleted

~~a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the contract.~~

~~b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.~~

19. WARRANTY: Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.

b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.

20. SAFETY AND ACCIDENT PREVENTION: In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.

21. INSURANCE: General Provision No. 21 augments Section 12, "Insurance Requirements" of MMCAP Agreement No. MMS28015.

General Provisions Applying to All Policies

- a. Coverage Term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply to the original terms of the contract.
- b. Policy Cancellation or Termination & Notice of Non-Renewal – Insurance policies shall contain a provision stating coverage will not be cancelled without 30 days prior written notice to the State. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- c. Deductible – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.
- d. Primary Clause – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.

- e. Insurance Carrier Required Rating – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor is self insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- f. Endorsements – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- g. Inadequate Insurance – Inadequate or lack of insurance does not negate the contractor's obligations under the contract.

Insurance Requirements

- a. Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$5,000,000 per occurrence for bodily injury and property damage liability combined with a \$2,000,000 annual policy aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:

The State of California, its officers, agents, employees and servants as additional insureds, but only with respect to work performed under the contract. This **endorsement** must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of Contractor.

- b. Automobile Liability – Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.
- c. Workers Compensation and Employers Liability – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of \$1,000,000 are required.

22. TERMINATION FOR NON-APPROPRIATION OF FUNDS: General Provision No. 22 augments Section 19.2, "Termination for Insufficient Funding" of MMCAP Agreement No. MMS28015.

a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.

b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

23. TERMINATION FOR THE CONVENIENCE OF THE STATE: General Provision No. 23 augments Section 19.1, "Termination by the State" of MMCAP Agreement No. MMS28015.

a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.

b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

- i) Stop work as specified in the Notice of Termination.
- ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- iii) Terminate all subcontracts to the extent they relate to the work terminated.
- iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.

24. TERMINATION FOR DEFAULT:

a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

- i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
- ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
- iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).

b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.

c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.

d) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:

- i) Completed goods, and
- ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.

- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

25. FORCE MAJEURE: General Provision No. 25 is hereby deleted, Refer to MMCAP Contract No. MMS28015, Section 25, "Force Majeure."

~~Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:~~

- ~~a) Acts of God or of the public enemy, and~~
- ~~b) Acts of the federal or state government in either its sovereign or contractual capacity.~~

~~If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform.~~

26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT: General Provision No. 18 augments Section 14, "Default and Remedies" of MMCAP Agreement No. MMS28015.

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

28. INDEMNIFICATION: General Provision No. 28 augments Section 9, "Liability" of MMCAP Agreement No. MMS28015.

Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

29. INVOICES: Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE: Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. TAXES: Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

32. NEWLY MANUFACTURED GOODS: All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

33. CONTRACT MODIFICATION: General Provision No. 33 augments Section 8.2, "Amendments" of MMCAP Agreement No. 432344. No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

34. CONFIDENTIALITY OF DATA: All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

35. NEWS RELEASES: General Provision No. 25 augments Section 13.1, "Publicity" of MMCAP Agreement No. MMS28015. Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

36. PATENT, COPYRIGHT and TRADE SECRET INDEMNITY: General Provision No. 36 augments Section 11.2, "Intellectual Property Indemnification" of MMCAP Agreement No. MMS28015.

a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted

composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.

b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.

c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,

ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.

d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The contractor agrees to take back such goods or software and refund any sums the State has paid contractor less any reasonable amount for use or damage.

e) The contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the contractor; or,

ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or

iii) The modification by the State of the equipment furnished hereunder or of the software; or

iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.

f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

g) The foregoing states the entire liability of the contractor to the State with respect to infringement of patents, copyrights or trade secrets.

37. EXAMINATION AND AUDIT: General Provision No. 37 augments Section 10, "State Audits" of MMCAP Agreement No. MMS28015. Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

38. DISPUTES:

a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, contractor shall submit to the Department Director or designee a written demand for a final decision regarding the

disposition of any dispute between the parties arising under, related to or involving this contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the contract, contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which contractor believes the State is liable. If the contractor is not satisfied with the decision of the Department Director or designee, the contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and contractor personnel.

b) Pending the final resolution of any dispute arising under, related to or involving this contract, contractor agrees to diligently proceed with the performance of this contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure to diligently proceed in accordance with the State's instructions shall be considered a material breach of this contract.

c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of contractor's demand, it shall be deemed a final decision adverse to contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

39. STOP WORK:

a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

i) Cancel the Stop Work Order; or

ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:

i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and

ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the contractor for loss of profits because of a Stop Work Order issued under this clause.

40. PRIORITY HIRING CONSIDERATIONS: If this contract includes services in excess of \$200,000, the contractor shall give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

41. COVENANT AGAINST GRATUITIES: The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

42. NONDISCRIMINATION CLAUSE:

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

43. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

44. ASSIGNMENT OF ANTITRUST ACTIONS: Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) ~~In submitting a bid to the State,~~ the supplier offers and agrees ~~that if the bid is accepted,~~ it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- i) the assignee has not been injured thereby, or
 - ii) the assignee declines to file a court action for the cause of action.

45. DRUG-FREE WORKPLACE CERTIFICATION: The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) the dangers of drug abuse in the workplace;
 - ii) the person's or organization's policy of maintaining a drug-free workplace;
 - iii) any available counseling, rehabilitation and employee assistance programs; and,
 - iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) will receive a copy of the company's drug-free policy statement; and,
 - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

46. FOUR-DIGIT DATE COMPLIANCE: Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

47. SWEATFREE CODE OF CONDUCT:

- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweat-free Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

48. RECYCLING: ~~General Provision No. 48 is hereby deleted. The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).~~

49. CHILD SUPPORT COMPLIANCE ACT: For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:

- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to,

disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

50. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).

51. ELECTRONIC WASTE RECYCLING ACT OF 2003: General Provision No. 51 is hereby deleted. ~~The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.~~

52. USE TAX COLLECTION: In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

53. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.

54. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code section 10295.3.

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. Guaranteed Returns

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: EVP
Date: 12-22-08

By: [Signature]
Title: Pres.
Date: 12/22/08

2. State of California

Approved as to content and agrees to be bound hereby:

By: [Signature]
Title: Pharmaceutical Program Consultant
Date: 12/18/2008

3. State of Minnesota, MMCAP Program

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

By: [Signature], PharmD, BCPS
Title: MMCAP Pharmacist
Date: 12-24-08

4. Commissioner of Administration

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

By: [Signature]
Date: Dec. 24, 2008

AMENDMENT NO. 2 TO MMCAP CONTRACT NO. MMS28015

State of California Agreement NO.1-08-65-54-A

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 Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015. Section 3.2 CONTRACT Administration of the Original Contract is being amended to change the contact information for Guaranteed Returns and the State of California.

Contract Amendment

The following terms and conditions are added to the Original Contract and are applicable only to the provision of pharmaceuticals returns services to facilities within the State of California:

3.2 CONTRACT ADMINISTRATION

Any notice required to be given pursuant to the terms and provision of this Agreement will be in writing and will be sent by certified mail, return receipt requested to:

Table with 3 columns: Guaranteed Returns, State of California, State of Minnesota, MMCAP Program. Rows include contact names, titles, addresses, phone numbers, and email addresses for Jonathan Genovese, Rhonda Kitchen, and Heather C. Pickett.

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. Guaranteed Returns

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: EVP
Date: 8-5-09

2. State of California

Approved as to content and agrees to be bound hereby:

By: [Signature]
Title: DPC
Date: 7-31-2009

3. State of Minnesota, MMCAP Program

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

By: [Signature]
Title: National Accounts Mgr
Date: 8-5-09

By: Sara Turnbull, PharmD, BCPS
Title: Pharmacist
Date: 8-12-09

4. Commissioner of Administration

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

By: Heather Pickett
Date: Aug 12, 2009

AMENDMENT NO. 3 TO MMCAP CONTRACT NO. MMS28015

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 Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741-4308 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment (1322JV)

Effective March 31, 2010, the table outlined in the Statement of Work (SOW) Section 20.2 of the Original Contract is deleted in its entirety and replaced with the following table.

Service Description	Rate
Waste tracking fee	Included
Disposal without inventory (non-hazardous, non-scheduled)	\$0.49 per pound
Disposal with inventory (non-hazardous, non-scheduled)	\$0.75 per pound
Disposal of Regulated (non-hazardous, non-scheduled)	\$2.45 per pound
Disposal of Hazardous Materials	\$3.95 per pound
Disposal of Scheduled CII-CV	\$1.25 per pound
Executed DEA 222 Forms	\$5.00 per pound
UPS A.R.S. Shipping Labels	\$9.85 per pound
Shipping per Pallet (Based on 500lb.)	\$400 per pallet (estimate)*

* Contact Guaranteed Returns to schedule a pick up and receive actual shipping costs.

Except as herein amended, the provisions of the Original Contract between the parties hereto are expressly and effect.

1. GUARANTEED RETURNS

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: EVP
Date: 3-31-10

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: AMS
Date: 3-31-2010

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]
Title: National Account Mgr
Date: 3-31-10

By: [Signature]
Title: AMS
Date: Mar 31, 2010

AMENDMENT NO. 4 TO MMCAP CONTRACT NO. MMS28015

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 Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741-4308 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment
(ST)

Revision: Article 1.2 is amended to read: **1.2 Expiration date:** October 31, 2011, or until all obligations have been satisfactorily fulfilled, whichever occurs first, with the option to extend an additional 2 years in one (1) year increments as determined solely by the State.

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. GUARANTEED RETURNS

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: EVP
Date: 9-23-10

2. STATE OF MINNESOTA FOR MMCAP

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

By: Sara Turnbow, PharmD, BCPS
Title: Pharmacist Sr.
Date: 9-28-10

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]
Title: EVP
Date: 9/27/10

By: [Signature]
Title: ASO
Date: Sept. 28, 2010

**Guaranteed Returns
MMS28015
Amendment 5
is not posted for
viewing**

AMENDMENT NO. 6 TO MMCAP CONTRACT NO. MMS28015

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 Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741-4308 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment
(LM)

Revision: Article 1.2 of the Original Contract is amended to read: **1.2 Expiration date:** October 31, 2012, or until all obligations have been satisfactorily fulfilled, whichever occurs first, with the option to extend an additional one (1) year as determined solely by the State.

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. GUARANTEED RETURNS

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: EVP
Date: 9-22-11

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: Pharmacy Analyst
Date: 9-22-11

3. COMMISSIONER OF ADMINISTRATION

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

By: [Signature]
Title: Pres.
Date: 9/22/11

By: [Signature]
Title: _____
Date: Sept. 23, 2011

AMENDMENT NO. 7 TO MMCAP CONTRACT NO. MMS28015

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 Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741-4308 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

Contract Amendment
(HP)

Effective when signed, Article 4.1 (D) of the Original Contract is deleted in its entirety and replaced with:

(D) **MMCAP Administrative Fee.** On a bimonthly basis, the Vendor must return to MMCAP an administrative fee of 3% of the credit returned during those two months (not the Estimated Return Value). The fee is in consideration for assisting with the cost of administering the Contract. The administrative fee will be remitted to MMCAP within 30 days of the end of the following periods:

- January 1 – February 28
- March 1 – April 30
- May 1 – June 30
- July 1 – August 31
- September 1 – October 31
- November 1 – December 31

Payments must be sent to MMCAP, 50 Sherburne Avenue, Suite 112, St. Paul, MN 55155. The vendor must provide a report detailing the total credit to all MMCAP Members. The report must be submitted by the payment due date and sent to mn.mmcap@state.mn.us.

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. GUARANTEED RETURNS

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: EVP
Date: 5-3-12

2. STATE OF MINNESOTA FOR MMCAP

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

By: [Signature]
Title: Pharmacy Analyst
Date: 05-3-12

3. COMMISSIONER OF ADMINISTRATION

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

* By: [Signature]
Title: Pres.
Date: 5/3/12

By: [Signature]
Title: Pharmacist Sr.
Date: 5-3-12

AMENDMENT NO. 8 TO MMCAP CONTRACT NO. MMS28015

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 Guaranteed Returns, 100 Colin Drive, Holbrook, NY 11741-4308 ("Vendor").

MMCAP has a contract with the Vendor identified as Contract No. MMS28015 (Original Contract). MMCAP and the Vendor are willing to amend the Original Contract as stated below.

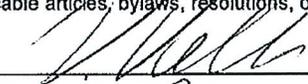
Contract Amendment
(LM)

Revision: Article 1.2 of the Original Contract is amended to read: **1.2 Expiration date:** November 1, 2013, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

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. GUARANTEED RETURNS

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: EVP
Date: 7-20-2012

2. STATE OF MINNESOTA FOR MMCAP

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

By: 
Title: Pharmacy Analyst
Date: 07-26-12

3. COMMISSIONER OF ADMINISTRATION

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

By: 
Title: President
Date: 7/20/12

By: 
Title: Pharmacist Senior
Date: July 26, 2012