



MEMBER-REQUESTED PARTICIPATION AGREEMENT

This Member-requested Participation Agreement (MPA) is by and between:

**HENRY SCHEIN MEDICAL A DIVISION OF HENRY SCHEIN INC.
(VENDOR), and**

**STATE OF FLORIDA
ACTING THROUGH THE DEPARTMENT OF MANAGEMENT SERVICES,
DIVISION OF STATE PURCHASING (FLORIDA DMS)**

and amends the Agreement between MMCAP and Vendor to include the terms set forth herein.

Term: The terms of this MPA are entered into by and between Vendor and the State of Florida. Neither the Minnesota Multistate Contracting Alliance for Pharmacy (“MMCAP”) nor the State of Minnesota are bound by the terms herein. MMCAP and the State of Minnesota, as a party to the Original Contract, execute this MPA only to signify its approval of the content of this MPA. This MPA supersedes and replaces all previously signed MPA’s between the Parties. In the event of a conflict between this MPA and any previously-signed MPA’s between the Parties, this MPA shall control.

This MPA is effective upon final signature (Florida Contract Number 42000000-18-ACS) and commences October 23, 2018 or earlier if agreed upon between the State of Florida and Henry Schein Medical a division of Henry Schein Inc. (MMS18016) or by any party upon 30 days’ written notice to the other parties to this MPA listed below, and expires on June 25, 2020, unless the applicable annual extensions are executed.

Scope: Florida DMS, desires to access the MMCAP agreement for medical supply distribution services with Henry Schein Medical a division of Henry Schein Inc. (MMS18016), which is incorporated into this MPA by reference.

Contacts and Notice:

Florida DMS:

Jeffrey Dykes
Florida Department of Management Services
Contract Manager Supervisor
State Purchasing
850-414-6131
Email: Jeffrey.Dykes@dms.myflorida.com

Jennifer Reed
Florida Department of Management Services
Contract Manager Supervisor
State Purchasing
850-488-8366
Email: Jennifer.Reed@dms.myflorida.com

MMCAP:

MMCAP Managing Director
State of Minnesota, MMCAP Program
50 Sherburne Avenue, Suite 112
St. Paul, MN 55155
651-201-2420



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Henry Schein Medical a division of Henry Schein Inc.:

Andy Oterson

240-409-6125

Email: andy.oterson@henryschein.com

With a copy to:

Henry Schein, Inc.

135 Duryea Road

Melville, NY 11747

Attention: General Counsel

Additional Terms:

The following additional terms and conditions apply solely to the performance of Henry Schein Medical a division of Henry Schein Inc. and the Florida DMS, and not to the State of Minnesota or MMCAP. These terms will be solely enforced by Florida DMS. As used in this MPA: “Customer” is an MMCAP Member that is also a State of Florida agency or eligible user as defined in Section 278.012(11), Florida Statutes, and “Contract” refers to this MPA.

- 1. Payment Invoicing.** Pursuant to Section 287.058(1)(a), Florida Statutes, the Contractor will be paid upon submission of proper invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain detail sufficient for an audit and contain the Florida Alternate Contract Source (ACS) Contract Number 42000000-18-ACS and the Contractor’s Federal Employer Identification Number.
- 2. Travel.** Pursuant to Section 287.058(1)(b), Florida Statutes, travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, Florida Statutes.
- 3. Annual Appropriation.** Pursuant to section 287.0582, Florida Statutes, if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida’s performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.
- 4. Transaction Fees.** The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), Florida Statutes. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees, when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.
- 5. Punch-out Catalog and Electronic Invoicing**
The Contractor shall implement a punch-out catalog within ninety (90) days after contract execution. The punch-out catalog provides an alternative mechanism for contractors to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the Florida MyFloridaMarketPlace eProcurement System (MFMP) and a contractor’s ERP system, which can



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reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a customer will “punch out” to a contractor’s website. Using the search tools on the supplier’s Florida punch-out catalog site, the customer selects the desired products and services. When complete, the user exits the supplier’s punch-out catalog site and the shopping cart (full of products and services) is “brought back” to MFMP. No orders are sent to a contractor when the customer exits the contractor’s punch-out catalog site. Instead, the chosen products and services are “brought back” to MFMP as Contract line items. The customer can then proceed through the normal workflow steps, which may include adding/editing the items to a requisition or a purchase order. An order is not submitted to a contractor until the customer actually adds the line items to a requisition and the purchase order is approved and sent to the contractor.

The Contractor shall supply electronic invoices in lieu of paper-based invoices for those transactions processed through the MFMP. Electronic invoices shall be submitted to the Florida agency through the Ariba Network (AN) in one of three mechanisms as listed below. Contractors can select the method that best meets their capabilities from the following list:

cXML (commerce eXtensible Markup Language)

This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.

EDI (Electronic Data Interchange)

This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the ASN for catalog and non-catalog products and services.

PO Flip via ASN

The online process allows contractors to submit invoices via the ASN for catalog and non-catalog products and services. Contractors have the ability to create an invoice directly from their Inbox in their ASN account by simply “flipping” the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the state and the third party provider of MFMP, a state Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State of Florida and the third party provider the right and license to reproduce and display within the system the Contractor’s trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the Florida MFMP management team to obtain specific requirements for the Punch-out Catalog and Electronic Invoicing.

The Contractor is required to provide additional Ordering Instructions and identify persons responsible for answering questions about the response and administering the Contract and shall provide information necessary for placing orders under the Contract.

6. **Respect.** Subject to the agency determination provided for in Section 413.036, Florida Statutes., the following statement applies:



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IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about the designated nonprofit agency and the commodities or contractual services it offers is available at <http://www.respectofflorida.org>.

7. **Pride.** Subject to the agency determination provided for in Sections 946.515 and 287.042(1), Florida Statutes, the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

8. **Contractor Certification.** If the Contract exceeds \$1,000,000.00 in total, not including renewal years, Contractor certifies that it is not listed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List created pursuant to sections 215.473, Florida Statutes and 215.4725 Florida Statutes, respectively and is not engaged in business operations in Cuba or Syria. Pursuant to section 287.135(5), Florida Statutes, and 287.135(3), Florida Statutes, Contractor agrees the Department may immediately terminate the Contract for cause if the Contractor is found to have submitted a false certification or if Contractor is placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies that Boycott Israel List, or is engaged in business operations in Cuba or Syria or a boycott of Israel during the term of the Contract.
9. **Cooperation with Inspector General.** Pursuant to Section 20.055(5), Florida Statutes, Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.
10. **E-Verify.** In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment



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eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five days of Contract execution. The link to E-Verify is provided below.

<http://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

11. **Financial Consequences of Non-Performance.** Pursuant to Section 287.058(1)(h), Florida Statutes, financial consequences for non-performance are required. The Contractor will be assessed a non-performance retainage equivalent to 10% of the total invoice amount or as specified in the Contract. The retainage will be applied to

the invoice for the then-current billing period. The retainage will be withheld until the Contractor resolves the deficiency. If the deficiency is subsequently resolved, the Contractor may invoice the Customer for the retained amount during the next billing period. If the Contractor is unable to resolve the deficiency, the funds retained will be forfeited.

12. **Public Records.** The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with the Contract, unless the records are exempt from section 24(a) of Article I of the Florida Constitution and section 119.07(1), Florida Statutes.

Solely for the purposes of this section the contract manager is the agency custodian of public records, unless another is designated per (e), below.

If, under a resulting contract or purchase order, the Contractor is providing services and is acting on behalf of a public agency, as provided by section 119.0701, Florida Statutes. The Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service;
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within reasonable time and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the contract if the contractor does not transfer the records to the public agency;
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency; and

(e) IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE

PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OF THE ORDERING ENTITY.

13. **Dispute Resolution, Governing Law, and Venue.** Any dispute concerning performance of the Contract shall be decided by the Florida DMS designated Contract Manager, who will reduce the decision to writing and



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serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive, subject to Contractor's right to pursue legal action related to the Contract or any other form of dispute resolution upon exhaustion of this administrative remedy. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by Florida DMS.

Except as amended herein the terms of the Original Contract remain in full force and effect.

BY AND BETWEEN:

1. Henry Schein Medical a division of Henry Schein Inc.

By: _____ Date: _____

Title: _____

Federal Tax ID Number: _____

2. State of Florida, acting by and through the Department of Management Services, Division of State Purchasing

Signature: _____ Date: _____

Printed Name: _____ Title: _____

IN AN APPROVAL CAPACITY ONLY:

3. State of Minnesota for MMCAP

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

By: _____ Date: _____

4. Commissioner of Administration

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

By: _____ Date: _____



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serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive, subject to Contractor's right to pursue legal action related to the Contract or any other form of dispute resolution upon exhaustion of this administrative remedy. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by Florida DMS.

Except as amended herein the terms of the Original Contract remain in full force and effect.

BY AND BETWEEN:

1. Henry Schein Medical a division of Henry Schein Inc.

By: Nancy A. Lanni

Date: 3/20/2019

Title: VP, Healthcare Services

Federal Tax ID Number: 11-3136595

2. State of Florida, acting by and through the Department of Management Services, Division of State Purchasing

Signature: David A. Clark

Date: 4/22/19

Printed Name: David A Clark

Title: Chief of Staff

IN AN APPROVAL CAPACITY ONLY:

3. State of Minnesota for MMCAP
In accordance with Minn. Stat. § 16C.03, subd. 3

By: Joseph R. Johnson

Date: 4/22/2019

4. Commissioner of Administration
In accordance with Minn. Stat. § 16C.05, subd. 2

By: Sarathunban, Phram D, BCPS

Date: 4-22-19