Member-Requested Participation Addendum (MPA)

This Addendum ("**MPA**") is entered into by State of North Carolina ("**Member**") and Medical Solutions, Inc., a corporation with an address of 9210 Wyoming, Ave. N, Suite 270, Brooklyn Park, MN 55445 ("**Vendor**") and the MMCAP Infuse, an agency of the State of Minnesota ("**MMCAP Infuse**"), regarding Agreement MMS2200732 ("**Agreement**").

WHEREAS, Member and Vendor wish to amend the terms and conditions of the Agreement to address the requirements of Member.

WHEREAS, MMCAP Infuse has sole approval authority to any changes to the Agreement, thus is a signatory to this MPA.

WHEREAS, Member, MMCAP Infuse, and Vendor do not intend to alter, amend, interfere, modify, or adjust the contractual relationship of MMCAP Infuse and Vendor.

THEREFORE, the parties agree as follows:

I. DEFINITIONS

A. **Membership**: Means the joint power cooperative comprised of the MMCAP Infuse authorized states, departments, facilities, and other municipalities.

B. **Facilities**: Means the authorized departments, facilities, and other municipalities approved by Member and MMCAP Infuse to access and use this MPA.

II. EFFECTIVE DATE AND TERM

A. **Effective Date**: This MPA is effective on June 1, 2023, or the date all signatures have been obtained, whichever is later.

B. **Termination**: This MPA terminates upon:

1. Thirty (30) calendar days' written notice to the other parties; or
2. The termination of the Agreement between MMCAP Infuse and the Vendor; or
3. Written agreement executed by all parties.

III. SCOPE

A. **Exhibit A**: Which is attached and incorporated herein, identifies the Agreement and all other documents to be incorporated into the contractual relationship between Member and Vendor.

B. **Exhibit B**: Which is attached and incorporated herein identifies the language to be incorporated into the contractual relationships between Member and Vendor, as referenced on Exhibit A. In the event of any conflict between the terms of the Agreement and Exhibit B of this MPA, the terms of Agreement will supersede as between Member and Vendor. *Neither MMCAP Infuse, the State of Minnesota, nor any other party of the Membership (except for the Facilities) are bound by the terms of Exhibit B*.

IV. GENERAL PROVISIONS

A. **Assignment**: Except as affirmed in this MPA, neither the Member nor Vendor will assign, delegate, or transfer any rights or obligations under this MPA without the prior written consent of MMCAP Infuse, subject to any reorganizations of Member agencies by the N.C. Legislature.

B. **Counterparts and Electronic Signature**: The MPA cannot be executed in counterparts and will not be enforceable until MMCAP Infuse has obtained all required signatures. If requested by MMCAP Infuse, Member and Vendor expressly agree to conduct transactions under the MPA by electronic means (including, without limitation, with respect to execution, delivery, storage and transfer of this MPA by electronic means and to the enforceability of this electronic agreement). MMCAP Infuse will be deemed to have control of the authoritative copy for the electronic transferable record, in each case regardless of whether applicable law

recognizes electronic transferable records or control of electronic transferable records and regardless of whether this MPA is an electronic record or transferable record. Member and Vendor will cooperate with and take all actions required by MMCAP Infuse in order for this MPA to be a transferable record, to ensure that MMCAP Infuse has control of the authoritative copy of such transferable record.

C. **Amendments**: Any amendment or modification to this MPA must be in writing and will not be effective until executed by Vendor, the Member, and MMCAP Infuse.

D. **Jurisdiction and Venue**: This MPA, except for the contents of Exhibit B, will be governed by the laws of Minnesota. Venue for all legal proceedings involving MMCAP Infuse arising out of this MPA, or breach thereof, will be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

IN WITNESS WHEREOF, the undersigned parties have caused this MPA to be signed on their behalf intending to be bound thereby.

BY AND BETWEEN:

FOR THE MEMBER:
STATE OF NOR

Signature: DocuSigned by: Sandy Anderson 1B935C9590674A6...
Printed: Sandy Anderson
Title: State Procurement Manager
Date: 9/15/2023

VENDOR: MEDICAL SOLUTIONS, INC.

Signature: David Delgado
Printed: David Delgado
Title: CEO
Date: 9/12/2023

IN AN APPROVAL CAPACITY ONLY:

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

Printed: James Babbitt
Signature: DocuSigned by: James Babbitt DDE5B1490A484FC... Date: 9/15/2023

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

Printed: Christina Fox
Signature: DocuSigned by: Christina Fox 126B5884704A473... Date: 9/15/2023

[SIGNATURE PAGE]

EXHIBIT A

Agreement and other Applicable Legal Documents

1. Agreement MMS2200732

EXHIBIT B

Language Modification of the Agreement

The following terms and conditions are entered into between Vendor and the Member and are added to the documents identified on Exhibit A. Neither MMCAP Infuse, the State of Minnesota, nor the Membership, except for the Member (and applicable Facilities), are bound by the terms within this Exhibit.

Modification of Terms:

This has been intentionally been left blank.

Additional Terms:

1. **CONTACT:**

State of North Carolina

Contract Administrator	Contract Manager
Sandy Anderson NC Department of Administration Division of Purchase & Contract 116 West Jones Street Raleigh NC 27603-8002 Phone: (984) 236-0216 Email: sandy.anderson@doa.nc.gov	James Brown NC Department of Administration Division of Purchase & Contract 116 West Jones Street Raleigh NC 27603-8002 Phone: (984) 236-0253 Email: james.brown@doa.nc.gov

2. **ADVERTISING:** Reserved.

3. **GOVERNING LAWS:** Solely with respect to matters or disputes related to or arising from purchase orders issued hereunder by governmental entities within the State of North Carolina, this MPA is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to is conflict of laws rules, and within which Member all matters, whether sounding in contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. This is a cooperative purchasing agreement advantageous to the State under 01 NCAC 05B.1513 and has been determined eligible for a Waiver of Competition under 01 NCAC 05B.1401. As to Member purchases under the MPA, it is subject to the provisions of Chapter 143 of the N.C. General Statutes and the rules in 01 NCAC Chapter 05.

4. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records, solely to the extent they relate to transactions and matters involving North Carolina's participation in the MPA, to verify accounts and data affecting fees or performance under the MPA, as provided in G. S. §143-49(9).

5. **AVAILABILITY OF FUNDS:** Reserved.

6. **COMPLIANCE WITH LAWS:** Vendor shall comply with all North Carolina laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, and those of federal, state, and local agencies having jurisdiction and/or authority. If federal funds are utilized, the provisions of 2 CFR 200, and particularly Appendix II, are applicable.

7. **CERTIFICATIONS:** Vendor certifies to each of the following:

   a). that its bid was submitted competitively and without collusion, per G.S. 143-54;
   b). that none of its officers, directors or controlling owners has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2);
   c). that it is not an ineligible vendor as set forth in G.S. 143-59.1;

d). that no employee or agent of Vendor has offered, and no Member employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32; and

e). that it, and each of its sub-contractors under this contract, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system, as required by G.S. §143-48.5.

f). that the Vendor is not an ineligible vendor due to being identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, in accordance with the Iran Divestment Act of 2015, G.S. 147-86.55 et seq. The Treasurer's Divestment List may be reviewed at: https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.asp.

8. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this MPA, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the Member under applicable law.

9. **ELECTRONIC PROCUREMENT:**

(a) Purchasing may be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

(b) Reserved.

(c) Reserved.

(d) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, Bids received, evaluation of Bids received, award of contract, and the payment for goods delivered.

(e) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges by such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

10. **LEASE AGREEMENTS:** Reserved.

11. **SUBCONTRACTORS:** All contactors, dealers, and resellers authorized in the State of North Carolina, as shown on the dedicated contractor (cooperative contract) website, are approved to provide sales and service support to participants in the MMCAP Infuse Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Agreement.

12. **ORDERS:** Reserved.

13. **TERMINATION:** If the contract is terminated by the Member as provided in this MPA above, the Member shall pay for goods and services satisfactorily completed and delivered by the Vendor, less any payment or compensation previously made.

14. **PROHIBITED ACTIONS:** Notwithstanding any provision to the contrary, the Member expressly does not agree to any Vendor term or provision in any attached or referenced document, or any revision thereof, that is inconsistent with or materially changes any posted Member requirement, term or condition in a relevant solicitation, except as 1) *expressly and lawfully agreed to in writing by authorized official(s)* prior to award of the contract, or, 2) ordered by a court of competent jurisdiction. For avoidance of doubt, the above statement includes and means, without

limitation and supplementing any similar provisions in the Agreement, any vendor term or provision that provides for:

- indemnification of any person or entity by the Member,
- applicability of state laws other than of North Carolina and of venue in Wake County, North Carolina, G.S. 22B-3 *Contracts against public policy* (Contracts with forum selection provisions deemed void and unenforceable); *See,* G.S. 114-6,
- arbitration, mediation or any limitation of any right of the Member to jury trial, See G.S. 22B-10 (Contract provisions waiving jury trial unenforceable),
- pre-payment of maintenance fees for a term other than one year,
- state contracts that have a term of more than 3 years without approval by the State Purchasing Officer (SPO).
- a late payment fee, penalty, or interest, or attorney's fees,
- any obligation by the Member to pay taxes inconsistent with its tax exempt status,
- any change in the posted payment terms,
- a statement of "entire agreement" in a subservient Vendor document,
- assignment of a MPA without approval by the State, 01 NCAC 05B.1507,
- implementation of any oral promise(s) or statements made by any Member official or personnel, 05 NCAC 05B.0102
- Vendor intellectual property liability or general indemnity clauses that are not unlimited as to dollar amount,
- any obligation to expose State Personally Identifiable Information or State Data internationally,
- *a general limitation of liability by the Vendor that is less than 2 times the total value of the Vendor's contract*.

15. **NOTE:** A contract not made in accordance with Article 3 of G.S. 143 is void. G.S.143-58.

16. **GENERAL:** The State of North Carolina shall not be required to provide Vendor with financial information, credit bureau reports, or fulfill credit inquiries from Vendor. North Carolina shall not be required to allow Vendor to audit any records for compliance. North Carolina does not agree to mediate or arbitrate any dispute and does not agree to waive or limit any of the North Carolina's rights to seek dispute resolution through legal action in North Carolina courts.

17. **PAYMENT TERMS AND REMEDIES:** Payment terms are Net not later than thirty (30) days after receipt of correct invoice. The using agency is responsible for all payments to the Vendor under this MPA. North Carolina shall not be assessed fees for late payments.

18. **FEDERAL FUNDS**: As applicable to purchases made with federal funds, Vendor and Member shall comply with all federal requirements imposed on these funds as consistent with each purchasing entity's federal award.