

**AMENDMENT NO. 5
TO
MEDICAL-SURGICAL DISTRIBUTION SERVICES AGREEMENT**

This Amendment No. 5 (“Amendment”) to the Medical-Surgical Distribution Services Agreement between Medline Industries, Inc. (“Contractor”) and the County of San Bernardino County on behalf of its Arrowhead Regional Medical Center (“County”) is made and entered into on November 17, 2020 (the “Amendment Effective Date”).

Whereas, Contractor and County are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

Whereas, the County and Professional Hospital Supply (“PHS”) entered into a Medical-Surgical Distribution Services Agreement, fully executed on May 7, 2013 (“Agreement No. 13-336”);

Whereas, an amendment to Agreement No. 13-336 was executed with an effective date of March 22, 2016 whereby the rights, title, and interest of PHS in Agreement No. 13-336 was assigned to Contractor and Contractor accepted all of PHS’ obligations, responsibilities, and duties under Agreement No. 13-336;

Whereas, Contractor and County now desire to enter into this Fifth Amendment in order to further modify the terms of Agreement No. 13-336 (hereinafter referred to as the “Agreement”) to establish a rebate program in compliance with applicable laws;

Accordingly, in consideration of the mutual promises set forth in this Fifth Amendment, effective November 17, 2020, the Parties hereby agree to amend the Agreement by setting forth the terms and conditions of a rebate program, as set forth below:

Rebate Program.

1. **Committed Product Category.** Contractor is offering County certain rebates in consideration for certain purchase commitments by County in agreed-upon categories of Medline branded products (each, a “Committed Product Category”).
2. **Definitions:**
 - **Net Sales:** Aggregate gross product sales minus all adjustment, including discounts, GPO administrative fees, fees, credits, bad debt, third party contracting service fees, and all other adjustments that reduce sales.
 - **Products:** The Medline brand medical-products offered for sale hereunder by Contractor for the Committed Product Categories designated below.
3. **Term.** The Rebate Program shall become effective on November 17, 2020 (the “Effective Date”) and shall remain in effect through March 31, 2021 (the “Term”). The Rebate Program is non-renewable.
4. **Rebate Components.**
 - 4.1 **Purchase Commitment.** To qualify for a rebate under this Rebate Program, County must purchase ninety percent (90.00%) of its requirements of the Products offered by Contractor under this Rebate Program for each of the selected Committed Product Category designated below during the Term. County must commit to a minimum of two Committed Product Categories in both Tier 1 and Tier 2, and an additional Product Committed Product Category in Tier 3, for a minimum of five (5) designated Committed Product Categories.

Committed Product Category Designation

Tier 1: 2.00% Rebate						
Place X in Selected Category	TWC	Plastics	OR Accessories	Laps and Towels	Electrodes	Yankauers + Suction Tubing
	X				X	

Tier 2: 4.00% Rebate						
Place X in Selected Category	Patient Bathing, (must include CHG)	Incontinence	Skin Care	MPTs (including disposable instruments)	Foam Positioners	Gen Anesthesia
	X	X				

Tier 3: 7.00% Rebate					
Place X in Selected Category	Renewal	Comfort Glide, including Heel boots	AWC	SPT	Instruments, (min \$200K)
	X				

4.2 Rebate. In the event County meets its Purchase Commitment as set forth in Section 4.1 of this Amendment, Contractor will pay County a rebate on County’s purchase of Products for each achieved Committed Product Category pursuant to the rebate amount for each Product’s respective Tier level.

To qualify for payment of a rebate, County must meet its Purchase Commitment for the agreed upon Committed Product Category as set forth in Section 4.1. Although County shall commit to Committed Product Categories in more than one Tier, County will be paid a rebate corresponding to the rebate percent attributed to each specific Committed Product Category. Notwithstanding the foregoing, in the event County meets all its Purchase Commitments for all agreed upon Committed Product Categories for more than one Tier, Contractor agrees to pay a rebate percent for all Products purchased equal to the rebate percent for highest Tier earned by County. If County meets its Purchase Commitment in one of two agreed upon Committed Product Categories within a Tier, County shall be entitled to the percentage of Net Sales applicable to the Committed Product Categories’ corresponding Tier.

For example, if County selects two Committed Product Categories in Tier 1, two Committed Product Categories in Tier 2, and two Committed Product Categories in Tier 3, and County meets its Purchase Commitment for all six Categories, Contractor shall pay County a rebate equal to 7.00% of Net Sales for all Product purchases under all six Committed Product Categories. *However*, in the event County only meets its Purchase Commitment for the two Committed Product Categories in Tier 1, the two Committed Product Categories in Tier 2, and one Committed Product Category in Tier 3, Contractor will pay County a rebate equal to 4.00% for the Tier 1 and Tier 2 Product purchases, and 7.00% for Product purchases for the one Committed Product Category met in Tier 3. County shall not be entitled to any rebate for the Product purchases within the second Committed Product Category in Tier 3 that was unmet.

- 4.3 **Rebate Payment Terms.** The rebate tracking period will be from November 17, 2020 through March 31, 2021. Rebate shall be paid within sixty (60) days after the end of the Rebate Program.

5. **Standard Terms and Conditions**

- 5.1 **Compliance with the Discount Safe Harbor.** It is the Parties' intent that the Rebate Program shall be administered consistent with the discount exception to the federal anti-kickback statute (42 USC 1320a-7b(B)(3)(A) and the related regulatory discount safe harbor (42 CFR 1001.952(h)). County and/or its facilities will report any discounts or rebates earned and paid under this Rebate Program on its/their institutional cost report(s), or otherwise disclose the amount of the discount or rebate to the appropriate federally funded program, in compliance with the discount safe harbor provisions of the Anti-Kickback Statute and its implementing regulations. 42 CFR § 1001.952(h). All discounts and rebates will be provided based on purchases of products within a single fiscal year of County, and the terms of the discounts and rebates are fixed as set forth in this Amendment. Contractor will provide County with notice on invoices of County's obligation to fully and accurately report the amount of any earned discounts or rebates in compliance with the safe harbor provisions and to provide information concerning the discounts and rebates to the Secretary of the United States Department of Health and Human Services or any applicable state Medicaid agency, if requested. Contractor will also disclose the amounts of the discounts and rebates in writing to County at the time of purchase on the invoice or at such time as the discounts or rebates are ascertainable. Medline shall promptly provide to County any additional documentation requested by County relating to its purchases and discounts/rebates received hereunder as County deems necessary to facilitate its reporting obligations.

- 5.2 **Miscellaneous.** This Amendment may be executed in one or more counterparts, each of which together will constitute one and the same instrument. The Parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other email transmission), which signature shall be binding on the Party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other Party an original signed Amendment upon request. This Amendment is binding on and inures to the benefit of each party's successors and assigns.

All provisions of the Agreement remain in full force and effect, and unchanged, except the aforementioned.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Amendment No. 5 to be executed by their respective duly authorized officers.

[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

ACCEPTED AND AGREED TO:

**COUNTY OF SAN BERNARDINO ON BEHALF
OF ITS ARROWHEAD REGIONAL
MEDICAL CENTER**

By: _____

Name: Curt Hagman

Title: Chairman, Board of Supervisors

Date: _____, 2020

MEDLINE INDUSTRIES, INC.

By: *Patrick Christian*
Patrick Christian (Nov 4, 2020 17:07 CST)

Name: Patrick Christian

Title: Director, Sales Contract Administration

Date: 11/4/2020, 2020