

Account Name ARROWHEAD REGIONAL MEDICAL CTR  
 Customer Master Id 1012355  
 Sold-To Customer 1012355  
 Master ID COUNTY OF SAN BERNARDINO00109832  
 Quote Number FINAL  
 Quote Stage VIZIENT - 1  
 GPO Affiliation

Purchase Order \_\_\_\_\_  
 Customer Does Not \_\_\_\_\_  
 Use Purchase Order  
 Revision 1  
 Created Date 3/11/2020  
 Expiration Date 4/10/2020

Prepared By Chris Blankenship  
 Email cblankenship@medivators.com

Ship To Name ARROWHEAD REGIONAL MEDICAL CTR

Ship To

400 N PEPPER AVE  
 COLTON, CA 92324-1801  
 US

## PLATINUM SERVICE AGREEMENT (C-PS-XXXX) ☐

Purchase of a Platinum Service Agreement initiates the Warranty set forth in this Service Agreement on the covered MEDIVATORS® endoscope reprocessor(s), for the period indicated below. Platinum Service Agreements include annual Preventive Maintenance, per customer request one operator training program annually per facility provided by a MEDIVATORS Clinical Support Specialist, a one year supply of customer-replaceable filters (for either 14 day or 28 day HLD standard filter package only), remedial service (labor, travel and parts) if required in between Preventive Maintenance service calls and telephone technical support at no additional charge for each year that the Service Agreement is in effect.

## GOLD SERVICE AGREEMENT (C-GS-10XX) ☐

Purchase of a Gold Service Agreement initiates the Warranty set forth in this Service Agreement on the covered MEDIVATORS endoscope reprocessor(s), and the EndoDry/ESC cabinets for the period indicated below. Gold Service Agreements include annual Preventive Maintenance, per customer request one operator training program annually per facility provided by a MEDIVATORS Clinical Support Specialist, remedial service (labor, travel and parts) if required in between Preventive Maintenance service calls and telephone technical support at no additional charge for each year that the Service Agreement is in effect.

## SILVER SERVICE AGREEMENT (C-SS-101X) ☐

Purchase of a Silver Service Agreement initiates the Warranty set forth in this Service Agreement on the covered MEDIVATORS semi-automatic, countertop endoscope reprocessor(s) (legacy CER models only) or VERISCAN® Leak Detection Systems for the period indicated below. Silver Service Agreements include remedial service (labor, shipping and parts) and telephone technical support at no additional charge for each year that the Service Agreement is in effect.

## PREVENTIVE MAINTENANCE AGREEMENT (C-PM-102X) ☐

Purchase of a Preventive Maintenance Agreement entitles the Customer to have a Field Service Engineer dispatched by MEDIVATORS to evaluate the covered MEDIVATORS endoscope reprocessor(s) or EndoDry/ESC Cabinet(s) performance, and have those specific components (i.e., PM Kit parts) required to ensure performance of the reprocessor or cabinet to manufacturer's specifications replaced at no charge ("Preventive Maintenance" or "PM"). The Preventive Maintenance Agreement components will be fully warranted for 90 days following Preventive Maintenance completion. Components required to repair the reprocessor or cabinet that are not covered by this service level or by a warranty in effect will incur additional charges. Preventive Maintenance Agreements must have a minimum term of two years. Preventive Maintenance Agreements are not available for VERISCAN Leak Detection System.

### Agreement Details

Product	Product Code	Serial Number	Standard Price	Sales Price	Number of Years
Gold Contract, Advantage Plus	C-GS-1013	78147437	USD 10,200.00	USD 8,244.54	3.00
Gold Contract, Advantage Plus	C-GS-1013	78147431	USD 10,200.00	USD 8,244.54	3.00

Notes for Customer Remote Access Form is Required

**\*Annual Price is based on Year 1**

Annual Price              USD 16,489.08

### General

**GPO:** VIZIENT (Subject to Vizient Base Agreement CE3112)

This Service Agreement, which includes the attached Terms and Conditions and, if applicable, the Service Discount Program Order Form, constitutes the entire agreement between the parties regarding the purchase of the above described services and supersedes all other agreements, quotes, purchase orders and understandings, whether written or oral, with respect to the subject matter of this Agreement. Acceptance by MEDIVATORS of any purchase order or other form from Customer will not alter, vary, or add to the terms and conditions of this Service Agreement. Any conflicting or additional terms and conditions will be deemed rejected, unless expressly agreed to by MEDIVATORS in writing. This Service Agreement may be amended only in writing, signed by authorized representatives of both parties.

#### COUNTY OF SAN BERNARDINO Approval

#### MEDIVATORS Approval

Signed By: \_\_\_\_\_

Signed By: \_\_\_\_\_

Title:      Curt Hagman, Chairman, Board of Supervisors

Title:      \_\_\_\_\_

Date:      \_\_\_\_\_

Date:      \_\_\_\_\_

### Internal Use Only

Contract Number

Contract Start Date

Contract End Date

### Acceptance:

All Service Agreements are accepted subject to certification by a MEDIVATORS Field Service Engineer or Service Manager that the Covered Equipment is functioning correctly as of the Service Start Date and is suitable for inclusion under this Agreement.

### Services:

#### Platinum, Silver or Gold Service Agreements

During the term of a Service Agreement and subject to any additional conditions that Medivators Inc. ("MEDIVATORS" or the "Company") may require for certain products, the Company will provide the following services to the Customer at no additional charge, for Covered Equipment located at Customer's facility named above:

- For DSD/SSD/ADVANTAGE model endoscope reprocessors and EndoDry/ESC cabinets: remedial service including PM Service (if required in between PM service calls) to be performed on-site or at MEDIVATORS in-house Depot Service Facility between the hours of 8 am and 5 pm local time, Monday through Friday, excluding holidays, or at such other times by mutual agreement of the parties. If Customer requests that Services begin after 4 pm local time, a premium labor charge of \$385 per hour will be incurred for each hour of on-site service visits conducted after 5 pm local time. For MV/CER/Optima model endoscope reprocessors and VERISCAN® Leak Detection Systems: remedial service (if required in between PM service calls) to be performed at MEDIVATORS in-house Depot Service Facility, with a loaner
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endoscope reprocessor and/or VERISCAN Leak Detection System provided for the duration of the in-house repair. Services will be performed by a MEDIVATORS Field Service Engineer or Technician, including travel, shipping charges, labor and all required service parts. Parts that require shipment to the Company's Depot Service Facility will be sent pursuant to MEDIVATORS Returned Material Authorization Policy ("RMA").

- Unlimited access to technical telephone support from MEDIVATORS Technical Service team at 1 (800) 444-4729 between the hours of 6 am and 6 pm Central time, with after-hours support from 6 pm to 10 pm, Monday through Friday, on Medivators business days. After-hours customer telephone support available from 6 am to 6 pm Central time on non-business days seven days a week including holidays.

#### Preventive Maintenance Agreements

During the term of a Preventive Maintenance Agreement, the Company will provide the following services to the Customer for covered MEDIVATORS® DSD/SSD/ADVANTAGE endoscope reprocessors located at Customer's facility named above:

- On-site inspection and evaluation of the DSD/SSD/ADVANTAGE endoscope reprocessor or EndoDry/ESC cabinets performance and replacement of component parts from MEDIVATORS standard Preventive Maintenance kit. Kit contents can be provided upon request by a MEDIVATORS Technical Service member by calling 1 (800) 444-4729.
- Services will be performed by a MEDIVATORS Field Service Engineer or Technician, including travel, shipping charges, labor and all required service parts. Parts that require shipment to the Company's Depot Service Facility will be sent pursuant to MEDIVATORS Returned Material Authorization Policy ("RMA").
- 90 day warranty on the replaced Preventive Maintenance kit components following completion of each Preventive Maintenance service.
- Unlimited access to technical telephone support from MEDIVATORS Technical Support team at 1 (800) 444-4729 between the hours of 6 am and 6 pm Central time, with after-hours support from 6 pm to 10 pm, Monday through Friday, on Medivators business days. After-hours customer telephone support available from 6 am to 6 pm Central time on non-business days seven days a week including holidays.

If Customer is not ready for the service scheduled pursuant to any of the above service agreements and/or Customer's Covered Equipment is not accessible upon arrival of MEDIVATORS service technician, the technician will leave the site and MEDIVATORS will be entitled to invoice Customer for an additional charge reflecting the additional travel and labor necessitated by the technician having to reschedule the service call.

In consideration of receiving new replacement parts as part of the services to be provided under this Agreement, MEDIVATORS reserves the right to retain the replaced parts for performance evaluation.

During the term of this Service Agreement and so long as Customer is not in breach of any of its obligations hereunder, MEDIVATORS will, at no additional cost, provide Customer with changes or additions to the Covered Equipment that improve or update functions or performance by changes in software design made by MEDIVATORS, but which do not add new functionality ("Updates"). An Update includes new releases, bug fixes and maintenance modifications provided by MEDIVATORS, is denoted and designated by a change in the right-most digit in the version number (for example, a change from X.1 to X.2), and will be provided if and when such Update is made generally available by MEDIVATORS to its similarly situated customers. Updates do not include, and none of the service agreements hereunder include, any new components, equipment, systems, products or applications, whether from third parties or MEDIVATORS, that are separately priced and licensed, including any modifications or upgrades to the Covered Equipment, systems or any software therein that provide additional value, functionality or utility ("Upgrade"). An Upgrade is denoted and designated by a change in the number to the left of the decimal point in the version number (for example, a change from 1.X to 2.X).

#### **Payment:**

Amounts due and payable under this Agreement will be invoiced in advance by MEDIVATORS on an annual basis at the commencement of each contract year and are non-refundable. MEDIVATORS shall accept all payments from Customer via electronic funds transfer (EFT) directly deposited into MEDIVATORS' designated checking or other bank account. MEDIVATORS shall promptly comply with directions and accurately complete forms provided by Customer required to process EFT payments. Customer is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on MEDIVATORS or on any taxes levied on employee wages. Customer shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to Customer pursuant to this Agreement. Costs for services under the terms of this Agreement shall be incurred during the Agreement period except as approved by Customer. MEDIVATORS shall not use current year funds to pay prior or future year obligations. Funds made available under this Agreement shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Agreement. MEDIVATORS shall not claim reimbursement or payment from Customer for, or apply sums received from Customer with respect to that portion of its obligations that have been paid by another source of revenue. MEDIVATORS agrees that it will not use funds received pursuant to this Agreement, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another

revenue source without prior written approval of Customer. MEDIVATORS shall adhere to Customer's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Agreement and for which reimbursement is sought from Customer. In addition, MEDIVATORS is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

### **Service Agreement Voided:**

Any (i) improper use, including substitution of parts or components not approved by the Company; (ii) repair of, or attempt to repair, equipment covered under this Service Agreement by any party other than the Company or a service representative authorized by the Company; or (iii) use of chemical cleaning agents, disinfectants, germicides or sterilants other than those validated by the Company as compatible with the Covered Equipment, automatically and immediately voids this Service Agreement and the warranties provided herein.

### **General Conditions:**

MEDIVATORS Service Agreements are available only to the original purchaser of the Covered Equipment or VERISCAN® Leak Detection System, and are available only for such Covered Equipment or VERISCAN Leak Detection Systems that are fully operational and presently in use.

None of the services provided hereunder include: (i) the installation or replacement of any consumable or accessory product (e.g. reprocessor hook-ups); (ii) the performance of any relocation services or electrical work external to any Covered Equipment; or (iii) the refurbishment of any Covered Equipment or other product.

MEDIVATORS Service or Preventive Maintenance Agreements are non-transferable.

MEDIVATORS endeavors to provide a targeted response time for the performance of on-site services purchased hereunder no later than the end of the next business day from the time a MEDIVATORS Technical Service team member determines that an on-site service visit (e.g. field dispatch) is required in response to Customer's request for service. Standard hours for on-site service visits are 8 am – 5 pm Monday to Friday local time excluding holidays. Platinum and Gold service levels receive first priority for parts and engineering/technical resources.

Customer will, at its expense: (i) perform all routine maintenance procedures on the Covered Equipment and/or systems as specified by the Company (including, without limitation, the replacement of all air, water and HLD filters), (ii) provide access to the Covered Equipment as necessary to effect repairs, and (iii) provide such assistance, information, services and facilities as may be requested by the Company to perform the services hereunder.

### **Warranty:**

The Warranty initiated by the purchase of a Service Agreement is as set forth on the MEDIVATORS website at [www.medivators.com/warrantystatement](http://www.medivators.com/warrantystatement) ("Warranty Statement"). Customer's remedies for breach of any warranty hereunder is as set forth in the Warranty Statement. This Warranty gives the Customer specific legal rights, and the Customer may also have other rights which vary from jurisdiction to jurisdiction. In no event will MEDIVATORS liability for breach of the Warranty Statement exceed the original purchase price of the Covered Equipment for which a Service Agreement has been purchased.

### **General Warranty Disclaimer:**

In addition to any disclaimers set forth in the Warranty Statement, the repair of any cracks in the cabinet of an endoscope reprocessor, which includes the basins, is not and will not be covered by any Warranty provided herein or otherwise under this Service Agreement.

SUBJECT TO MEDIVATORS INDEMNIFICATION OBLIGATIONS SET FORTH IN THE VIZIENT BASE AGREEMENT FOR THIRD PARTY CLAIMS, TO THE EXTENT PERMITTED BY LAW, MEDIVATORS WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION, DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY MALFUNCTIONS, DELAYS, LOSS OF PROFIT, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR ANTICIPATORY PROFITS, EVEN IF MEDIVATORS HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

### **Termination:**

Either the Customer or MEDIVATORS may terminate this Service Agreement by giving the other party not less than sixty (60) days written notice prior to the annual start date of the second or any subsequent contract year. Any such termination will be deemed to be effective on the last day of the then current year.

The Customer may terminate the Service Agreement at any time prior to the end of the then current contract year by giving not less than thirty (30) days' prior written notice to MEDIVATORS.

Upon termination for any reason prior to the expiration of the period of Service Agreement as set forth on the first page hereof, Customer will, within ten (10) days of termination, pay MEDIVATORS all amounts accrued prior to the date of termination as due under this Service Agreement.

In the event that Customer fails to make any payment when due or is in breach of any other material obligation hereunder, MEDIVATORS may suspend all services until such breach is cured or, at its option, terminate this Agreement on thirty (30) days written notice to Customer if Customer does not cure the breach during such 30-day time period.

**Miscellaneous:**

Anti-Kickback Statute. This Agreement will be construed to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b). It is the intent of the parties to comply with the Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)) and the Discount Safe Harbor and Warranties Safe Harbor regulations set forth in 42 C.F.R. 1001.952(h) and (g), respectively. Customer's price may constitute a discount or other reduction in price under the Anti-Kickback Statute. Company will provide Customer with invoices that fully and accurately disclose the discounted price of all products purchased under this Agreement to allow Customer to comply with this Section and the Discount Safe Harbor regulations, including sufficient information to enable it to accurately report its actual cost for all purchases of products. Customer acknowledges that, if applicable, it will fully and accurately report all discounts or other price reductions, including warranty items, in the costs claimed or charges made under any Federal or State healthcare program and provide information upon request to third party reimbursement programs, including Medicare and Medicaid. Customer will be solely responsible for determining whether any savings or discount or warranty item it receives must be reported or passed on to payors.

Federal Program Participation. Company represents that neither it nor any of its current directors, officers, or key personnel: (i) are currently excluded, debarred or otherwise ineligible to participate in federal health care programs as defined in 42 U.S.C. §1320a-7b(f) (the "Federal Healthcare Programs"); (ii) have been convicted of a criminal offense related to the provision of healthcare items or services during the last five (5) years; or (iii) have been excluded, debarred or otherwise declared ineligible to participate during the last five (5) years in Federal Healthcare Programs. Company will notify Customer of any change in the status of the representations and warranties set forth above.

Protection of Health Information. If and to the extent applicable, Company agrees to comply with the provisions of the "Health Insurance Portability and Accountability Act of 1996" and the "Health Information Technology and Clinical Health Act" and standards promulgated pursuant to such federal statutes or which may be prescribed by the Department of Health and Human Services subsequent to the execution date of this Service Agreement as being applicable to the relationship between the parties created by this Service Agreement and the services to be performed by Company (collectively, "HIPAA"). Company will promptly report to Customer any use or disclosure of any protected health information ("PHI") which is not permitted under HIPAA whenever Company becomes aware of such improper use or disclosure. Customer agrees that it will not, during the term of this Service Agreement, provide Company with any PHI. Customer warrants that: (i) it has taken all necessary steps to ensure that any PHI which may be accessible, transferred or otherwise provided, directly, indirectly or remotely, to Company, has been de-identified pursuant to 45 CFR § 164.514 ("De-Identified PHI"); and (ii) it will utilize and input only De-Identified PHI in conjunction with its use of Equipment being serviced hereunder.

Force Majeure. Neither party assumes liability or will be liable to the other party for any failure or any delay in fulfilling its obligations hereunder caused, in whole or in part, directly or indirectly, by fires, natural disasters, strikes, shortages of raw materials, supplies or components, retooling, upgrading of technology, delays of carriers, embargoes, government orders or directives, terrorist activities, or any other circumstance beyond the reasonable control of such party. When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

Assignability. Without the prior written consent of Customer, the Agreement is not assignable by MEDIVATORS either in whole or in part. This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

Governing Law; Venue; Attorney's Fees and Costs. This Agreement shall be governed by and construed according to the laws of the State of California. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or



rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District. If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

Background Checks for Contractor Personnel. MEDIVATORS shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to Customer; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by Customer and not in violation of applicable law, MEDIVATORS shall conduct a background check, at MEDIVATORS' sole expense, on all its personnel providing Services. If requested by Customer, MEDIVATORS shall provide the results of the background check of each individual to Customer. Such background check shall be in the form generally used by MEDIVATORS in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. MEDIVATORS personnel who do not meet Customer's hiring criteria, in Customer's sole discretion, shall not be assigned to work on Customer property or Services, and Customer shall have the right, at its sole option, to refuse access to any MEDIVATORS personnel to any Customer facility.

Compliance with County Policy. In performing the Services and while at any Customer facilities, MEDIVATORS personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of Customer regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of Customer; and (d) abide by all laws applicable to Customer facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "Customer Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to MEDIVATORS or MEDIVATORS personnel or may be made available to MEDIVATORS or MEDIVATORS personnel by conspicuous posting at a Customer facility, electronic posting, or other means generally used by Customer to disseminate such information to its employees or contractors. MEDIVATORS shall be responsible for the promulgation and distribution of County Policies to MEDIVATORS personnel to the extent necessary and appropriate. Customer shall have the right to require MEDIVATORS' employees, agents, representatives and subcontractors to exhibit identification credentials issued by Customer in order to exercise any right of access under this Agreement.

County Internship Initiative. MEDIVATORS agrees to be contacted by the County of San Bernardino to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by MEDIVATORS' business. MEDIVATORS is encouraged, and agrees to make good faith efforts, to utilize the County of San Bernardino's program to aid the County of San Bernardino's ***Vision for a skilled workforce and jobs that create countywide prosperity***, and its ***goal to Create, Maintain and Grow Jobs and Economic Value in the County of San Bernardino***. The County of San Bernardino's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County of San Bernardino's internship initiative, MEDIVATORS remains an independent contractor and shall not be construed as agents, officers, or employees of the County of San Bernardino's. More information about the County of San Bernardino's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

Damage to Customer Property. MEDIVATORS shall repair, or cause to be repaired, at its own cost, all damages to Customer vehicles, facilities, buildings or grounds caused by the willful or negligent acts of MEDIVATORS or its employees or agents. Such repairs shall be made immediately after MEDIVATORS becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If MEDIVATORS fails to make timely repairs, Customer may make any necessary repairs. MEDIVATORS, as determined by Customer, shall repay all costs incurred by Customer for such repairs, by cash payment upon demand, or Customer may deduct such costs from any amounts due to MEDIVATORS from Customer, as determined at Customer's sole discretion.

Drug and Alcohol Free Workplace. In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Agreement, MEDIVATORS agrees that MEDIVATORS and MEDIVATORS's employees, while performing service for Customer, on Customer property, or while using Customer equipment: (i) shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance; (ii) shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance; and (iii) shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where MEDIVATORS or MEDIVATORS' employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs. MEDIVATORS shall inform all employees that are performing service for Customer on Customer property, or using Customer equipment, of Customer's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol

use or impairment from same while performing such service for Customer. Customer may terminate for default or breach of this Agreement and any other contract MEDIVATORS has with Customer, if MEDIVATORS or MEDIVATORS' employees are determined by Customer not to be in compliance with above.

**Employment Discrimination.** During the term of the Agreement, MEDIVATORS shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. MEDIVATORS shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**Improper Influence.** MEDIVATORS shall make all reasonable efforts to ensure that no Customer officer or employee, whose position in Customer enables him/her to influence any award of the Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Agreement or shall have any relationship to MEDIVATORS or officer or employee of MEDIVATORS.

**Improper Consideration.** MEDIVATORS shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of Customer in an attempt to secure favorable treatment regarding this Agreement. Customer, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of Customer with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. MEDIVATORS shall immediately report any attempt by a Customer officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from MEDIVATORS. The report shall be made to the supervisor or manager charged with supervision of the employee or the County of San Bernardino Administrative Office. In the event of a termination under this provision, Customer is entitled to pursue any available legal remedies.

**Informal Dispute Resolution.** In the event Customer determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**Legality and Severability.** The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Agreement are specifically made severable. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**Licenses, Permits and/or Certifications.** MEDIVATORS shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. MEDIVATORS shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. MEDIVATORS will notify Customer immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Agreement.

**Records.** MEDIVATORS shall maintain all records and books pertaining to the delivery of services under this Agreement and demonstrate accountability for the Agreement performance. All records shall be complete and current and comply with all Agreement requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Agreement. All records relating to MEDIVATORS's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Agreement shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**Subcontracting.** MEDIVATORS shall obtain Customer's written consent, which Customer may withhold in its sole discretion, before entering into contracts with or otherwise engaging any subcontractors who may supply any part of the Services to Customer. At Customer's request, MEDIVATORS shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by Customer, resumes of proposed subcontractor personnel. MEDIVATORS shall remain directly responsible to Customer for its subcontractors and shall indemnify Customer for the actions or omissions of its

subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Agreement applicable to MEDIVATORS Personnel. For any subcontractor, MEDIVATORS shall: (i) be responsible for subcontractor compliance with the Agreement and the subcontract terms and conditions; (ii) ensure that the subcontractor follows Customer's reporting formats and procedures as specified by Customer; and (iii) include in the subcontractor's subcontract substantially similar terms as are in this Agreement. Upon expiration or termination of this Agreement for any reason, Customer will have the right to enter into direct contracts with any of the Subcontractors. MEDIVATORS agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with Customer.

**Insurance:**

Additional Insured. All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights. MEDIVATORS shall require the carriers of required coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit MEDIVATORS and MEDIVATORS' employees or agents from waiving the right of subrogation prior to a loss or claim. MEDIVATORS hereby waives all rights of subrogation against Customer.

Policies Primary and Non-Contributory. All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.

Severability of Interests. MEDIVATORS agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between MEDIVATORS and Customer or between Customer and any other insured or additional insured under the policy.

Proof of Coverage. MEDIVATORS shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and MEDIVATORS shall maintain such insurance from the time MEDIVATORS commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, MEDIVATORS shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

Failure to Procure Coverage. In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by MEDIVATORS or Customer payments to MEDIVATORS will be reduced to pay for Customer purchased insurance.

Insurance Review. Insurance requirements are subject to periodic review by Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Customer, inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. MEDIVATORS agrees to execute any such amendment within



## SERVICE AGREEMENT

thirty (30) days of receipt. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.

MEDIVATORS agrees to provide insurance set forth in accordance with the requirements herein. If MEDIVATORS uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, MEDIVATORS agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, MEDIVATORS shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:

Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of MEDIVATORS and all risks to such persons under this Agreement. If MEDIVATORS has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance – MEDIVATORS shall carry General Liability Insurance covering all operations performed by or on behalf of MEDIVATORS providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If MEDIVATORS is transporting one or more non-employee passengers in performance of the Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If MEDIVATORS owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of Customer.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after the Agreement completion.

[END OF SERVICE AGREEMENT]