

[ABC Medical Supplies, Inc. Letterhead]¹

Date

_____, President
XYZ Medical Supplies, Inc.

Re: Letter of Intent to Enter into a Subcontract Agreement (Agreement”)

Dear Mr./Ms. _____:

ABC Medical Supplies, Inc. (“ABC”) desires to submit a bid to furnish items in one or more product categories within the Competitive Bidding Program (“CBP”) for CY 2007, as described in the April 10, 2007, *Federal Register*. This letter memorializes the mutual intent of ABC and XYZ Medical Supplies, Inc. (“XYZ”) to enter into the Agreement. In the event that a CBP contract is awarded to ABC in the _____ Competitive Bidding Area (“CBA”), then ABC and XYZ will enter into the Agreement, under which XYZ will furnish items, functions or services related to the following product category/categories: [List the product category or categories.] The Agreement will include the following:

1. The parties to the Agreement will be:

Bidder/Contract Supplier: ABC

Subcontractor: XYZ

2. The items, functions, or services to be performed by XYZ will be:

- (i) ABC will store products on the premises of XYZ.
- (ii) XYZ will not advertise that it has ABC’s products, nor that it is affiliated with ABC.
- (iii) If a patient requests that XYZ provide a product, then XYZ will give the patient a choice of Competitive Bid Contract Suppliers that can furnish the product. If the patient chooses ABC, then XYZ will (A) fit the patient with the product; (B) educate the patient on how to use the product; (C) explain to the patient that follow-up care, maintenance and repair will be provided by ABC; (D) give the patient the contact information for ABC; (E) collect the necessary signatures from the patient; (F) send the patient home; and (G) forward the documentation to ABC.

¹ This letter of intent (“LOI”) is in template form. Before using it, the parties should consult with an attorney and instruct the attorney to modify this LOI to meet the specific needs of the parties.

- (iv) If a patient contacts ABC for a product, and if the patient resides in an area of the CBA that XYZ services, then at ABC's request, XYZ will deliver the product (on behalf of ABC) to patient at patient's home.

3. The term of the Agreement will be: [_____].

Upon execution of the Agreement, XYZ agrees to (i) supply the above items, functions, or services and (ii) abide by State and Federal privacy and security requirements, including the privacy provisions stated in the regulations for the CBP.

This letter does not constitute a binding contract. Rather, it expresses the intent of ABC and XYZ to enter into the Agreement in the event a CBP contract is awarded to ABC in the _____ CBA. Please sign and date this letter on the spaces provided below.

ABC Medical Supplies, Inc.

By: _____
_____, President

AGREED TO AND ACCEPTED:

XYZ Medical Supplies, Inc.

By: _____
_____, President

Date: _____

SUBCONTRACT AGREEMENT¹

THIS SUBCONTRACT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between ABC MEDICAL SUPPLIES, INC. (“Supplier”) and XYZ MEDICAL SUPPLIES, INC. (“Contractor”).

BACKGROUND

- A. Supplier is in the business of providing durable medical equipment, prosthetics, orthotics, and supplies (“DMEPOS”) to patients residing in _____ (“Competitive Bidding Area” or “CBA”).
- B. Contractor has experience and expertise in providing DMEPOS.
- C. Supplier desires to subcontract with Contractor to provide [Describe Specific Products] (“Products”) to patients of Supplier who reside in the CBA, and Contractor desires to accept such subcontract arrangement. The purpose of the subcontract arrangement is to ensure that Supplier is capable of providing Products to all patients in the CBA for the purposes of participating in the Competitive Acquisition Program, as described in the April 10, 2007, *Federal Register* (“Competitive Acquisition Program”).

TERMS

In consideration of the mutual covenants contained herein, and other good and valuable consideration, Supplier and Contractor agree as follows:

1. **Contractor Services.** Contractor will provide the following services (“Services”) on behalf of Supplier to Supplier’s patients who reside in the CBA:
- (a) [Description of Services]
 - (b) Contractor warrants that:
 - (i) All persons it employs or engages to provide the Services are fully qualified to provide Services, and
 - (ii) All Services are provided in accordance with (A) all applicable laws and regulations; (B) Supplier protocols, policies and procedures (including but not limited to policies regarding safety, infection control, and clinical practice); and (C) operational specifications provided by equipment manufacturers and by Supplier. Supplier will provide a copy of Supplier’s applicable

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clinical protocols, policies and procedures to Contractor, and may modify any protocol, policy or procedure on 10 days notice to Contractor. Upon reasonable notice from Supplier, and during normal business hours, in order to verify that Contractor is in compliance with this section, Supplier will have the right to (A) inspect hard copies and electronic versions of Contractor's books, records and documents, and (B) interview Contractor's employees.

- (c) Contractor will:
 - (i) Cooperate with Supplier in the conduct of quality improvement activities;
 - (ii) Produce any documents or information Supplier requires in order to comply with a request from any third party payor, state or federal agency, or accreditation organization; and
 - (iii) Maintain all documents and records necessary for it to render the Services.

2. **Compensation.**

(a) In consideration for the Services, Supplier will pay Contractor in accordance with the fee schedule set out in Exhibit A. Supplier will pay Contractor within 15 days of receipt of an invoice from Contractor.

(b) Except as otherwise provided herein, Contractor will be responsible for all expenses incurred by Contractor in rendering the Services.

3. **Term and Termination.**

(a) This Agreement will be effective as of the date set forth in the introductory paragraph and will continue in effect until the earlier of the date that (i) Supplier is notified that it is not awarded a Competitive Acquisition Program Contract ("CAP Contract") for the Products in the CBA, or (ii) termination of the CAP Contract if previously awarded to Supplier for the Products in the CBA. Within 10 days of receipt, Supplier will furnish to Contractor notice of non-award or termination of the CAP Contract.

(b) In the event a party defaults under the terms of this Agreement ("Defaulting Party") then the other party ("Non-Defaulting Party") will give the Defaulting Party written notice of the default. The Defaulting Party will then have 10 days within which to cure the default to the reasonable satisfaction of the Non-Defaulting Party. In the event that the Defaulting Party does not cure the default as specified in the preceding sentence, then the Non-Defaulting Party may immediately terminate this Agreement and/or may exercise all remedies allowed by law.

(c) Notwithstanding the foregoing, Supplier may immediately terminate this Agreement upon giving written notice thereof to Contractor (but without giving Contractor a right to cure) in the event that:

- (i) Supplier reasonably concludes that Contractor has engaged in conduct that adversely affects Supplier's name or goodwill; or
- (ii) If Contractor is: (1) convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or another federal or state health care program; (2) assessed civil money penalties for an offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or another federal or state health care program; or (3) excluded from participation in any federal or state health care program, including, but not limited to, Medicare and Medicaid.

(d) Notwithstanding the foregoing, either party may terminate this Agreement without cause upon giving the other part at least 60 days' prior written notice of such termination.

4. Covenants of Supplier and Contractor.

(a) Contractor acknowledges that it may acquire confidential information, as defined below, having a special and unique nature and value relating to Supplier. As a material inducement to Supplier to enter into this Agreement, Contractor agrees that, without the Supplier's prior written consent, Contractor will not, at any time during or following the term of this Agreement, directly or indirectly, disclose, publish, divulge or use, except in connection with the provision of the Services, any such information which has been obtained by or disclosed to Contractor through or in the course of its relationship with Supplier.

- (i) For purposes of this Agreement, "confidential information" will include, but not be limited to, policies, methods, protocols, manuals, confidential reports, lists of customers, lists of referral sources, and other matters relating to the operation of the business of Supplier.
- (ii) In the event this Agreement is terminated, Contractor will deliver to Supplier, within 10 days of the date of termination, all originals and copies of any and all records, papers, programs, computer software, documents, and all matter of whatever nature that bears or contains Supplier's confidential information.

(b) During the term of this Agreement and for a period of one year following the termination or expiration of this Agreement, Supplier will not solicit for employment or engagement, or otherwise interfere with Contractor's relationship with, any employee or agent of Contractor.

(c) During the term of this Agreement and for a period of one year following the termination or expiration of this Agreement, Contractor will not directly or indirectly divert or attempt to divert from Supplier any business in which Supplier has been actively engaged during the term of this Agreement, or otherwise interfere with Supplier's current or prospective business relationships.

(d) The covenants herein will survive the expiration or termination of this Agreement, and will be enforceable according to their terms.

5. **Insurance and Indemnification.**

(a) Throughout the term of this Agreement, Contractor and Supplier will each continually maintain general and professional insurance coverage with minimum coverage of \$1,000,000.00 per occurrence. Each party will submit proof of such insurance coverage to the other party on request.

(b) Contractor will indemnify and hold harmless Supplier from and against all damages, claims, liabilities and losses (including reasonable attorney's fees) resulting from Contractor's negligence or willful misconduct committed in connection with the performance of Contractor's duties hereunder.

(c) Supplier will indemnify and hold harmless Contractor from and against all damages, claims, liabilities and losses (including reasonable attorney's fees) resulting from Supplier's negligence or willful misconduct committed in connection with the performance of Supplier's duties hereunder.

6. **Business Associate Provisions.** In connection with providing Services to patients on behalf of Supplier, Contractor will be acting as a business associate of Supplier as that term is used in the Security Standards for the Protection of Electronic Protected Health Information and the Standards for Privacy of Individually Identifiable Health Information (collectively the "HIPAA Standards"), 45 CFR parts 160 and 164. The following provisions are included for purposes of complying with the HIPAA Standards, and apply with respect to all Protected Health Information ("PHI"), as defined in 45 CFR § 164.501, created or received by Contractor in performing its duties under this Agreement.

(a) Contractor will not use or disclose PHI other than as permitted or required by this Agreement or as required by law.

(b) Contractor will use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.

(c) Contractor will mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement.

(d) Contractor will report to Supplier any use or disclosure of PHI not provided for by this Agreement of which Contractor becomes aware.

(e) Contractor will ensure that any agent, to whom Contractor provides PHI received from or created or received by Contractor on behalf of Supplier, agrees to the same restrictions and conditions that apply throughout this Agreement to Contractor with respect to such information.

(f) Contractor will make books and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Supplier available to the Secretary of Health and Human Services or his designee, in a time and manner designated by the Secretary, for purposes of the Secretary determining Supplier's compliance with the HIPAA Standards.

(g) At Supplier's request, Contractor will make available PHI in Contractor's possession to enable Supplier to respond to a request by an individual for access to PHI in accordance with 45 CFR § 164.524.

(h) At Supplier's request, Contractor will make available PHI in Contractor's possession for amendment, and will incorporate any amendments to PHI in accordance with 42 CFR § 164.526

(i) Contractor will document and provide to Supplier such disclosures of PHI and information related to such disclosures as would be required for Supplier to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

(j) Contractor may use or disclose PHI to perform services for or on behalf of Supplier as specified in this Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Supplier or the minimum necessary policies and procedures of Supplier.

(k) Contractor may use PHI (i) for the proper management and administration of Contractor, or (ii) to carry out Contractor's legal responsibilities.

(l) Contractor may disclose PHI (i) for the proper management and administration of Contractor, or (ii) to carry out Contractor's legal responsibilities, if (A) the disclosure is required by law; or (B)(1) Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and used or disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

(m) Contractor will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Supplier as required by the HIPAA Standards.

(n) Contractor will ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it.

(o) Contractor will report to Supplier any security incident (as defined in the HIPAA Standards) of which it becomes aware.

(p) Upon Supplier's knowledge of a material breach by Contractor, Supplier may either (i) provide an opportunity for Contractor to cure the breach or end the violation, and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by Supplier; (ii) immediately terminate this Agreement if Contractor has breached a material term of this Agreement and cure is not possible; or (iii) if neither termination nor cure is feasible, report the violation to the Secretary.

(q) Upon termination of this Agreement, for any reason, Contractor will return or destroy all PHI received from Supplier, or created or received by Contractor on behalf of Supplier. This provision will apply to PHI that is in the possession of contractors or agents of Contractor. Contractor will retain no copies of PHI. In the event that Contractor determines that returning or destroying the PHI is infeasible, Contractor will notify Supplier of the conditions that make return or destruction infeasible, and will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such PHI.

7. **Miscellaneous.**

(a) The relationship between Contractor and Supplier established by this Agreement is solely that of independent contractors. Neither party will be considered the legal representative or agent of the other, nor authorized or empowered to assume any obligation of any kind, implied or expressed, on behalf of the other party, except with the express prior written consent of the other party.

(b) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that this Agreement will not be assignable by either party without the other party's written consent.

(c) Neither the waiver by either party of any breach of or default under any of the provisions of this Agreement, nor the failure of either party to enforce any of the provisions of this Agreement or to exercise any right hereunder, will hereafter be construed as a waiver of any subsequent breach or default, or a waiver of any rights or provision hereunder.

(d) This Agreement will be governed by and construed in accordance with the laws of [Name of State]. No provision of this Agreement will be applied to or construed in a manner inconsistent with applicable state and federal laws and regulations.

(e) No person or entity other than the parties hereto will be entitled to bring any action to enforce any provision of this Agreement against a party hereto.

(f) No provision of this Agreement which is in violation of any state or federal law or regulation will be effective; provided, however, if one or more provisions of the Agreement are hereinafter determined to be invalid and unenforceable, this will not operate to the detriment or invalidate the remainder of the Agreement unless the unenforceability or

invalidity has the effect of substantially changing the terms and conditions of this Agreement or operates in such a manner as to invalidate or defeat the primary purposes or objectives of this Agreement.

(g) This Agreement is the entire agreement between the parties as to its subject matter, and all prior written or oral agreements, promises or representations are incorporated herein. This Agreement may be amended only by a writing executed by the parties.

(h) Any notice required or permitted to be given under this Agreement will in writing and will be hand delivered, sent by certified mail with return receipt requested, or delivered by overnight courier service providing written proof of delivery, addressed as follows:

If to Supplier: ABC Medical Supplies, Inc.

Attn: _____, President

If to Contractor: XYZ Medical Supplies, Inc.

Attn: _____, President

or to such other address as either party may designate by notice pursuant to this section.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth in the introductory paragraph, to be effective as of the date set forth in Section 3(a).

ABC MEDICAL SUPPLIES, INC.

By: _____
_____, President

XYZ MEDICAL SUPPLIES, INC.

By: _____
_____, President

EXHIBIT A

Fee Schedule

<u>Description of Product</u>	<u>Provision of Product in Accordance With Section 1.(a)(iv)</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____