

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**

Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT

MEDELA, Inc.

Washington Contract Number: 01910

(hereinafter "Contractor")

And

**STATE OF NORTH DAKOTA, OFFICE OF MANAGEMENT AND BUDGET,
STATE PROCUREMENT OFFICE**

North Dakota State Term Contract – 274 Breast Pumps

(hereinafter "Participating Entity")

Page 1 of 5

1. Scope: This addendum covers the WSCA Breast Pumps Contract lead by the State of Washington, for members of WSCA or NASPO, for use by Participating Entity's programs, including Women, Infants & Children Programs office.

2. Participation: Use of specific WSCA or NASPO cooperative contracts by other agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating Entity Modifications or Additions to Master Price Agreement:

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

a. ORDER OF PRECEDENCE:

The parties acknowledge and agree that:

a. In the event of a conflict between the terms contained in the WSCA Master Agreement 01910 and this Participating Addendum, the terms and conditions of this Participating Addendum will control as between Contractor and the Participating Entity; and

b. MERGER AND MODIFICATION:

This Contract including the following attachments constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties. This Participating Addendum and WSCA Master Price Agreement 10910 together with its exhibits are attached hereto and incorporated herein by reference. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence:

- 1) Terms and conditions of this PA, as may be amended,
- 2) Amendments to the Master Price Agreement No. 01910,
- 3) WSCA Master Price Agreement attached to the Master Contract 01910,

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**

**Administered by the State of Washington (hereinafter "Lead State")
MASTER PRICE AGREEMENT**

MEDELA, Inc.

Washington Contract Number: 01910
(hereinafter "Contractor")

And

**STATE OF NORTH DAKOTA, OFFICE OF MANAGEMENT AND BUDGET,
STATE PROCUREMENT OFFICE**

**North Dakota State Term Contract – 274 Breast Pumps
(hereinafter "Participating Entity")**

Page 2 of 5

- 4) Contractors' response to the RFP issued by the State of Washington, Department of General Administration, Office of State Procurement (OSP) RFP # 01910 for Purchases of Breast Pumps and Related Accessories.

c. Renewal: The renewal terms for this Participation Addendum shall be the same as the NASPO Master Agreement renewal terms; however, this contract will not automatically renew. State will provide written notice to Contractor of its intent to renew this contract at least 60 days before the scheduled termination date.

d. Effective Date. This Contract is not effective until fully executed by both Parties.

e. Cooperative Purchasing: This contract is an open-ended, cooperative purchasing contract established pursuant to North Dakota Century Code sections 15.1-09-34(1)(k) and 54-44.4- 13. Government entities, including, but not limited to, institutions under the jurisdiction of the State Board of Higher Education, public primary and secondary schools, townships, cities, counties, governmental boards and commissions, and nonprofit organizations established on behalf of public entities may purchase under this contract. The Contractor must confirm with the State that the entity is eligible for cooperative purchasing. "Open-ended" means that other government entities may participate in this contract, but participation is not mandated; therefore, the estimated volume of this contract is unknown. Contractor shall report to State all purchases made by other government entities.

f. Alternative Dispute Resolution – Jury Trial: The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The Parties have the right to legal action to enforce available remedies. The State does not waive any right to a jury trial.

g. Applicable Law and Venue: This Contract is governed by and construed in accordance with the laws of the State. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.

h. Attorney Fees. In the event a lawsuit is instituted on behalf of the State to obtain performance due of any kind under this Contract, and the State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

i. Confidentiality: Contractor agrees not to use or disclose any information it receives from the State under this Contract that the State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by the State. The State agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of State and Contractor to maintain confidentiality of information under this section continues beyond the term of this Contract, or any extensions or renewals or it.

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**

Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT

MEDELA, Inc.

Washington Contract Number: 01910

(hereinafter "Contractor")

And

**STATE OF NORTH DAKOTA, OFFICE OF MANAGEMENT AND BUDGET,
STATE PROCUREMENT OFFICE**

North Dakota State Term Contract – 274 Breast Pumps

(hereinafter "Participating Entity")

Page 3 of 5

j. Compliance with Public Records Act: Contractor understands that, except for disclosures prohibited in Section 8.4, the State must disclose to the public upon request any records it receives from Contractor under this Contract. Contractor further understands that any records that are obtained or generated by the Contractor under this Contract may be open to the public upon request under the North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

k. Taxpayer Identification: The Contractor's federal employer ID number is: _____

l. Limitations on Appropriations and Spending Authority. Continuation of this Contract beyond June 30 of any odd numbered year is contingent on continued legislative appropriation of funds for the purposes of this Contract. If those appropriations are not forthcoming, the State will notify the Contractor as soon as possible and the Contract will terminate on June 30 of that year, however the state shall be responsible for and shall pay Contractor in full for all orders executed prior to the written termination notice. The State will not be penalized nor incur any liability because of termination of the Contract.

m. Payment of Taxes By State: State is not responsible for and will not pay local, state, or federal taxes. State sales tax exemption number is E-2001, and certificates will be furnished upon request by the purchasing agency.

n. Contract Reporting: Submit reporting to the State of North Dakota, as mutually agreed, and as required to the Contract Administrator. The State requires quarterly report of services, whether or not there are sales within the period.

o. Certificate of Insurance: A certificate of insurance shall be furnished to the State of North Dakota.

4. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

Lead State Contract Administrator- Washington

Name: Melissa Cox, Contracts Specialist

**Address: Department of General Administration, Office of State Procurement
210 11th Ave SW Rm 201
Olympia, WA 98504-1101**

Voice: (360) 902.7439

Fax: (360) 586.2426

E-mail: mcox@ga.wa.gov

Contractor - Medela, Inc.

Name: Bonnie Voigt, Supervisor Government Contracts

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**

Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT

MEDELA, Inc.

Washington Contract Number: 01910

(hereinafter "Contractor")

And

**STATE OF NORTH DAKOTA, OFFICE OF MANAGEMENT AND BUDGET,
STATE PROCUREMENT OFFICE**

North Dakota State Term Contract – 274 Breast Pumps

(hereinafter "Participating Entity")

Page 4 of 5

**Address: 1101 Corporate Drive,
McHenry, Illinois 60050-7005**

Voice: 815-578-2459

Fax: 815-759-2459

E-mail: bonnie.voigt@medela.com

Participating Entity - North Dakota

Name: Dillys Bach, C.P.M. -State of North Dakota, OMB, State Procurement Office

**Address: 600 E Boulevard Ave, Capitol Twr, Dept 012,
Bismarck ND 58505-0310**

Telephone: 701.400.4589

Fax: 701.38.0109

E-mail: dbach@nd.gov.

5. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract #01910" and ND State Term Contract # 274 (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if appropriate), itemized list of items being purchased, & rates of the service being used.

6. Price Agreement Number: All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: [ND STATE TERM CONTRACT # 274] and the Lead State price agreement number: 01910.

This Participating Addendum and the Master Price Agreement number 01910 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
BREAST PUMPS (WSCA/WIC)**

Administered by the State of Washington (hereinafter "Lead State")

MASTER PRICE AGREEMENT

MEDELA, Inc.

Washington Contract Number: 01910

(hereinafter "Contractor")

And

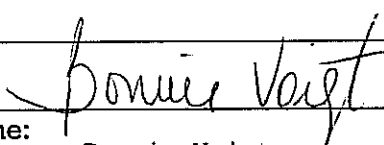
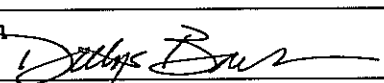
**STATE OF NORTH DAKOTA, OFFICE OF MANAGEMENT AND BUDGET,
STATE PROCUREMENT OFFICE**

North Dakota State Term Contract - 274 Breast Pumps

(hereinafter "Participating Entity")

Page 5 of 5

by both parties below. This Amendment is not effective until fully executed by all parties.

Participating Entity: State of North Dakota, acting through its Office of Management and Budget, State Procurement Office	Contractor: Medela, Inc.
By: ND State Procurement Office	By: 
Name: Dillys Baeh 	Name: Bonnie Voigt
Title: , C.P.M. State Procurement Officer II	Title: Supervisor, Government Contracts
Date: 8-01-2011	Date: July 15, 2011