

## **PROVISTA GPO PARTICIPATION AGREEMENT**

This Provista GPO Participation Agreement (this "**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the "**Effective Date**"), by and between Provista, Inc. ("**Provista**"), a Delaware corporation, and \_\_\_\_\_ SCA-MD Savings 2242840 ("**Customer**").

WHEREAS, Provista is a group purchasing organization that, directly and through its subsidiaries, affiliates and designated agents (the "**Provista Parties**"), negotiates purchasing agreements ("**Provista Supplier Agreements**") with suppliers and distributors of goods and services ("**Suppliers**") for the benefit of its customers;

WHEREAS Customer is an organization that desires to obtain access to Provista Supplier Agreements in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **I. Provista Supplier Agreements.**

- A. **Authorization.** Customer hereby authorizes Provista, directly and through the Provista Parties, to act as its non-exclusive group purchasing agent for purposes of negotiating and entering into Provista Supplier Agreements. Notwithstanding the foregoing, this authorization shall be contingent upon Customer's proper and timely completion of any necessary enrollment forms or declaration documents. Nothing in any Provista Supplier Agreement shall, in any way, obligate Customer to purchase, license or lease any goods, services, or intangible rights ("**Covered Items**") thereunder.
- B. **Supplier Agreement Terms.** Customer acknowledges and agrees that before it may purchase through Provista Supplier Agreements, Provista may need to ensure that its Suppliers have no objection to granting Customer access to Provista Supplier Agreements. Customer further acknowledges and agrees that, in the event that Customer purchases Covered Items pursuant to Provista Supplier Agreement, Customer shall comply with any and all applicable terms and conditions set forth in such Provista Supplier Agreement.
- C. **Own Use; Not For Resale.** If Customer is a nonprofit organization, Customer represents and warrants that all goods purchased through Provista Supplier Agreements will be for Customer's "own use," within the meaning of the Nonprofit Institutions Act as interpreted by the U.S. Supreme Court in Abbott Laboratories v. Portland Retail Druggist Association Inc., 425 U.S. 1 (1976), and following cases. Notwithstanding, in no event shall Customer sell, resell, lease or otherwise transfer goods purchased through Provista Supplier Agreements to a third party unless expressly permitted by the terms of the applicable Provista Supplier Agreement. Any breach of the foregoing representation and warranty may result in immediate termination of this Agreement.

## II. Supplier Fees and Disclosure Reports

- A. In General. Customer acknowledges and agrees that, pursuant to the terms of Provista Supplier Agreements, Provista may receive fees from Suppliers ("**Supplier Fees**"), which are based upon purchases made by Customer. Except as noted below, each Provista Supplier Agreement provides for Supplier Fees that are fixed at three percent or less of the purchase price of the Covered Items.
- B. Fee Database. For Supplier Fees that are not fixed at three percent or less of the purchase price of the Covered Items, Provista shall give Customer (or its authorized agent or designee) access to a secure, electronic web-based database that lists all such Supplier Fees, which shall be updated by Provista or another Provista Party, from time to time, as necessary, and is incorporated herein by reference.
- C. Disclosure Report. Provista shall provide Customer (or its authorized agent or designee) with, or provide Customer with access to, an annual report listing Customer's purchases under Provista Supplier Agreements and the associated Supplier Fees received by Provista based on such purchases.

## III. Term and Termination

- A. Term. The initial term of this Agreement shall commence as of the Effective Date and continue for three (3) years (the "**Initial Term**"). The Initial Term shall renew automatically from year to year until terminated in accordance with the terms set forth herein
- B. Termination Without Cause. Either party may terminate this Agreement at will and without cause at any time upon one hundred eighty (180) days' prior written notice to the other party.
- C. Termination For Cause. Either party may serve written notice of material breach of this Agreement to the other party, which notice shall specify the nature of the breach. If such material breach is not cured within thirty (30) days of the notice, or such additional time as is reasonably required and agreed to by both parties to cure such material breach, the non-breaching party may terminate this Agreement upon ten (10) days written notice thereafter.
- D. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, all provisions of this Agreement that contain obligations which extend past the termination date shall survive the termination or expiration of this Agreement.

## IV. Miscellaneous

- A. Confidentiality. Except as provided below, neither party shall, during the term of this Agreement and for a period of three (3) years after the expiration or termination thereof, disclose to any third party, other than its employees or agents with a need to know who have been advised of the confidentiality restrictions contained in this Agreement, or use for any purpose other than compliance with this Agreement, any of the Confidential Information of the other party. Notwithstanding anything in this

Agreement to the contrary, Provista shall have the right to disclose the terms and conditions of this Agreement to Channel Partner, Suppliers with whom Provista has Supplier Agreements, and federal, state, and local governmental regulatory entities.

For purposes of this Agreement, the term "Confidential Information" includes: (i) any information which refers or relates to this Agreement, any agreements between Provista and its customers, and any Supplier Agreement, including but not limited to any information relating to Supplier pricing, customer data, customer lists, financial analyses, benchmarking, and comparative reports of any kind prepared by the other party; (ii) any information that a party marks as "Confidential," "Proprietary" or with a similar legend prior to disclosure; (iii) any information which is orally identified as confidential at the time of disclosure and confirmed as confidential in writing within three (3) business days following such disclosure; and (iv) all information generated by a party that contains, reflects, or is derived from Confidential Information. Confidential Information shall not include any information that is: (i) publicly available through no fault of the receiving party; (ii) received from a third party who is not under an obligation of confidentiality to the disclosing party; (iii) known by the receiving party prior to disclosure by owner; (iv) developed by the receiving party independently from the Confidential Information of the owner; or (v) required to be disclosed by law or legal process, as determined by the receiving party based on the advice of legal counsel, so long as the party uses reasonable efforts to notify the disclosing party prior to such disclosure.

The parties agree that money damages will not be a sufficient remedy for any breach of the confidentiality provisions of this Agreement. The non-breaching party shall be entitled to seek specific performance and/or injunctive relief, in addition to any other remedies available at law or in equity, upon the breach or threatened breach of this Section IV.A. of the Agreement without posting bond and without proof of actual damages.

- B. Assignment. This Agreement may not be transferred or assigned without the prior written consent of the non-assigning party; provided, however, that Provista may, without the consent of Customer, assign this Agreement to a Provista Party or to the successor in interest in the event of a merger or sale of substantially all of its assets. Any attempt to assign this Agreement without the required consent shall be void.
- C. Reporting Price Reductions; Compliance with Law. Customer represents, warrants and guarantees that at all times during the Term of this Agreement, Customer shall comply with all applicable federal, state and local laws. To the extent Customer receives discounts, rebates or any other price reductions as a result of purchases under a Provista Supplier Agreement, or any other remuneration under this Agreement or any Provista Supplier Agreement, Customer may have an obligation under federal or state law to disclose such price reductions or remuneration to federal or state health care programs or other payors, and Customer agrees to comply with all such laws.
- D. Attorneys' Fees and Costs. In the event that either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of such action so incurred, including, without limitation, reasonable attorneys' fees.

- E. Exclusion. Each party represents and warrants that it has never been, and shall never be, during the term of this Agreement, excluded from participation in any federal health care program (as such term is defined in 42 U.S.C. § 1320a-7b(f)) ("**Federal Health Care Program**"), or been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency. Each party represents and warrants that it has not been the subject of an actual, pending or threatened formal adverse action, as that term is defined in 42 U.S.C. § 1320a-7e(g). Each party agrees that it will notify the other party immediately in the event it is excluded from any Federal Health Care Program, or debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency, during the term of this Agreement.
- F. Limitation of Liability. Neither party shall be liable for special, incidental or consequential damages under this Agreement, even if advised of the possibility thereof. All remedies available to an aggrieved party herein under this Agreement, at law, or in equity, are cumulative and not mutually exclusive. Provista and its parent, subsidiaries, affiliates, directors, officers, agents and employees shall not be liable to Customer for any act, or failure to act, in connection with any Provista Supplier Agreement (or Provista program), including, but not limited to, any failure of a Supplier to furnish the Covered Items that the Supplier has agreed to furnish under any Provista Supplier Agreement. Without limiting the generality of the foregoing, Provista hereby disclaims and excludes any express or implied representation or warranty regarding any Covered Items under any Provista Supplier Agreement (or Provista program).
- G. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the transactions contemplated hereby. This Agreement supersedes all written or oral prior agreements or understandings with respect to the subject matter hereof. This Agreement may not be amended or modified, and no provision of this Agreement may be discharged or waived, except by a writing signed by Provista and Customer. A waiver of any particular provision will not be deemed a waiver of any other provision, nor will a waiver given on one occasion be deemed to apply to any other occasion.
- H. Severability. In the event any provision of this Agreement is for any reason deemed to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement, and this Agreement will be construed by limiting or invalidating such provision to the minimum extent necessary to make such provision valid, legal and enforceable.
- I. Notice. Any notice required by this Agreement will be deemed to be properly given if sent by (1) certified or registered mail, return receipt requested, or (2) national courier service, such as federal express, at the addresses set forth below or at any other address of which notice has been properly given pursuant to the provisions of this Section V.I.:

If to Provista: Provista, Inc.  
250 E. John Carpenter Frwy., Ste. 120  
Irving, TX 75062  
Attn: General Counsel

If to Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

- J. Governing Law. This Agreement will be construed under and governed by the laws of the State of Texas.
  
- K. Independent Contractors. The parties to this Agreement are independent contractors and are solely responsible for the conduct of their respective employees, agents, and representative in connection with the performance of their obligations under this Agreement. Neither party will, by entering into this Agreement, become liable for any of the existing or future obligations, liabilities or debts of the other party. Nothing in this Agreement will be construed as creating a partnership or joint venture between Provista and Customer.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and delivered by their respective authorized representatives.

PROVISTA, INC.

\_\_\_\_\_  
("CUSTOMER")

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_