

Savings Squared Medical

Group Purchasing and Contract Purchasing Management Services Agreement

This Group Purchasing and Contract Purchasing Management Services Agreement (“Agreement”) is made and entered into as of the date of your assent to its terms in accordance with the obligations set forth below (“Effective Date”), by and between Savings Squared Medical, Inc., a California corporation (“SSM”) and Customer (described below). This Agreement governs Customer’s access and use of SSM’s Group Purchasing and Contract Purchasing Management Services described in Exhibit B, Section 1 (“Contract Services”).

By enrolling for Contract Services, clicking “I agree” to this Agreement, or otherwise using the Contract Services, you: (a) agree to this Agreement on behalf of your employer or legal entity which you represent (“Company”), and on behalf of the facilities provided in Exhibit A (“Covered Facilities”, together Company and Covered Facilities are collectively referred to as “Customer”); and (b) represent that you have the authority to bind Company, and on behalf of Company, the Customer, to these terms. Me

Use of the Contract Services is conditioned upon acceptance without modification of the terms, conditions and notices contained in this Agreement. If SSM changes the terms of this Agreement, SSM will notify Customer in writing of those changes and Customer will be deemed to have agreed to such changes should Customer continue to use the Contract Services.

1. Distribution Contract Purchasing Management Services

The medical distribution supply chain may involve contracts for products and pricing from one or more Group Purchasing Organization (“GPO”), distributor, and/or manufacturer hereafter collectively referred to as “Suppliers”.

SSM has established various Supplier relationships that enable SSM to effect pricing optimization for Customer as part of SSM’s Contract Services. Customer may express its preference in naming a designated distributor(s); however, SSM retains the right to designate the distributor(s) as well as the GPO, at its sole discretion, as the structural foundation for Customer’s contract supply chain under this Agreement as set forth on Exhibit B, Section 2. Within said supply chain framework, SSM will tailor contract portfolio pricing according to Customer’s product and brand preferences to maximize the pricing benefits from the Suppliers for Customer under this Agreement hereinafter referred to as (“SSM’s Contract Portfolio”).

To engage SSM’s Contract Services, Customer hereby authorizes SSM to negotiate pricing of items, including but not limited to medical supplies, pharmaceuticals, equipment and services on behalf of Customer and as Customer’s authorized group purchasing and contract agent. To that end, SSM may sign participation agreements with GPOs, vendors or distributors on Customer’s behalf to obtain better pricing and services for Customer and SSM may sign letters of commitment with vendors and distributors on Customer’s behalf in order to secure products, services and pricing for Customer’s benefit. By clicking “I agree” to SSM’s use of your digital signature, you hereby authorize SSM to

execute the agreements, letters and other relevant documents for purposes of the Contract Services and this Agreement with such signature on Customer's behalf.

1.1. Distribution Contract Management. SSM will load and connect manufacturer contracts and tiers per SSM's Contract Portfolio for the designated distributor.

1.2. Direct Manufacturer Contract Management. SSM will, upon the election of Customer, provide the service of signing and connecting contracts in which Customer engages directly with the manufacturer outside the distribution supply-chain network for pricing and delivery of products.

2. Establishing an account with SSM

To access Contract Services under this Agreement, Customer must have and maintain an SSM customer account in good standing.

Customer will provide SSM with access (login and password) or allow the distributor to give SSM access of its distribution ordering websites/portals throughout the duration of this Agreement so that SSM can download usage data regularly on a monthly basis.

3. GPO and Other Contracts

SSM will obtain and may administer GPO and medical supply contracts for Customer from time to time and administer Customer's existing GPO contracts. No terms, conditions, prices, products, or other outcomes are guaranteed. SSM has no liability to Customer for any Supplier's or vendor's performance under any GPO contract, or to any Supplier or vendor for Customer's performance under a GPO contract.

Customer authorizes SSM to collect detailed information regarding Customer's purchases made under GPO contracts, this Agreement and any other agreements between SSM and any supplier or vendor. In addition, Customer authorizes all Suppliers and vendors to disclose to SSM any information regarding any of Customer's planned or proposed purchases from any Supplier or vendor.

4. Use of Products; Own Use

Unless otherwise specified, each product is sold only for the specific use or uses set forth in any documentation made available by the Supplier related to such product.

Customer expressly and unequivocally understands and agrees that each and every purchase made through the SSM Contract Services is for its ultimate consumption in its business or medical practice, in other words, for its "Own Use".

SSM reserves the right to limit sales, including the right to prohibit sales, to re-sellers.

5. About Pricing

The prices quoted for products may differ from customer to customer. Prices and the availability of items are subject to change without notice. Additionally, prices may vary based on Customer's order

and delivery location(s). It is understood that, despite SSM's best efforts, some items in the SSM Contract Portfolio may not reflect the then-current price.

6. Purchase Commitment

In return for SSM opening an SSM customer account for Customer and SSM agreeing to provide and/or manage the contract administration and pricing described above, Customer agrees to make annual purchases through SSM of not less than 0% of Customer's total purchases of products available from the SSM Contract Portfolio each year during the term of this Agreement. Upon request from SSM, Customer agrees to provide SSM with true and correct copies of usage from all distributors for the purpose of verifying Customer's compliance with the provisions of this purchase commitment. Customer acknowledges and agrees that SSM may terminate Customer's account and/or revise the pricing available to Customer in the event Customer does not comply with the terms of said purchase commitment.

7. Administrative Fees

SSM receives administrative fees from other GPOs, manufacturers and distributors as negotiated between SSM and the other GPO's, manufacturers and distributors.

8. GPO Contract Discounted Pricing

Customer understands that the discounted pricing provided under this Agreement, as well as the value of any products provided at less than full price, may be a "discount" or "rebate" within the meaning of 42 U.S.C. Section 1320a-7b(b)(3)(A) of the Social Security Act and the regulations promulgated hereunder at 42 C.F.R. Section 1001.952(h) and that Customer may have an obligation to report this discount to applicable state or federal programs. To the extent required by applicable law, Customer will report any discounts or rebates earned and paid under this Agreement on its/their institutional cost report(s), or otherwise disclose the amount of the discount or rebate to the program, in compliance with the discount safe harbor provisions of the Anti-Kickback Statute and its implementing regulations. 42 CFR § 1001.952(h). All discounts and rebates will be provided based on purchases of products within a single fiscal year, and the terms of the discounts and rebates are fixed as set forth in this Agreement. SSM will, as provided by law, provide information concerning the discounts and rebates to the Secretary of the United States Department of Health and Human Service or any applicable state Medicaid agency, if requested.

9. Seller Rebates

GPOs forward any seller rebates SSM receives for Customer's purchases to Customer along with any allocation data received. Customer is solely responsible for allocating and disclosing rebates as required by law.

10. Contract Services Fee(s)

As consideration for providing Customer with access to SSM's Contract Services, Customer agrees to pay SSM service fee(s) as defined in Exhibit B, Section 1. Fee percentages apply to the gross dollar amount of all purchases per category under contracts managed and/or audited by SSM during each month. Said fees will be assessed and invoiced monthly. Notwithstanding the foregoing, no such fee

for distribution shall be due for any month during which the administrative fee described in Section 10.1 is applicable.

10.1

In compliance with the GPO safe harbor under the Anti-Kickback Statute and its implementing regulations (42 CFR § 1001.952(j)), to the extent required by law, SSM will disclose in writing at least annually to Customer, and to the Secretary of the Department of Health and Human Services upon request, the administrative fees or other amounts pursuant to Section 7 of this Agreement received by SSM from the Designated Distributor with respect to purchases made by or on behalf of the Customer. The amount of that administrative fee shall not exceed 3.75% of purchases.

SSM shall waive its standard monthly Contract Services fee set forth in Section 10 and Exhibit B unless Distributor discontinues said payment or until Customer violates this Agreement in a manner that reduces or eliminates such fee. SSM will provide written notice to Customer, of any such event and Customer will have the option to pay SSM's monthly Contract Services fee directly to SSM pursuant to Sections 10 and 11 of this Agreement. Customer will have thirty (30) days to provide written notice to SSM of its acceptance of responsibility for payment for SSM's Contract Services, in which case, SSM will begin billing the Customer directly for ongoing services rendered relating to purchases beginning ninety (90) days from SSM's date of notice. Should Customer fail to notify SSM within thirty (30) days of the date of SSM's notice of their election to maintain SSM's Contract Services under these revised payment terms, this Agreement will terminate effective ninety (90) days from the date of said SSM notice.

11. Payment Terms

Any amount due for Contract Services is payable by check in NET 15 days. This Agreement is at all times subject to SSM's ongoing credit department approval, and SSM may at any time condition performance of any Contract Services upon timely receipt of payment or Customer compliance with other terms and conditions satisfactory to SSM. If, in the judgment of SSM, Customer's financial condition at any time does not justify continuation of services or shipment on the terms of payment originally specified, SSM may require full or partial payment in advance. In the event that it becomes necessary for SSM to incur collection costs or institute a suit to collect any amount due and payable, Customer agrees to pay any and all such costs, charges, and expenses, including attorney's fees incurred by SSM to collect the account. LATE PAYMENT: A late payment penalty of 1.5% per month will be assessed to the unpaid balance if payment is received 30 days after the due date stated on the invoice.

12. Initial and Renewal Terms

12.1. Initial Term. Unless earlier terminated in accordance herewith, this Agreement shall remain in full force and effect for an initial term of thirty-six (36) months from the Effective Date (the "Initial Term").

12.2. Renewal Term. The Agreement shall renew automatically for twelve (12) month periods at the end of the Initial Term and any term thereafter unless Customer provides SSM with a written notice of non-renewal at least thirty (30) days prior to the end of the Initial Term or a Renewal Term. In the case such notice is received, this Agreement shall terminate as of the last day of the then-current term.

13. Termination

13.1. Termination for Breach or Insolvency. A party may terminate this Agreement: (i) for material failure by the other party to comply with the terms of this Agreement unless such breach is cured within thirty (30) days after written notice of the breach is received from the other party; or (ii) immediately in the event the other party seeks the protection of any bankruptcy court, becomes insolvent, or makes an assignment for the benefit of creditors.

13.2. SSM may also terminate this Agreement or suspend performance of Contract Services, without notice, if Customer violates this Agreement or if Customer engages in any conduct that SSM, in its sole discretion, believes is in violation of any applicable law or regulation or is otherwise harmful to the interests of SSM, any other SSM customer, Supplier or any third party.

13.3. Termination of this Agreement will result in severance of Customer from the SSM Contract Portfolio pricing.

14. Intellectual Property

SSM logos and trade names are trademarks or registered trademarks of SSM. All trademarks used on or in connection with SSM, and all goodwill in and to such names and marks, are the property of SSM.

15. Confidentiality

Customer agrees (i) to hold all non-public information including without limitation product, pricing and customer data disclosed by SSM ("Confidential Information"), in strict confidence, (ii) not to disclose such Confidential Information to any third parties, and (iii) not to use any Confidential Information for any purpose except for Customer's internal business purposes. Customer may disclose the Confidential Information to Customer's responsible employees with a bona fide need to know, but only to the extent necessary to carry out Customer's internal business purposes. Customer agrees to instruct all such employees not to disclose such Confidential Information to third parties, including consultants, without the prior written permission of SSM. Confidential Information will not include information that: (a) is now, or hereafter becomes, through no act or failure to act by Customer, generally known or available to the public; (b) was acquired by Customer before receiving such information from SSM and without restriction as to use or disclosure; (c) is hereafter rightfully furnished to Customer by a third party without restriction as to use or disclosure; or (d) is disclosed with the prior written consent of SSM. Customer recognizes and agrees that nothing contained in the Agreement will be construed as granting any rights to Customer, by license or otherwise, to any Confidential Information except as specified in this Agreement. Customer acknowledges that all Confidential Information is owned solely by SSM (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, Customer agrees that SSM will have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach. The obligations of nondisclosure, non-use and confidentiality described in this Agreement will remain in effect for three (3) years from the date of the last disclosure of Confidential Information, at which time such will terminate.

16. Limitation of Liability and Disclaimer of Warranty

SSM MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONTRACT SERVICES OR THE PRODUCTS SUPPLIED BY ANYONE.

SSM DOES NOT REPRESENT OR WARRANT THAT INFORMATION AVAILABLE THROUGH SSM IS ACCURATE, CURRENT OR COMPLETE.

SSM is not a manufacturer or distributor of any product but acts solely as a provider of Contract Services. CUSTOMER AGREES TO NOT HOLD SSM LIABLE FOR ANY DEFECT IN PRODUCTS OR BREACH OF ANY WARRANTY EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEROPERABILITY AND COMPATIBILITY AND BY THE MANUFACTURER OR FOR CLAIMS ARISING FROM THE HANDLING OF PRODUCTS BY ANY DISTRIBUTOR. CUSTOMER AGREES TO LOOK SOLELY TO THE MANUFACTURER OR DISTRIBUTOR FOR ANY CLAIM ARISING DUE TO LOSS, INJURY, DAMAGE OR DEATH RELATED TO THE USE, HANDLING OR SALE OF PRODUCTS.

IN NO EVENT WILL SSM BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, UNDER ANY THEORY, INCLUDING NEGLIGENCE, FOR DAMAGES OF ANY KIND ARISING FROM THE USE OF SSM CONTRACT SERVICES, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, ACTUAL, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST INCOME, REVENUE OR PROFITS, LOST OR DAMAGED DATA, OR OTHER COMMERCIAL OR ECONOMIC LOSS, THAT RESULT FROM CUSTOMER'S USE OF, OR INABILITY TO USE, THE CONTRACT SERVICES, EVEN IF SSM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE. BY USING THE CONTRACT SERVICES, CUSTOMER AGREES THAT THIS LIMITATION WILL APPLY TO ALL SERVICES, CONTENT AND DATA AVAILABLE THROUGH SSM. IN THE EVENT THAT APPLICABLE LAW DOES NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR DAMAGES, CUSTOMER AGREES THAT IN NO EVENT WILL SSM'S TOTAL LIABILITY TO CUSTOMER FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION OF ANY KIND EXCEED TEN THOUSAND DOLLARS.

Although some states do not permit suppliers of goods to disclaim implied warranties, you agree that SSM does not sell goods, unless specifically stated, but provides only services, and that due to the limited nature of SSM's involvement in transactions in which SSM's e-commerce services are used, those restrictions on disclaimer of warranties do not apply to SSM. Any warranties relating to goods or services purchased using the Contract Services are limited solely to warranties, if any, provided by the suppliers of such goods or services. Customer is responsible for understanding and complying with any limitations on liability and warranties offered by Suppliers.

17. Miscellaneous

17.1. California Services. Contract Services are created, controlled and operated by SSM and its affiliates in the State of California, USA and the location of the applicable affiliate. If Customer chooses to access the Contract Services from another location, Customer is responsible for complying with local laws, if and to the extent that local laws apply. SSM is located at 1902 Joseph Drive, Moraga, CA 94107 and can be reached by telephone at (415) 744-4404.

17.2. Compliance with Laws. The parties shall comply with all applicable local, state, national, and international laws and regulations.

17.3. Indemnity. Customer agrees, at Customer's sole cost and expense, to defend, indemnify and hold SSM, as well as its subsidiaries, affiliates, officers, shareholders, employees and independent contractors, harmless from and against any and all damages, liabilities, costs and expenses including reasonable attorney's fees arising from any third party claims, due to or arising out of Customer's use

of the Contract Services, Customer's breach of this Agreement, or Customer's violation of the rights of any third party.

17.4. Amendments. SSM reserves the right to change the terms of this Agreement, disclaimers and policies at any time by written notice to Customer.

17.5. Applicable Laws. The formation, construction and interpretation of this Agreement will be controlled by the laws of the State of California, regarding agreements between California residents entered into and to be performed within California, giving no effect to choice of law provisions. The U.N. Convention of Contracts for the International Sale of Goods is expressly excluded from any interpretation of this Terms of Use. The Uniform Computer Transaction Act ("UCITA") as adopted in some States in the United States of America will not apply to this Agreement.

17.6. Jurisdiction and Venue. Any dispute relating to this Agreement will be subject to the exclusive jurisdiction of the state and federal courts in San Francisco, California, U.S.A., and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

17.7. No Medical Advice. Although SSM is dedicated to serving the healthcare industry and its suppliers, SSM is not authorized to provide, and SSM does not engage in providing, medical advice.

17.8. Severability. If any provision of this Agreement is held to be unlawful, void or for any reason unenforceable, that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of the remaining provisions.

17.9. There is no commitment to purchase under this contract.

Savings Squared Medical

Customer as Authorized Representative

Name: Savings Squared Medical
Address: 1902 Joseph Drive
Moraga, CA 94556

Customer Name:
Customer Address:

Date: _____
Signature: _____
Print Name: _____

Date: _____
Signature: _____
Print Name: _____

EXHIBIT A

List of Locations Included as Covered Facilities

Additional Locations

EXHIBIT B

1. Contract Services Fee Schedule

SERVICE CATEGORY		
FEE		

Distribution Contract Pricing and Management		
Distribution		

	Paid by
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