

## MEMBER AGENCY AND PROGRAM CONTRACT

2009

BETWEEN

MEMORANDUM OF AGREEMENT DATED as of the \_\_\_\_\_ day of \_\_\_\_\_,

**ADAGIO PURCHASING ALLIANCE INC.**

**OF THE FIRST PART**

A Company incorporated under the laws of Ontario, Canada  
Herein referred to as "Adagio"

And

**OF THE SECOND PART**

\_\_\_\_\_

A Company incorporated under the laws of \_\_\_\_\_, Canada  
Herein referred to as the "Member"

**WHEREAS Adagio** is a corporation, whose purpose is to negotiate, on behalf of its members, contracts with suppliers to members with products and services at advantageous prices and to obtain for its members volume discounts;

**AND WHEREAS THE MEMBER** wishes to have Adagio act as Agent for negotiating programs for such products and services both existing and future, as they shall become available;

**AND WHEREAS THE MEMBER** wishes, to the extent provided hereunder, to take advantage of the contract and discount programs negotiated by Adagio.

**APPROVED SUPPLY CONTRACT** means any program contract negotiated by Adagio for the benefit of itself or any of the participating Members.

**NOW THEREFORE IN CONSIDERATION OF** the mutual premises and covenants contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

- 1.0 APPOINTMENT** by Adagio is hereby made of this signatory as a Member entitled to the benefits and subject the conditions contained herein;
- 1.1 APPOINTMENT** by the Member is hereby made for Adagio to act as an Agent for purchasing and accounting, with rights to access with Approved Suppliers account information, personal information and volume information required to exercise its duties as set out within this document including but not limited to information and disclosure requirements.
- 2.0 RIGHTS OF A MEMBER** included and granted by this document included a Members option to avail itself of any Approved Supply Contract in force, from time to time, during the term hereof and to participate, to the extent provided herein in any margin discounts negotiated.
- 3.0 TERM** This agreement shall have an initial term of one year and shall therefore automatically renew, on an annual basis for one year unless terminated herein.
- 4.0 TERMINATION** may be made by either party after the initial term of one (1) year without cause providing the other 120 Days prior written notice. This right shall be in addition to any right of termination for cause as provided herein. This contract cannot be terminated without cause during the first year.
- 5.0 OBLIGATIONS OF THE MEMBER** During the term of this Agreement, the Member agrees that it shall:
  - 5.1** Comply with the Terms and Conditions required, on the part of the Member as contained herein;
  - 5.2** Purchase 100% of its required supply from Approved Supply Contracts where exclusivity is agreed upon prior to binding the Member for programs where equipment is placed on loan or lease;
  - 5.3** Endeavour to promote and utilize programs within Adagio's portfolio wherever possible and applicable to better the overall environment for both Suppliers and Members;
  - 5.4** Comply with the Terms of Purchase under any Approved Supply Contract pursuant to which the Member purchases goods or services;
  - 5.5** Provide Adagio with such tracking information as required, including but not limited to invoices, statements, receipts and proof of payment if during the course of our commercial effort, we require such information. Additionally, the Member shall authorize Adagio as an Agent as required for communication with Suppliers about the Members account, status, and so on as it sees fit;
  - 5.6** To be responsible for all loaned, leased or placed equipment which may be granted under an Approved Supply Contract and to adhere to the requirements set out for such equipment in the Approved Supply Contracts.
  - 5.7** To keep accounts receivables within the terms agreed to by the Supplier pursuant to the Members purchasing from the Supplier under an Approved Supply Contract. The Member further agrees to indemnify and hold forever harmless Adagio for any costs, credits, outstanding amounts, attorneys fees and costs arising from a dispute between any Supplier and the Member;
  - 5.8** To treat information surrounding pricing, methods, programs, discounts and credits as confidential, understanding that transmittal or dissemination of this information without Adagios consent could represent a material harm to the organization as a whole and both parties acknowledge that a breach of this provision would

cause irreparable harm that monetary damages alone will not be sufficient to rectify the breach, so you are entitled to Special Remedies such as injunctions or other equitable relief. These Special Remedies (injunction/equitable relief) are cumulative and in addition to those remedies provided by law and may be exercised separately, concurrently or successively.

**5.9** In signing this agreement, the member agrees not to participate in or share any information to a like organization providing services relating to group purchasing or lobbying in any way whatsoever.

**6.0 OBLIGATIONS OF ADAGIO** During the term of this Agreement, Adagio agrees that it shall:

**6.1** Seek out, negotiate and enter into advantageous Approved Supply Contracts as opportunities present themselves;

**6.2** Maintain contact with Approved Suppliers to ensure that service and supply performance is maintained;

**6.3** Provide Member accounts with assistance with respect to any reasonable negotiation between an Approved Supplier and themselves;

**6.4** Provide at the commencement of this agreement information on all current Approved Supply Contracts and to maintain communication with the Member at least on a quarterly basis for any new updates on program development or information pertaining to the group;

**6.5** Give access to the Members Only section of the Adagio website to all members in good standing;

**6.6** Offer Members in good standing access to participate in any program the Member should choose.

**7.0 TERMINATION WITH CAUSE** Suppliers retain the right to limit equipment, maintain quality standards and or deem the account unserviceable due to geography, or refuse Members service based on prior credit issues. It is at the sole discretion of Adagio to accept or reject accounts as members as well as to suspend or discontinue as membership due to outstanding payables, misuse of equipment, material breach or disclosure of confidential information. Adagio also retains the right to conduct credit checks as it may be required to perform its duties and commercial efforts with relation to Approved Supply Contracts.

**8.0 ANNUAL FEE** The Member acknowledges that an annual membership fee of \$150.00 will apply for the duration of this agreement.

**9.0 STATUS OF FEES AND DISCOUNTS** In the case of Termination for Cause the member will not be entitled to any reimbursement of fees. Any Discount may be revoked by a Supplier in the event that outstanding payables exist.

**10.0 CONFIDENTIAL INFORMATION** Either party may disclose to the other party during the course of this agreement, confidential and/or proprietary information, including but not limited to the Terms of this Agreement, the names of Approved Suppliers, Approved Supplier Contracts, information pertaining to Member participation, Member incentives, closed Events and or group activities.

**10.1 CONFIDENTIAL REQUIREMENTS** With respect to Confidential Information (including credit) disclosed in the course of this Agreement, the party receiving such confidential information agrees to: **(a)** Not disclose any confidential information to third parties except: (i) those of its employees, agents, and consultants with a need to know, (ii) those parties with respect of who consent to disclose has been granted; and/or (iii) as required by law or by any court or governing body of competent jurisdiction; **(b)** Advise employees, consultants or agents who receive or have access to confidential information of the existence of the confidentiality provisions of this Agreement and the obligations created therein; **(c)** Use and require its employees, consultants and agents to exercise at least the same degree of care in handling required for the parties own information, but in any event holding in confidence; **(d)** Use this information only as required in executing its duties in performance of this Agreement.

**10.2 NON CONFIDENTIAL INFORMATION** applies to any information that is: **(a)** known to 3rd party from someone else, **(b)** subject to disclosure under the law (court order), **(c)** independently created/obtained by the other party, or **(d)** in the public arena already

**11.0 REMEDIES** Both parties agree that the restrictions contained herein are reasonable and a necessary protection of the interests of the parties and that any violation of these restrictions would cause substantial and irreparable injury to the parties.

**12.0 STATUS OF THE MEMBER AND ADAGIO** Each of the parties hereto agrees and acknowledges that they are independent contractors and that this agreement does not appoint or authorize either party to enter into any agreement for the provision of services or products or to bind in any fashion whatsoever, the other party. Notwithstanding the foregoing, the Member acknowledges and agrees that Adagio shall have the authority to negotiate Approved Supply Contracts, pursuant to which the participating Member must fulfill its obligations under this agreement.

**13.0 MEMBER PURCHASES** Any purchases made by the Member pursuant to an Approved Supply Contract shall be for the Member's Account and Adagio shall, in no way whatsoever be responsible to pay any amount with respect to any

such purchase. The Member hereby agrees to indemnify and save Adagio harmless for any claim made by an Approved Supplier to the Member. Time shall be of the essence in this agreement.

- 14.0 LEGAL FEES** Each of the parties hereto shall pay their respective legal and accounting costs incurred in connection with the preparation, execution and delivery of this Agreement and all instruments and documents executed pursuant hereto.
- 15.0 ASSIGNMENT** The Member shall not assign, by instrument, operation of law or otherwise, its rights under this agreement without the prior written consent of Adagio.
- 16.0 BENEFIT OF THE AGREEMENT** This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of the party hereto.
- 17.0 NON-WAIVER.** A waiver of any breach or provision under the agreement by any party shall not be deemed to be a waiver of that provision, nor shall any waiver be construed as a continuing waiver.
- 18.0 INDEMNIFICATION.** Both parties indemnify and hold the other party harmless from any actions that may arise from this agreement from their own actions, omissions or negligence.
- 19.0 SURVIVAL OF PROVISIONS** shall remain in effect for this agreement for (5) years past termination of this agreement with or without cause, for sections: **10.0 CONFIDENTIAL INFORMATION**, **11.0 REMEDIES** and **18.0 INDEMNIFICATION** as included in this agreement.
- 20.0 SEVERABILITY** If one or more sections of this agreement prove unenforceable, the balance of the agreement will remain binding on the parties.
- 21.0 DECLARATION** This instrument forms an Agency Agreement between the parties and does not create a partnership, joint venture or employer-employee relationship.
- 22.0 GOVERNING LAW** The contract is subject to the jurisdiction to Canadian/federal and Ontario laws, and Ontario is the exclusive jurisdiction for interpretation and dispute resolution.
- 23.0 ENTIRE AGREEMENT** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, cancels and supersedes any prior agreements. There are no other warranties or collateral agreements, expressed or otherwise between the parties other than what has been stated herein. This agreement may be modified from time to time with prior written notification to the member by Adagio to meet governing regulations.
- 24.0 AMMENDMENTS AND WAIVER** No modification or amendment to this Agreement shall be void or binding unless set forth in writing and duly executed by both parties hereto.
- 25.0 NOTICES** Any demand, notice or communication in connection with this Agreement shall be made to the following parties by Registered Mail, Facsimile Transmittal or personal delivery as listed below and sealed by;

I Agree and have authority to bind the corporation/company

\_\_\_\_\_  
Member (Printed)\_\_\_\_\_

\_\_\_\_\_  
Adagio Purchasing Alliance Inc. (Printed)\_\_\_\_\_

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

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