



## Apligraf® DIRECT PURCHASING AGREEMENT

THIS AGREEMENT, dated as of \_\_\_\_\_ is made by and between:

Legal entity's name \_\_\_\_\_ ("Provider")

having a business address at: Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_,

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_,

And: Organogenesis Inc. ("Manufacturer") of 150 Dan Road, Canton, MA 02021.

### Please check one of the following:

Hospital: \_\_\_\_\_, Physician Office: \_\_\_\_\_, Long-term Care facility: \_\_\_\_\_ ASC: \_\_\_\_\_ Other: \_\_\_\_\_

Manufacturer produces and markets Apligraf® (the "Product"). Provider desires to purchase Product directly from Manufacturer, and Manufacturer is willing to sell Product to Provider solely for application to patients of Provider. In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Manufacturer and Provider hereby agree that their transactions with respect to Product shall be subject to the following terms and conditions.

#### 1. ORDERS.

- a. Provider shall transmit orders for Product to Manufacturer by fax at 781-401-1049 or by telephone at 888-432-5232. Manufacturer shall ship orders to site(s) designated by Provider. Provider shall designate the date upon which provider intends to apply product (the "Application Date").
- b. Manufacturer shall ship all orders standard freight within two (2) business days of the Application Date provided that order quantities are reasonable and attainable. Title to, and risk of loss, of Product shall pass to Provider upon delivery by Manufacturer to the destination designated by Provider.

#### 2. PRICES AND PAYMENT.

- a. PRICE. The initial price payable by Provider for Product shall be \$1,578 per unit. Manufacturer shall give Provider at least forty-five (45) days prior notice of any price change.
- b. RUSH ORDERS. Accepted orders requiring early AM delivery on the Application Date provided by Provider shall be shipped at no charge providing someone at facility is available between 6:30am and 10:00am to receive the delivery.
- c. RESPONSIBILITY FOR PAYMENT: Provider is primarily responsible for payment to Manufacturer of the entire purchase price for all Product, irrespective of whether or when Provider may receive payment for Product from Medicare, Medicaid, and/or any other responsible party.

- d. TERMS OF PAYMENT. Payment shall be due on or before the 46th day after the date of shipment of Product set forth in Manufacturer's invoice. Manufacturer shall give Provider at least forty-five (45) days prior notice of any change in terms of payment.
- 1) Manufacturer may levy a late payment charge of 1.5% per month (or the maximum amount permitted by law, if lower) to any amount for which payment is not received by the due date.
  - 2) Manufacturer reserves the right to suspend deliveries to Provider at any time without notice if any overdue amounts remain outstanding.
3. RETURNS
- a. RETURNS. Manufacturer's standard Apligraf® Purchase, Return Goods, and Cancellation Policy is attached hereto as Exhibit A and incorporated herein by reference.
  - b. PRODUCTS RECALL AND FIELD CORRECTIONS. In the event of a general recall or a limited recall, whether directed by the Food and Drug Administration or undertaken voluntarily by Manufacturer, Manufacturer shall refund all amounts paid by Provider for Product returned to Manufacturer by the Provider. Manufacturer's suggested products recall allowances will be followed unless otherwise specified. Manufacturer will pay all return shipping costs.
4. CONFIDENTIAL INFORMATION. Provider and Manufacturer agree to hold in strict confidence the terms of this Agreement and all non-public confidential information provided to the other in connection with their business transactions with each other. The obligation set forth in this paragraph shall survive any termination of this agreement.
5. TERM. Subject to the other provisions hereof, this Agreement shall commence on the date set forth in the first sentence hereof and shall continue in full force and effect until terminated as set forth below.
6. TERMINATION. Either party may terminate this Agreement for cause by written notice if the noticed party has failed to cure any material default within thirty (30) days after receipt of written notice of such default. Either party may terminate this Agreement without cause or penalty by providing the other party with at least sixty (60) days prior written notice of termination.
7. INDEMNIFICATION. Manufacturer shall defend, indemnify and hold Provider harmless against all liabilities whatsoever (and expenses connected therewith, including reasonable attorneys' fees) not caused by the negligence or other wrongful conduct of Provider, arising as a result of (a) the use of Manufacturer's Product as directed by Manufacturer, (b) any actual or asserted violation(s) of federal, state or local law or regulation by virtue of which Product delivered to Provider by Manufacturer shall be alleged or determined to be adulterated, misbranded, mislabeled or otherwise not in full compliance with any such law or regulation, and (c) any actual or asserted claim that Manufacturer's Product infringes the proprietary rights of any person, including without limitation the infringement of any trademark or service name, trade name, trade secret, invention, patent or the violation of any copyright laws or other applicable federal, state or local laws.

Provider shall defend, indemnify and hold Manufacturer harmless against all liabilities what so ever (and expenses connected therewith, including reasonable attorneys' fees) not caused by the negligence or other wrongful conduct of Manufacturer, arising as a result of (a) Provider's use of Manufacturer's Product otherwise than as directed by Manufacturer, (b) any actual or asserted violation(s) of federal, state or local law or regulation by Provider in connection with Provider's use of Product delivered to Provider by Manufacturer, and (c) any actual or asserted claim that Provider's use of any licensed trademark, service mark or trade name violated applicable law.

8. **FORCE MAJEURE.** Neither party shall be liable for any loss, damage, delay or failure to perform in whole or in part resulting from causes beyond such party's reasonable control, including, but not limited to, fires, strikes, insurrections, riots, embargoes or requirements of any governmental authority.
9. **INDEPENDENT RELATIONSHIP.** Nothing in this Agreement shall constitute or be construed as the creation of a partnership or joint venture between Provider and Manufacturer. Provider shall not represent Provider or Provider's organization as having any relationship to Manufacturer other than that of an independent purchaser of Product for the limited purposes described in this Agreement.
10. **TRADENAMES AND TRADEMARKS.** To the extent reasonably necessary to enable Provider to inform patients regarding the availability and nature of the Product, Manufacturer grants to Provider a non-exclusive, royalty-free right to use the various trade names, trademarks, service marks and other word and design marks, that Manufacturer associates with the Product. Provider acknowledges that Manufacturer is the exclusive owner or authorized user of the above-mentioned marks and agrees that Manufacturer has the right to control the use or display thereof by Provider. This non-exclusive license is a limited license and may be terminated at any time by Manufacturer.
11. **LAWS.** This Agreement has been entered into in the Commonwealth of Massachusetts and all questions regarding construction of the terms of this Agreement and the rights and liabilities of the parties shall be governed by the laws of the Commonwealth of Massachusetts without reference to its choice of law rules. Each party agrees that all disputes arising in connection with this Agreement shall be heard in greater Boston, Massachusetts, and each party irrevocably submits to the exclusive jurisdiction of, and venue in, the state and federal courts located in Suffolk and Middlesex Counties, Massachusetts.
12. **ENTIRE AGREEMENT.** This Agreement and its Exhibit A sets forth the entire agreement between the parties concerning the subject hereof, and supersedes all prior and contemporaneous written or oral negotiations and agreements between them concerning the subject hereof. Except as herein provided, any modification of this Agreement must be in writing and signed by both parties.
13. **NO IMPLIED WAIVERS.** The failure of either party at any time to require the performance by the other party of any provision of this Agreement shall not affect in any way the right to require such performance at any later time nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of such provision.
14. **ASSIGNMENT.** This Agreement cannot be assigned without the prior written consent of both parties.

15. SEVERABILITY. If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed to be severable from the remainder of this Agreement and shall not affect the enforceability of the remainder of this Agreement.
16. ATTORNEYS' FEES AND COSTS OF COLLECTION. Provider shall reimburse Manufacturer on demand for any court costs, reasonable attorneys' fees, fees of collection agents, and related costs and expenses incurred in collecting and attempting to collect any amounts due from Provider hereunder.
17. THIRD PARTY PAYORS.
  - a. Provider shall be solely responsible for obtaining reimbursements, if any, from third party payors, including without limitation Medicare, Medicaid, and/or any other responsible party, for amounts Provider pays Manufacturer for Product, and for obtaining all information and documentation necessary to bill and collect from such third party payors in the manner prescribed by such third party payors.
  - b. Provider shall be solely responsible for obtaining any pre-certification and/or other authorization required by Medicare, Medicaid, and/or third party payors.
  - c. Manufacturer shall have no obligation to compensate Provider for any failure by Provider, for any reason, to collect amounts otherwise payable to Provider on account of services rendered by Provider in connection with Product.
18. COUNTERPARTS. This Agreement may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be deemed to be an original but all of which when taken together shall constitute one and the same Agreement. Electronic, facsimile or PDF image signatures shall be treated as original signatures.

The parties have executed this Agreement as of the date first written above.

**Provider:** \_\_\_\_\_  
(Print Legal Entity's Name)

**ORGANOGENESIS INC.:**

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

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

Name: \_\_\_\_\_  
(Print Name)

Name: Antonio S Montecalvo, CPA  
(Print Name)

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

Title: Director, Customer Support Services

## EXHIBIT A

# **Apligraf® PURCHASE, RETURN GOODS, AND CANCELLATION POLICY**

[Please note that this policy is part of the Agreement]

### **Return Goods Policy**

Apligraf® is purchased on a non-returnable basis. For the following circumstances, orders not canceled in accordance with our cancellation policy, may be returned for credit.

- Procedure canceled for unanticipated patient related reason.
- Procedure canceled by Physician (or his/her designee) for unanticipated situation.

*To qualify for credit, notification must be given to Organogenesis within 7 business days after product expiration at 1-888-HEAL-2-DAY (1-888-432-5232), option 1. If approved, a Return Goods Authorization Form and number will be issued. Product must be returned to Organogenesis, Attn: Customer Service, 150 Dan Road, Canton, Massachusetts, 02021. Customers to bear costs of return shipment.*

**NOTE: No credit will be issued for product returned without authorization.**

Organogenesis will **not** be responsible for product received and unused as a result of:

- Product deteriorates because of characteristics beyond Organogenesis' control (e.g., improper storage of product, heat, cold, smoke, fire, etc.).
- Units ordered are not applied during the procedure and excess units remain unused.

**NOTE: Apligraf® should be kept in its sealed polybag and stored at 20 – 23° C (68 – 73° F), until ready to use.**

A credit or replacement product will be provided for unused product associated with specific situations out of the customer's control:

- Returns associated with a product complaint. This includes issues surrounding product appearance or product quality or integrity (e.g., tear in the bag, pH out-of-range, etc.)
- Product mis-shipments by either Organogenesis or the carrier (e.g., a damaged shipment, or shipment lost, or misdirected shipments that do not arrive in time for customer use.)

### **For product manufacturing complaints:**

- Contact our technical support team at 1-888-HEAL-2-DAY (1-888-432-5232), option 5.
- Staff will gather the necessary information and authorize the product's return or local destruction. In either case, full instructions on the return or destruction will be provided.
- When a product return is requested, your Organogenesis Sales Specialists or our Technical Support Team will provide special biohazard return goods packaging kit for your use.
- You will have the option of a replacement product or a credit.

### **Delivery questions:**

- Contact our Customer Service group at 1-888-HEAL-2-DAY (1-888-432-5232), option 6.
- If product delivery cannot be successfully facilitated, staff will be ready to assist in arranging a replacement shipment or a credit.

### **Order Cancellation Policy:**

- All orders for Apligraf may be cancelled up to **10:00 AM Eastern Time** on the date the unit is scheduled to ship.
- The shipping date will be reviewed with you at the time the order is placed.
- As a guide, our policy is to ship the product **two business days** prior to the scheduled procedure.