

Provider Agreement

This Provider Agreement (“Agreement”), by and between **Avesis Third Party Administrators, Inc.** (“Avesis”) and _____, (“Participating Provider”), who hereby represent and agree as follows:

- A. DEFINITIONS.** Whenever capitalized in this Agreement the following terms have the respective meanings set forth below, unless the context clearly requires otherwise.
- (1) Participating Provider means the optometrist, ophthalmologist or optician acting within the scope of his profession who has provided an accurate and complete application requesting inclusion in the Avesis network and who has been approved by Avesis to provide Covered Benefits to Members and who has executed this Agreement with Avesis.
 - (2) Covered Benefits are those benefits described in the Plan Sheet(s) or the Provider Manual and offered to enrolled Members through various plan options.
 - (3) Member means an individual, spouse or dependent who is eligible to receive Covered Benefits.
 - (4) Sponsor means an insurer, employer, union trust, HMO, managed care organization or other entity that has entered into an agreement with Avesis to provide Covered Benefits.
 - (5) Claim means a request for payment submitted by Participating Provider, in a format and medium acceptable to Avesis for the processing of payment for Covered Benefits, for Vision Care Services personally provided by Participating Provider.
 - (6) Clean Claim refers to a complete and accurate Claim that is free of errors and/or omissions for services personally provided by the Participating Provider.
 - (7) Provider Manual refers to the written document provided to Participating Provider by Avesis that describes the administrative policies and procedures established by Avesis for the provision of Covered Benefits to Members. The Provider Manual may be amended from time to time and the terms of which are hereby expressly incorporated by reference into, and as a part of, this Agreement.
 - (8) Plan Sheets are those sheets provided to Participating Provider from time to time that detail the specifics regarding a Sponsor’s plan design.
 - (9) Plan Matrix is the matrix that may be provided to Participating Provider that details the Covered Benefits available to Members.
 - (10) Vision Care Services refer to the vision examination, lenses (including contact lenses, if applicable under the Sponsor’s benefit) and frames and such other vision related services as permitted by the Sponsor’s Agreement, within the scope of practice of Participating Provider and necessary as determined by his medical judgment.
 - (11) Effective Date is the date entered on the signature page of this Agreement.
 - (12) CMS is the Centers for Medicare and Medicaid Services.

B. TERM.

The term of this Agreement shall be for a period of one year beginning on the Effective Date entered on the signature page of this Agreement and ending on the date one year subsequent to the Effective Date ("Initial Term"). Upon expiration of the Initial Term, this Agreement will automatically renew for successive one-year periods (each one-year period a "Renewal Period" and the Initial Term and all Renewal Periods, if any, referred to collectively herein as the "Term"), unless otherwise terminated by either party in accordance with the terms of this Agreement.

C. RESPONSIBILITIES OF AVESIS.

- (1) Sponsor Contracts. Avesis will negotiate and enter into agreements with employers, employee groups, unions, corporations, insurance carriers and other organizations whose Members may obtain Vision Care Services from Avesis Participating Providers.
- (2) Plan Matrix. Avesis will, from time to time, distribute to Participating Provider new and revised Plan Sheets (collectively referred to herein as "Plan Sheets") describing covered services and materials offered by various Sponsors. Plan Sheets display to Participating Provider the discounted fee amounts that will be paid upon delivery of the services and/or materials to the Members. Payment is made to Participating Provider based upon information sent by Participating Provider to Avesis as described in Section A-5 herein. Avesis may also provide a Plan Matrix to Participating Provider that describes the Covered Benefits available through different Sponsors' plans.
- (3) Provider Information. Avesis shall make available to Members, through access to our Internet site, Customer Service Representatives or provider directory, the names, addresses, phone numbers and specialties of all of the providers who agree to participate under each Sponsor's program.
- (4) Member Eligibility Verification. When applicable, Avesis provides twenty-four (24) hour per day Member eligibility verification via a mechanism through which Participating Provider may, before rendering services, verify the eligibility status of individuals seeking services based on current information available. Eligibility can also be verified via our Customer Service Center from 7:00 AM to 5:00 PM (MST).
- (5) Provider Manual. Avesis shall make available to Participating Provider the Avesis Provider Manual ("Provider Manual") for use during the term of this Agreement. Participating Provider agrees to comply with the policies and procedures set forth in the Provider Manual, as it may be revised by Avesis from time to time. The Provider Manual is incorporated herein by reference and the terms of this Agreement shall control the interpretation of the Provider Manual. Participating Provider further agrees to keep the Provider Manual and all information in it confidential; and not to copy or disclose such information to third parties except as required for the conduct of Participating Provider's business.

D. RESPONSIBILITIES OF PARTICIPATING PROVIDER.

- (1) Eligibility Verification. Participating Provider shall verify Members' eligibility to receive Vision Care Services as a Covered Benefit under his or her Sponsor's Plan by contacting Avesis by telephone or other mechanisms as set forth herein. It is specifically understood that neither Avesis nor the Sponsor will reimburse Participating Provider for services rendered to any individual unless such individual is eligible for the services on the date that the services are rendered.

- (2) Professional Services. Participating Provider shall furnish Covered Benefits to Members as provided on the Avesis Plan Matrix incorporated herein by reference and other Plan Sheets that Participating Provider may agree to service. Participating Provider agrees to provide services to Members in a timely manner and on the same basis as other patients. Members shall not be kept waiting longer than one (1) hour after the appointment time. Participating Provider shall provide services as quickly as possible but no more than thirty (30) days after an appointment is first sought. In the case of emergencies Participating Provider shall make every reasonable effort to see the Member immediately. Participating Provider shall make every reasonable effort to satisfy the needs of Members. All services rendered by Participating Provider under this Agreement shall be furnished in accordance with the Participating Provider's best professional judgment and in compliance with applicable laws, rules and regulations of the licensing or other governmental bodies having jurisdiction as well as the guidelines as set forth by the appropriate national association(s).
- (3) Payment from Members. Participating Provider agrees to accept as payment in full only the fees for services and materials provided on the Plan Sheets incorporated by reference or on other Plan Sheets that may later be agreed to by Participating Provider. Participating Provider may not collect any payment from Members other than those designated on the Plan Sheets as being the responsibility of Members, such as deductibles, co-payments, and charges for additional services and materials not representing a Covered Benefit or specified on the Plan Sheets.
- (4) Records. Participating Provider shall maintain confidential and complete Member medical records and personal information as required by applicable State and Federal laws and regulations or ten (10) years, whichever is longer. Confidentiality of patient records and information shall be maintained in accordance with all State and Federal laws and regulations in force as of the Effective Date of this Agreement and those that may be enacted in the future. The types of records to be maintained shall be in accordance with industry and plan standards.
- (5) Records Access. Participating Provider agrees to provide Avesis, its agents or representatives, access to billing and medical records of Members who have been serviced by Participating Provider. Notwithstanding termination of this Agreement, this right of access to Member records shall continue for three (3) years after termination of this Agreement, to the extent permitted by law. Participating Provider further agrees to make copies of such records available to the Sponsor, Department of Insurance and/or appropriate government authority in conjunction with its regulation of Sponsor.
- (6) Confidentiality of Records. Confidentiality of Member records and personal information shall be maintained in accordance with all State and Federal laws and regulations in force as of the Effective Date of this Agreement and those that may be enacted in the future. Participating Provider shall not use any information received in the course of providing services to Avesis' Members except as necessary for the proper discharge of his obligations hereunder. Participating Provider agrees to comply with all of the Federal requirements for privacy and security of health information.

- (7) Compliance with Law, Policies and Procedures and Provider Manual. Participating Provider shall, at all times, conduct his professional practice and supervise all personnel in a manner that complies with all applicable laws, regulations, Policies and Procedures of Avesis as set forth in the Provider Manual, as amended from time to time, and Policies and Procedures of the Sponsor, as applicable. Participating Provider shall maintain in good standing and keep current all of the permits, certificates and licenses required by all applicable State and government laws and regulations in order to provide Vision Services under this Agreement. In the event of any complaint or disciplinary or administrative action against Participating Provider, regardless of whether such complaint or disciplinary action is based on services provided under this Agreement, Participating Provider shall notify Avesis of the complaint or disciplinary action within two (2) business days of Participating Provider's receipt of notice of such action or complaint. Participating Provider hereby authorizes any governmental agency to release to Avesis information relating to any such complaint or disciplinary action.
- (8) Credentialing Program. Participating Provider agrees to meet and maintain NCQA and/or established industry standards for provider credentialing adopted by the Avesis Credentialing Program as well as any other requirements that may be imposed by the Sponsor, from time to time. These include, but are not limited to, current licensure; current certifications, as appropriate; professional liability insurance coverage; compliance with continuing education requirements; and such other requirements and qualifications as may be required by Avesis, Sponsor or any State or Federal agency. Failure to cooperate with the credentialing or recredentialing process may result in payment for services rendered being withheld until all recredentialing materials have been received by Avesis. Participating Provider further agrees to notify Avesis of subsequent changes in status of any information relating to Participating Provider's professional credentials.
- None of Avesis' or Sponsor's utilization management, quality management, credentials verification or provider sanction programs shall either a) override the professional or ethical responsibility of the provider or b) interfere with the provider's ability to provide information or assistance to Members.
- (9) Cooperation with Member Grievances. Participating Provider agrees to cooperate with Avesis in whatever way necessary to reasonably resolve Member grievances that may come about from time to time.
- (10) Personnel and Office Address. Participating Provider shall provide Avesis with a complete list of all associates bound by this Agreement with whom Participating Provider practices. Participating Provider shall notify Avesis within thirty (30) days of any relocation of his business, change in area code or telephone number or any change in the associates. If Participating Provider utilizes independent contractors Participating Provider must have the independent contractor(s) execute a separate Provider Agreement before providing any Vision Care Services under this Agreement. Participating Provider agrees to the inclusion of the practice's location and contact information in provider directories and/or on the Avesis website or the Plan Sponsor's website. Participating Provider further agrees to permit practice location and contact information to be given to Members by Avesis' or Sponsor's customer service representatives.
- (11) Quality Improvement. Participating Provider agrees to respond and / or comply with Avesis' Quality Improvement Program as it relates to quality assurance, utilization review and Member grievance program as explained in the Provider Manual.
- (12) Submission of Claims. Participating Provider shall submit Claims to Avesis in a timely manner. Participating Provider understands that failure to submit Clean Claims or requested documentation within the specified time period as outlined in the Provider Manual may result in loss of reimbursement for services provided.

- (13) Locum Tenens. A Provider may submit a claim and receive payment for Covered Benefits for a Locum Tenens Provider provided that the Provider notifies Avesis in writing prior to the Locum Tenens provider's servicing of the Members. The Locum Tenens provider may not be an employee of the Provider and whose services for Members of the Provider are not restricted to the Provider's offices if: 1) the Provider is unavailable to provide the Covered Benefits; 2) the Member has arranged or seeks to receive the Covered Benefits from their Provider; 3) the Provider may pay the Locum Tenens for his/her servicers on a per diem basis or similar fee for time basis; 4) the Locum Tenens provider does not provide the Covered Benefits to Members for a period of time not to exceed sixty (60) continuous days within a twelve (12) month period. The Locum Tenens provider shall be an appropriately qualified and licensed eye care professional in the State wherein he/she is practicing and have a valid NPI number. If the Member is participating in a Medicaid program, the Locum Tenens provider shall have a valid State Medicaid number. It is the responsibility of the Provider to notify Avesis in writing of any Locum Tenens arrangement.

E. RELATIONSHIP OF PARTIES.

- (1) Professional Judgment. Participating Provider shall have the sole right and responsibility for exercising his professional judgment on all matters of professional practice. Participating Provider agrees, however, to participate in the Avesis utilization review programs and to abide by the resulting conclusions of those programs. Failure to abide by the utilization review program's conclusions shall be considered a breach of this Agreement.
- (2) Independent Contractor. Participating Provider is and shall be an independent contractor, and nothing herein shall be construed to create an agency, employment, partnership, joint venture or fiduciary relationship between Avesis and Participating Provider.
- (3) Non-Exclusive Relationship. Participating Provider's rights hereunder are non-exclusive. Participating Provider may provide services to non-Avesis patients, and enter into agreements with other networks and organizations for such purposes.
- (4) Rights Reserved by Avesis. Avesis retains all ownership rights in the Avesis networks and system, the sole and exclusive right to operate offices or license other providers to participate in the Avesis system, and exclusive rights in and to the names and marks AVESIS®, together with any and all other trademarks and service marks that may hereafter be adopted or used by Avesis. Participating Provider shall not advertise or use any names, symbols, trademarks or service marks of Avesis in any advertising or public communication without the prior written authorization of Avesis.
- (5) Incentives. Nothing contained herein provides for an incentive, monetary or otherwise, for the withholding of medically necessary healthcare services.

F. INDEMNIFICATION.

Neither Avesis nor any Sponsor, their officers, shareholders, directors, employees, agents, successors nor assigns ("Indemnified Party") shall be responsible for or guarantee the quality of any services or materials furnished by Participating Provider. Participating Provider agrees to indemnify and hold Avesis, its officers, directors, employees and agents from and against any claim, damage, loss (including any amounts paid in compromise or settlement of disputed claims), expenses, liability, obligation, action or cause of action, including reasonable attorneys' fees and all costs of investigation (collectively the "Indemnified Claims"), which the Indemnified Party may sustain pay, suffer incur by reason of any service provided by Participating Provider to any Member. Attorneys' fees shall include not only those fees incurred in connection with investigating and defending the Indemnified Claims but also all attorneys' fees incurred by Avesis in prosecuting, enforcing and collecting this indemnity. The Indemnified Party is not responsible for nor does the Indemnified Party guarantee the quality of any services or materials furnished by Participating Provider. Participating Provider shall indemnify Avesis

and all Sponsors from all claims, liabilities and damages incurred in connection with, or arising out of, Participating Provider's material breach of this Agreement or any Vision Care Services or materials furnished, or to be furnished, by Participating Provider to Members. The obligations of indemnification shall survive the termination of the Agreement.

It is further understood and agreed to by Participating Provider that in no event, including but not limited to non-payment by Avesis or Sponsor, insolvency of Avesis or Sponsor or breach of this Agreement, shall Participating Provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from or have any recourse against a Member or a person acting on a Member's behalf for Covered Benefits provided pursuant to this Agreement. This provision shall not prohibit Participating Provider from collecting copayments, deductibles and/or coinsurance made in accordance with the terms of the Plan Sheets or for collection for non-covered services either from the Member or from third parties when such parties are primarily responsible for paying for these services. It is further understood that this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of the Member and that this provision supersedes any oral or written contrary agreement now existing or thereafter entered into between Avesis and Participating Provider and Member or persons on their behalf.

G. CLAIMS AND PAYMENT.

- (1) Claims Processing. If the Sponsor's program includes the payment of claims for Covered Benefits provided to its Members, and if the Sponsor retains Avesis as its claims administrator, then Participating Provider shall submit claims to Avesis in the manner described in Section A.5 herein in order to receive payment for Covered Benefits. Participating Provider shall, to the extent possible, seek and accept from Members their assignments of payments for claims for Covered Benefits. Participating Provider shall submit claims in the manner provided in the Provider Manual, together with all reasonably requested additional documentation, no later than ninety (90) days or as specified by state or federal regulatory agencies, after providing the Covered Benefits. Avesis shall pay or deny all Clean Claims received within thirty (30) days of receipt or faster, in accordance with prompt pay rules for claims from states having prompt pay regulations. Avesis shall provide prompt payment of Clean Claims in accordance with the terms of the Sponsor's Plan Sheet, for properly filed Clean Claims for Covered Benefits provided to Members by Participating Provider, but only from designated funds provided to Avesis by the Sponsor specifically for that purpose.
- (2) Limitation of Liability. Avesis shall not be obligated to make capitation payments or pay Participating Provider for services or materials furnished to Members from Avesis' own funds.
- (3) Program Coverage. For Covered Benefits requiring prior authorization as required on the Plan Sheet, Participating Provider agrees to submit the prior authorization request prior to providing the materials or Vision Care Services requested. Participating Provider acknowledges that possession of an Avesis identification card does not guarantee that an individual is still a Member on the date services are rendered, or that a Member is necessarily covered for any or all services or materials to be provided.
- (4) Non-covered Services. Participating Provider shall enter into written agreement with Member to pay for non-covered goods and services if the Member knowingly elects to receive non-covered goods and services and the fees charged do not exceed the usual fees to Participating Provider.
- (5) Coordination of Benefits. Participating Provider will notify Avesis when it is determined that a Member may be entitled to coverage under any other Sponsor Plan. If the Member would be considered primary under Avesis' Sponsor Plan, Participating Provider agrees that Avesis' obligation to Participating Provider will not exceed the compensation described in the Covered Benefits and Fee Schedule. If the Member would be secondary under the Avesis Sponsor Plan, Participating Provider agrees that Avesis' obligation to Participating Provider will not exceed the

compensation described in the Covered Benefits and Fee Schedule and Participating Provider will refund the aggregate compensation that Participating Provider received from other Sponsor for services or goods in question.

- (6) Missed Appointments. Participating Provider shall not bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from or have recourse against any Member or person acting on behalf of a Member for a missed appointment.
- (7) Use of Provider Number(s). Participating Provider shall only submit claims for Vision Care Services using the provider number assigned by Avesis to Participating Provider. Provider numbers shall not be provided to Participating Provider until the credentialing process has been successfully completed. Participating Provider shall only submit claims under his provider number for services personally performed by Participating Provider. Participating Provider may not loan or otherwise allow any person or entity to bill claims under his provider number.

H. REPRESENTATIONS, WARRANTIES AND COVENANTS OF PARTICIPATING PROVIDER.

Except as otherwise disclosed to Avesis in writing prior to execution of this Agreement, Participating Provider hereby warrants that the representations, warranties and covenants set forth below in this Section H are true and accurate as of the date of this Agreement, and that they shall remain true and accurate at all times throughout the Term of this Agreement. Participating Provider acknowledges that the accuracy and fulfillment of these representations, warranties and covenants are a condition of initial and continued survival of this Agreement:

- (1) Authorization. The individual executing this Agreement on behalf of Participating Provider is duly authorized to do so; and upon its execution, this Agreement shall constitute the legal, valid and binding obligation of Participating Provider.
- (2) No Inducements. Except as otherwise specifically set forth herein, no promises or guarantees of specific payment or volume or value of referrals have been made to Participating Provider as an inducement to reduce, delay or limit specific, medically necessary services covered by the Sponsor's vision benefit plan(s) or by any person representing either party to induce Participating Provider to execute this Agreement. Participating Provider agrees that he shall not profit from provision of services that are not medically necessary or appropriate.
- (3) Review. Participating Provider and any partners or shareholders, if applicable, have read the entire Agreement and represent that each of them is capable of complying and will comply with it.
- (4) Participating Provider is duly licensed, registered and in good standing and shall maintain such licensure throughout the Term to practice medicine or optometry in the states where he provides services under this Agreement and such license and registration is not restricted, conditioned or limited in any way.
- (5) Except as otherwise set forth by Provider during the Credentialing process, Participating Provider's license to practice medicine or optometry in any state has never been suspended, limited, conditioned, revoked or voluntarily relinquished under the threat of disciplinary action;
- (6) Except as otherwise set forth by Provider during the Credentialing process, Participating Provider has never been reprimanded, sanctioned or disciplined by a licensing board or state or local professional society or specialty board;
- (7) Except as otherwise set forth by Provider during the Credentialing process, there has never been entered against Participating Provider a claim, final judgment or agreed settlement in a malpractice action;

- (8) Participating Provider has no obligation to others that is inconsistent with Participating Provider's obligations under this Agreement and the undertaking of this Agreement by Participating Provider and Practice will not constitute a breach of any other agreement to which Participating Provider is a party or any obligation to which Participating Provider is bound;
- (9) Except as otherwise set forth by Provider during the Credentialing process, Participating Provider is currently not, and has not in the past been, the subject of any investigation for suspected healthcare fraud or abuse or violation of any other state or federal law, nor has Participating Provider's Medicare or Medicaid provider status been limited, conditioned, revoked, or suspended for any reason;
- (10) Participating Provider shall at all times render services to Members of Avesis in a competent, professional, and ethical manner, in accordance with prevailing standards of professional care and practice, and all applicable statutes, regulations, rules, orders, and directives of any and all applicable governmental and regulatory bodies having competent jurisdiction;
- (11) Participating Provider shall complete and maintain, in a timely manner, adequate, legible and proper Member records, claims and correspondence with respect to all services rendered to Members of Avesis;
- (12) Participating Provider represents and warrants that he is not now under any obligation to any person or entity nor does he have any other interest which is inconsistent with or in conflict with this Agreement or in conflict with any other agreement which would prevent, limit or impair, in any way, his performance of any of the covenants or duties herein.

I. INSURANCE.

While this Agreement is in effect, Participating Provider shall keep in force all professional liability insurance coverage required by state and/or federal law. If the state does not require specific limits, Participating Provider agrees to maintain professional liability insurance of One Million Dollars (\$1,000,000) per claim and THREE MILLION DOLLARS (\$3,000,000) annual aggregate, or such other amounts as may be recommended by the State licensing board. Such insurance shall cover, at a minimum, each location where Participating Provider provides Vision Care Services under this Agreement. Participating Provider also agrees to maintain comprehensive general liability insurance and/or such other available insurance as shall be necessary to insure Participating Provider and its employees against and from any and all damages arising from its duties and obligations under this Agreement. Proof of such insurance shall be made available to Avesis within two (2) business days of its request. The costs of securing said insurance coverages shall be borne by the Participating Provider. Insurance carried by Participating Provider will not relieve Participating Provider from the indemnity obligations in Section F. Participating Provider shall notify Avesis or Sponsor at least thirty (30) days prior to the cancellation or termination of any such policy. Participating Provider shall notify Avesis immediately upon the termination of any such policy.

J. ASSIGNMENT.

Neither this Agreement nor any of the rights or obligations hereunder shall be assigned, transferred or delegated by Participating Provider, by operation of law or otherwise, without the prior written consent of Avesis. Any change of ownership interest in Participating Provider shall be deemed an assignment of the Agreement, and requires the prior written consent of Avesis. Avesis may assign its rights and obligations hereunder so long as the assignment is in accordance with the terms of the contract.

K. TERMINATION AND SUSPENSION.

- (1) Termination without Cause. This Agreement may be terminated by either party, at any time by giving not less than ninety (90) calendar days prior written notice to the other party. It is understood that during any such ninety (90) day period, the terms and conditions of this Agreement shall remain in force and effect with the exception of Section C(3).

- (2) Termination for Cause. Avesis may terminate this Agreement immediately by providing written notice to Participating Provider, in the event Participating Provider:
- (a) breaches a term of this Agreement or the Provider Manual, including without limitation, the Representations and Warranties or Responsibilities defined herein; or
 - (b) poses an imminent danger to Avesis Members or the public health, safety and welfare; or
 - (c) is charged with a felony or a crime of moral turpitude; or
 - (d) fails to satisfy the credentialing or recredentialing program requirements; or
 - (e) ceases participating in Avesis network(s) through non-renewal of credentialing application or denial of approval for participation.
- (3) Either party may terminate this Agreement for a material default by the other party if the default is not cured within thirty (30) calendar days after the defaulting party is given written notice specifying the default. Termination of this Agreement does not nullify Participating Provider's responsibility for the adequacy of service and materials provided to Members.
- (4) Effect of Termination. Under no circumstances will reimbursement be made by Avesis for any services rendered after the termination of this Agreement unless required by the applicable state law provisions regarding continued coverage of services for Members. Any due process or appeal rights of a Participating Provider shall be governed by the provisions defined in the Provider Manual, incorporated herein by reference, unless superseded by conflicting and governing state law.
- (5) Definitions.
- (a) "Termination" shall mean any termination of this Agreement for any reason stated under this Section K. (2).
 - (b) "Termination Date" shall mean the effective date of Termination as provided in this Section K.
- (6) Suspension. Avesis may, in its sole and absolute discretion, suspend Participating Provider's participation as an Avesis Provider if any of the following were to occur:
- (a) Upon claims or utilization review by Avesis, billing or claims submission issues occur with such frequency that Avesis, in its sole and absolute discretion, determines that Participating Provider should be suspended pending further investigation by Avesis and such billing and claims issues are resolved.
 - (b) Breach of this Agreement by Participating Provider for which Avesis elects, in its sole and absolute discretion, to suspend Participating Provider until such problem or problems that caused the breach of this Agreement have been cured.

L. PROCEDURES AFTER TERMINATION.

Upon termination of this Agreement for any reason:

- (1) Cease Affiliation. Participating Provider shall cease to be an authorized Avesis Provider and shall:
- (a) immediately and forever cease and desist from using Avesis advertising and promotional materials, and all trade secrets and confidential material delivered to Participating Provider pursuant to this Agreement; and
 - (b) refrain from doing anything which would indicate that Participating Provider is an authorized Avesis provider.

- (2) Non-Solicitation. Participating Provider agrees that it shall not keep any list of Members and shall not, directly or indirectly, solicit them to remain patients of Participating Provider. Participating Provider hereby acknowledges that solicitation of Members after the termination of this Agreement would be damaging to Avesis and its Sponsors and other providers. Participating Provider specifically acknowledges receipt of good and valuable consideration sufficient to support this provision of the Agreement.
- (3) Participating Provider further agrees to comply with Sponsor's transition of administrative duties and records in the event of the termination of this Agreement or insolvency of Sponsor or Avesis.

M. SPECIAL REMEDIES.

Participating Provider acknowledges that if Participating Provider breaches any of the provisions of Sections C (5), E, I, or L, Avesis shall have incomplete and inadequate remedies at law. Therefore, Participating Provider expressly consents and agrees that Avesis may, in addition to any other available remedies, obtain an injunction and/or temporary restraining order to terminate or prevent the continuation of any such violation.

N. NOTICES.

All notices except notifications regarding office closures or terminations as set forth in Section K hereof, provided for in this Agreement, including changes in the amounts paid to Participating Provider, shall be in writing at least thirty (30) calendar days prior to the effective date of the notice or longer as required by applicable State law, and sent to the address provided on the signature page of this Agreement. Notices shall be deemed to have been duly given upon (a) actual delivery; (b) five days after deposit for mailing by registered or certified mail, postage prepaid, return receipt requested, addressed to the other party at the address shown at the end of this Agreement; (c) one business day after delivery to a commercial overnight delivery service addressed as provided above for delivery the next business day; or (d) facsimile transmission. Either party may change its address by written notice to the other party. If Participating Provider is closing his office, Avesis must be notified, in writing, at least ninety (90) days prior to said closing.

O. GENERAL PROVISIONS.

- (1) Interpretation. This Agreement contains the entire understanding between the parties with respect to the subjects hereof, and supersedes all prior negotiations and agreements. Except as otherwise expressly provided herein, this Agreement may be amended only by written instrument and signed by the parties. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other or subsequent breach. Headings are for convenience and shall not affect interpretation. Words in this Agreement shall be deemed to refer to whatever number or gender the context requires. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. No right or remedy shall be exclusive of any other right or remedy herein or provided by law, but such rights and remedies shall be cumulative and enforceable simultaneously or sequentially.
- (2) Severability. If any provision of this Agreement shall be declared invalid or unenforceable, that provision shall be deemed modified to the extent necessary to make it valid and enforceable. If it cannot be so modified, then severed, and the modified or remaining provisions shall remain in full force and effect.
- (3) Choice of Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed, interpreted and enforced in accordance with the laws in the state wherein it has been executed by Participating Provider.

- (4) Disputes. Except as may otherwise be provided for herein, any and all disputes arising out of or relating to this Agreement and the transactions contemplated herein, shall be solely and finally settled by binding arbitration and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules (the “Rules”), by a single arbitrator selected in accordance with the Rules (the “Arbitrator”). The Arbitrator shall not have been employed by or affiliated with any of the parties or their affiliates. Except as set forth below, the parties hereby renounce all recourse to litigation as to matters subject to arbitration hereunder, and the parties agree that the award of the Arbitrator shall be final and subject to no judicial review, except as expressly provided by applicable law. The Arbitrator shall decide the issues submitted to him in accordance with: (a) the provisions and purposes of this Agreement; and (b) the laws in the State wherein this Agreement has been executed by Participating Provider (without regard to its conflicts of laws rules), and shall issue a written award setting forth the reasons for his decision. Judgment on the award of the Arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, each party shall have the right to seek injunctive or other equitable relief in any court of competent jurisdiction to enforce the provisions of this Agreement without first seeking or obtaining any decision of the Arbitrator with respect to the subject matter of this Agreement, even if a similar or related matter has already been referred to arbitration in accordance with the terms of this paragraph.
- (5) Attorneys' Fees. Should Avesis incur attorneys' fees in order to enforce the terms and conditions of this Agreement, including post-term covenants, whether or not a legal action is instituted, Avesis shall be entitled to reimbursement of such attorneys' fees and costs, in addition to any other remedies Avesis may have at law or in equity.
- (6) Non-Discrimination. Participating Provider shall not differentiate or discriminate in the treatment of Members on the basis of race, color, national origin, gender, age, religion, marital status, health status or health insurance coverage. Avesis shall not discriminate in its credentialing or recredentialing process against a provider based upon race, color, creed, religious affiliation, marital status, sexual orientation, disability status or any other basis including Participating Provider's practice being substantially comprised of patients requiring expensive or uncompensated care.
- (7) Program Compliance. Participating Provider agrees to comply with Avesis and Sponsor regarding (a) benefit exclusions; (b) administrative and utilization management requirements; (c) credential verification program; (d) quality assessment program; and (e) provider sanction policies. Avesis agrees to notify Participating Provider of any changes to the above mentioned programs and agrees to allow Participating Provider a mutually agreed upon time frame to comply with such changes.
- (8) Entire Agreement. This Agreement, together with the Provider Manual, any Exhibits and Plan Sheets referred to herein, constitute the entire Agreement between Participating Provider and Avesis. This Agreement supersedes all prior and contemporaneous agreements, understandings and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement may not be modified or amended other than by an agreement in writing.
- (9) Exhibits. All Exhibits attached hereto are incorporated by reference into this Agreement and made a part hereof.
- (10) Change in Status. Participating Provider understands that any and all changes in the Participating Provider's legal and contractual relationship to and with the Participating Provider's clinical partners, who are also party to this Agreement must be communicated to Avesis in writing. Participating Provider also agrees to provide Avesis thirty (30) days notice of any closure of their practice to additional Members or of a new location of their practice.

- (11) Responsibility for Actions. Each party shall be responsible for any and all claims, liabilities, damages, or judgments that may arise as a result of its own negligence or intentional wrong doing.
- (12) Gender. The use of terminology relating to gender throughout this Agreement includes both the masculine and feminine gender regardless of the terminology used.
- (13) In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et. Seq.) and its implementing regulation at 45 C.F.R. Part 80 (2001, as amended) Participating Provider must take adequate steps to ensure that persons with limited English skills receive free of charge the language assistance necessary to afford them meaningful and equal access to the benefits and services provided hereunder.

P. Medicare Advantage Program

The following CMS-required provisions only apply to Participating Providers who will be seeing Medicare Advantage Members:

1. Record Retention. Participating Provider shall give the U.S. Department of Health and Human Services (HHS) and U.S. General Accounting Office (GAO), and their authorized designees, the right to audit, evaluate and inspect books, contracts, records, including medical records and other records of Participating Provider relating to its participation in Plan's Medicare Advantage product(s) and to services furnished to Medicare Advantage Members, and any other relevant information that the Centers for Medicare and Medicaid Service (CMS) may require during the term of this Agreement and for a period of ten (10) years following termination or expiration of this Agreement for any reason, or until completion of an audit, whichever is later pursuant to 42 C.F.R. §422.504(i)(2)(ii), unless such time frame is extended pursuant to 42 C.F.R. §422.504(e)(4) (such as in the event of fraud). This provision shall survive termination of the Agreement.
2. Privacy/Confidentiality. Participating Provider agrees to safeguard the privacy of information that identifies a particular Plan's Medicare Advantage Member in accordance with Federal and State laws; and maintain the Plan's Medicare Advantage Member's medical, health and enrollment records in an accurate and timely manner pursuant to 42 C.F.R. §422.118.
3. Hold Harmless. As set forth in 42 C.F.R. §422.504(g)(1)(i), Participating Provider shall ensure that in no event, including but not limited to, non-payment, Organization or Payor insolvency, or breach of this Agreement, will Participating Provider bill, or hold any Medicare Advantage Member liable for payment of any such fees that are the legal obligation of Provider or Plan including payment due for Covered Services furnished to Medicare Advantage Members who are eligible for both Medicare and Medicaid, if applicable. In those situations where the Medicare Advantage Member is dually eligible, Participating Provider shall not seek to collect payment for any portion of the Medicare Part A and Part B cost sharing when the applicable State program is responsible for paying such amounts. This provision shall not prevent the collection of any applicable co-pays, coinsurance, or charges for non-covered services delivered to a Medicare Advantage Member. It is the responsibility of Participating Provider to determine the appropriate amount, if any, of cost sharing that may be collected from the dually eligible Member and any amount or amounts that Provider is prohibited from collecting from the Member may be collected from the Plan as payment in full or the Participating Provider may seek payment from the appropriate State source for any remaining amount. Should Participating Provider require assistance in locating information about Medicare and Medicaid benefits and rules for Medicare Advantage Members eligible for both Medicaid and Medicare may be obtained from the Plan. This provision shall survive termination of the Agreement.

4. Prompt Payment. Plan and Participating Provider agree to follow prompt pay regulations regarding clean claims payment within thirty (30) days according to arrangements set forth in the Agreement and Plan policy as outlined in the Provider Manual. (42.C.F.R.§422.520(b)).
5. Delegation. If Plan has delegated to Participating Provider certain Medicare Advantage obligations, Participating Provider and Plan shall, in accordance with 42 C.F.R. §422.504(i)(3)(iii) and 42 C.F.R.§422.504(i)(4), specify delegated activities and reporting responsibilities in a written document. The written document shall also identify revocation of delegation activities and reporting requirements or specify other such remedies in instances where CMS or Plan determines that Participating Provider has not performed satisfactorily. Plan shall monitor the performance of Participating Provider and if delegated, audit the credentialing process on an ongoing basis when deemed appropriate by Plan. Plan retains the right to approve, suspend, or terminate any individual provider selected or credentialed by Participating Provider as set forth in 42 C.F.R. §422.504(i)(5).
6. Compliance with Medicare Advantage Program Policies and Procedures. Participating Provider will comply with all Medicare Advantage Program policies and procedures as outlined in the Provider Manual and will ensure that services performed will be consistent and comply with said policies and procedures as set forth in 42 C.F.R. 422.504(i)(4)(v).
7. Compliance with Federal, State, and Medicare Laws. Participating Provider agrees to comply, and to ensure that contracted providers comply, with laws applicable to individuals and entities receiving Federal funds as well as all other applicable State and Federal laws and regulations, including but not limited to those governing participation in the MA Program, pursuant to 42.C.F.R. §422.504(h) and 42 C.F.R. §422.504(i)(4)(v). Participating Provider further agrees to incorporate into this contract such other terms and conditions as CMS may find necessary and appropriate, including amendments to CMS rules, regulations and guidance.
8. Fraud, Waste and Abuse. Participating Provider agrees to comply with applicable federal laws and regulations designed to prevent fraud, waste, and abuse, including, but not limited to, applicable provisions of federal criminal law, the False Claims Act, the anti-kickback statute; and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) administrative simplification rules, as may be amended from time to time. Further, Participating Provider shall have a compliance plan in force to include, but not be limited to: (1) measures to prevent, detect and report fraud, waste, and abuse; and (2) written policies, procedures, and standards of conduct that address Participating Provider’s commitment to comply with all applicable Federal and State guidelines relating to the prevention and reporting of fraud, waste and abuse. Participating Provider is responsible for training and educating his/her staff within thirty (30) days of hire and all employees shall receive annual training. Such compliance training shall include but not be limited to procedures for effective internal monitoring and auditing. Participating Provider shall allow Avesis to maintain oversight of Participating Provider’s training efforts under its compliance plan and Avesis shall provide training materials as necessary, to Participating Provider, upon request.
9. Standards of Conduct. Participating Provider agrees to train new hires within thirty (30) days of hire and all employees shall annually receive training on the practice’s Standards of Conduct.
10. Anti-Kickback Statute. Payments made to Participating Provider for the treatment of a Member in a Medicare Advantage plan are made, in whole or in part, from Federal funds, and subject Participating Provider to all laws applicable to the individuals or entities who receive Federal funds, including the False Claims Act (32 USC 3729, et. seq.), the Anti-Kickback Statute (section 1128B(b) of the Social Security Act), Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.

11. Accountability. In accordance with 42 C.F.R. §422.504(i)(3)(ii)(A), Plan is accountable to monitor Participating Provider on an ongoing basis and is accountable to CMS for any functions or responsibilities that are described in these standards.

Agreed to by the parties hereto.

By: _____
Printed Name

Signature

Address: _____

Date: _____

Tax Identification Number: _____

NPI Number: _____

State License Number: _____

Expiration Date: _____

By: **Avēsis Third Party Administrators, Inc.**

Signature

10324 South Dolfield Road
Owings Mills, Maryland 21117

Date: _____