

RIVER ROAD INDEPENDENT SCHOOL DISTRICT  
BOARD OF EDUCATION  
AMARILLO, TEXAS

**Subject:** Provista Group Purchasing Organization      **Date:** Monday, November 12, 2012

**Presented By:** Mike Hodgson  
Business Manager

**Related Page(s):** This page +3

**ACTION**

**BACKGROUND INFORMATION:**

Provista is another purchasing cooperative which can offer us savings in the area of custodial supplies.

Attached is an Education Member Participation Agreement that must be signed and returned to Provista.

There is NO CHARGE to the district to be a member of this cooperative.

**BOARD ACTION REQUESTED:**

It is recommended that the Board grant permission for the school district to become a member of the Provista's Group Purchasing Organization and sign the attached Education Member Participation Agreement.

Provista, LLC  
EDUCATION MEMBER PARTICIPATION AGREEMENT

This Agreement is made this 21st day of October, 2013, by and between Provista, LLC™ ("Provista"), a Delaware limited liability company, and River Road I.S.D. and any facilities listed on Exhibit A attached hereto, for which it is acting as an agent on their behalf ("Member").

Provista is a Supply Chain Improvement Company ("GPO") which among other things negotiates vendor and distribution agreements on behalf of organizations. Member is an organization which promotes or utilizes vendor and distribution agreements negotiated by a GPO. Therefore, in consideration of the foregoing statements, Provista and Member agree as follows:

- A. Member hereby authorizes Provista, and its agents, to act as a group purchasing organization on its behalf and to advise the vendors and/or distributors ("Suppliers") that it should be listed as a participating member in the Provista contracts, all contingent upon proper and timely completion of any necessary enrollment forms or declaration documents.
- B. **Term and Termination.** This Agreement is for a three-year term commencing on the date set forth above, and will automatically renew from year to year unless either party gives prior notice of termination. Additionally, this Agreement may be terminated by either party at will and without cause at any time upon sixty (60) days prior written notice to the other. The effective date of program eligibility will be established for each program.
- C. Member agrees that Provista is authorized (but not obligated) as Member's purchasing agent to enter into any agreement with Suppliers in order to make products, intangible rights or services available to the Member. Any such agreement may set forth some or all of the terms and conditions pursuant to which the Member may purchase such products, rights or services from the Supplier. **Nothing in any such agreement shall, in any way, obligate the Member to purchase, license or lease any products, services or intangible rights hereunder.** In each case, where the Member takes advantage of any such agreement, the Member agrees to comply with the terms and conditions of such agreements. Additionally, Member represents and warrants that all products purchased through Provista agreements will be for the Member's "own use", and that Member will comply with all applicable laws; any breach of the foregoing representation and warranty may result in immediate termination of this Agreement. Member recognizes that before it may purchase through such agreements, Provista may need to ensure that its Suppliers are willing to do business with the Member.
- D. Member agrees that Provista may receive fees from Suppliers in connection with products, rights or services which are purchased, licensed or leased by Member, including without limitation, remuneration for providing certain administrative and promotional services to Suppliers. Member further understands and agrees that, except as noted herein, each Supplier agreement provides for fees that are fixed at three percent or less of the purchase price of the products, rights or services covered by such agreement; and that with respect to agreements providing for fees that are not so fixed, Member or its agent will be given access to a secure, electronic web-based database that lists such fees (the "Fee Database").
- Member understands and agrees that the Fee Database is and shall be automatically incorporated into this Agreement by reference. If Member has any questions concerning the Fee Database, Member may contact Provista.
- Additionally, Member understands and agrees that Provista shall provide Member with an annual report listing (1) Member's purchases under each agreement and (2) fees received by Provista from Suppliers based on such purchases.
- E. Member represents, warrants and guarantees that at all times during the term of this Agreement, Member will comply with all applicable federal, state and local laws. To the extent Member receives discounts, rebates or any other price reductions as a result of purchases under a Supplier agreement, Member may have an obligation under federal or state law to disclose such price reductions to federal or state healthcare programs or other payors, and agrees to comply with such laws. Member agrees to defend, indemnify and hold Provista harmless from any and all losses, damages and costs (including, but not limited to, attorneys' fees and expenses) incurred by Provista on account of any breach of this warranty.
- F. Provista, its directors, officers, agents and employees shall not be liable to the Member for any act, or failure to act, in connection with the Provista purchasing agreements, any distribution agreements or the Provista programs. In addition, Provista shall not have any liability to Member for any failure of a distribution agent to perform the service which it has agreed to provide in any distribution agreement. Without limiting the generality of the foregoing, Provista hereby disclaims and excludes any express or implied representation or warranty regarding any products or services which may be the subject of Provista purchasing agreements or any distribution agreement or the Provista programs.

- G. Member agrees that it will keep strictly confidential and hold in trust all confidential information of Provista, including but not limited to information in the Fee Database, not use it for any purpose other than to effectuate the purposes of this Agreement, nor disclose such confidential information to any third party, unless upon Provista's prior written consent. "Confidential Information" will consist of all information relating to the prices and usage of any products or services contracted for and all information of Provista relating to its programs, services and agreements of a proprietary or sensitive nature not readily available through sources in the public domain.
- H. This Agreement may not be transferred or assigned without the prior written consent of both parties hereto, provided, however, that Provista may assign this Agreement to any affiliate of Provista without Member's consent.
- I. This Agreement, together with the Fee Database, constitutes the entire agreement of the parties with respect to the transactions contemplated thereby. This Agreement shall be construed under and governed by the laws of the state of Delaware.

**Tax Status.** Member has checked the number below that correctly reflects Member's organizational legal structure and tax status, and agrees to provide Provista with written notice of any changes during the term of this Agreement.

- 1. Federal tax-exempt entity -- Member must provide a copy of IRS determination letter (Internal Code 5) Governmental Entity
- 2. Federal taxable entity (Internal Code 6)

\*Tax ID Number: 75-6002314

\* Tax ID Number is required for enrollment

**THEREFORE**, in consideration of the premises and the covenants contained herein and other good and valuable consideration, the adequacy, receipt and sufficiency whereof are hereby acknowledged, the parties agree to the terms and conditions as outlined herein.

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

**Member**

**Provista, LLC**

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

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

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

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

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

Title: Manager, Member Services

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

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

## **PROVISTA Safe Harbor Legal Notice:**

Please note that Provista's group purchasing organization (GPO) safe harbor legal compliance Web site is available to Member at: <https://www.provistaco.com/healthcare/acute.asp>. Click on Contract Tools, Contract Tools Home, Programs/Services, Contracting Process, Fee Report Database. It includes 1) copies of certain administrative fee provisions of GPO supplier Contracts, 2) annual sales/purchases and revenue reports, and 3) other compliance information, such as cost reporting FAQs. Paper copies are available on request. For questions, please contact Rodney Waller, Senior Director, Compliance and Risk Management, at (972) 830-0329, or e-mail [rwaller@vha.com](mailto:rwaller@vha.com).