



## DONATION AGREEMENT

This Agreement ("Agreement") is entered into as of \_\_\_\_\_ by and between Henry Schein, Inc., ("Donor"), a Delaware corporation with its principal place of business at 135 Duryea Road, Melville, New York 11747, and \_\_\_\_\_ ("Donee"), with its principal place of business at \_\_\_\_\_

WHEREAS, Donor has certain medical and pharmaceutical devices and supplies available for donations;

WHEREAS, Donee is a charitable institution and has the need for such donations;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Term - This Agreement shall be for a term of two years from the Effective Date of this Agreement and may be renewed upon the mutual agreement of the Parties for additional one-year periods.

### 2. Products to be Donated

A. Upon receipt and approval by Donor of all of the required documentation under Section 3 of this Agreement, Donor agrees to begin to donate certain medical and pharmaceutical, devices and supplies (for medical, dental and veterinary use) to Donee. The products to be donated may include products such as those described in Exhibit A (hereinafter referred to as "Products"). The donated Products shall specifically exclude controlled substances, drug classes one through five, as defined in the Comprehensive Drug Abuse Prevention Control Act of 1970 ("Controlled Substances Act").

B. Donee acknowledges that the donated Products are being donated from Donor's non-saleable inventory. Donee understands that while the Products are new and usable, the Products' packaging may be imperfect.

C. Donor agrees to donate whatever quantity of the Products it deems appropriate in its sole discretion. Donee acknowledges and agrees that during the term of this Agreement, there may be times when Donor does not have any Products to donate.

D. Donee understands and agrees that it is not the only charitable institution to which Donor makes donations and that the order and manner in which donations are made shall be in the sole discretion of the Donor.

### 3. Responsibilities and Obligations of Donee

A. Prior to the execution of this Agreement, Donee must provide Donor with the following documentation:

- i. A letter, written on the Donee's official institutional stationery, containing the following information: the Donee's proper name, address, telephone number, fax number, a statement that the Donee is a charitable institution as defined in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, at least two contact names with the titles of the positions held by such contacts, a statement of the purpose and/or use of the Products, and the Donee's non-

profit identification number (such letter with all of the above information is hereinafter referred to as the "Identification Letter"). Donee shall attach its nonprofit institution's business certificate to this Identification Letter.

ii. A statement of whether any special conditions or circumstances exist under which the donated Products are being accepted and whether there is any Product that the Donee will not or cannot accept.

iii. A statement identifying the physician, registered pharmacist, or other licensed healthcare professional responsible for screening and distributing the donated Products and that Donee accepts complete and total responsibility for such screening and distributing as more fully set forth in Section 4 of this Agreement.

iv. Donee shall provide Donor, on an annual basis, copies of any and all of its financial reports, and institutional mission statements.

v. Within 30 days of any change in the information provided in the Identification Letter or any material change to the Donee itself, Donee must notify Donor of all such changes.

B. Donee must confirm to Donor in writing its receipt of each donation within 10 days of receipt of any delivery of Products. Such confirmation shall be sent via fax [fax # (631) 843-5557] or certified mail to: Henry Schein, Inc., Regulatory Department, 135 Duryea Road, Melville, New York 11747. With each delivery, Donor shall provide Donee with a blank Confirmation Statement in the form set forth in Exhibit B. Donee shall complete this Confirmation Statement by providing the number of pallets, cases, or other packaging units and/or weight of each such pallets, cases, or other packaging units. Failure of the Donee to timely and accurately submit the above mentioned Confirmation Statements may lead to Donor's termination of this Agreement.

C. Ninety days prior to the expiration of the First Anniversary of this Agreement, Donee must notify Donor in writing if it desires to renew this Agreement for an additional one-year term.

D. Donee will be responsible for assisting Donor with public relations efforts that will work to raise awareness about the donation program and its impact on the Donee's organization and community. Donee hereby permits Donor to make public statements including, without limitation, public relations materials, promotional materials relating to the donations program, and Donee's role therein including, without limitation, use of Donee's name, pictures and images.

#### 4. Warranties by Donee - Donee represents and warrants as follows:

A. Donee warrants and represents that it shall accept full responsibility for screening the donated Products to eliminate all materials that are unwanted, outdated, recalled or otherwise unsuitable for human use (hereinafter referred to as "Unusable Products"). Donee agrees to destroy any Unusable Products locally, at its sole expense, and in accordance with all federal, state and local laws, regulations and ordinances.

B. Donee warrants and represents that it shall accept full responsibility for distributing the donated Products in accordance with all federal, state and local laws, regulations and ordinances.

C. Donee warrants and represents that it will not resell or deliver any of the Products to any entity not directly affiliated with Donee.

D. Donee warrants and represents that it will only use the Products for the sole purpose described in the Identification Letter.

## 5. Transportation and Delivery of Products

A. Donor shall make all of the necessary arrangements for the delivery of the Products to Donee. Donee understands and agrees that it shall reimburse Donor for all costs associated with the delivery of the Products, including the cost of such insurance. Such payment shall be due within 15 days of the date of invoice.

B. Donee understands and agrees that there shall be no regular delivery schedule. Donor will deliver Products as such Products become available and in an order and fashion Donor, in its sole discretion, deems appropriate.

C. Up to the point of delivery by the Donor to any selected carrier, Donor shall keep and store the Products in accordance with the manufacturer's specifications. Upon delivery of any donated Products by the Donor to any carrier, Donor disclaims any and all liability for the maintenance and storage of such Products and at that point Donee accepts full responsibility and liability for the proper storage and handling of the donated Products.

6. Recalled and Withdrawn Products - Donor shall use all commercially reasonable efforts to notify Donee in writing of any recalled or withdrawn Product.

7. Disclaimer - DONOR PROVIDES THE PRODUCTS TO DONEE ON AN AS-IS BASIS AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS. DONOR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) RESULTING FROM THE USE OF THE PRODUCTS UNDER THIS AGREEMENT.

8. Termination - Either party may terminate this Agreement at any time upon written notice, pursuant to Section 9(A) herein, to the other party.

## 9. General Provisions

A. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be properly addressed to each party at the addresses stated herein or to such other address as may be provided in writing by either party from time to time, shall be sent by any recognized commercial overnight courier or United States registered or certified mail, postage prepaid, return receipt requested, and shall be concurrently sent by facsimile. Notice will be deemed effective when actually received by other party.

B. Relationship of Parties. In performing their respective obligations hereunder, each of the parties shall operate as and have the status of any independent contractor and shall not act as or be an agent, partner, or employee of the other party. No party shall have any right or authority or create any obligations of any kind or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind any other party in any respect whatsoever. Nothing contained herein shall give or is intended to give any rights of any kind to any third persons other than the parties to this Agreement and thereby create any third-party beneficiary hereto other than to the parties to this Agreement.

C. Assignment. Donee shall not transfer, assign, subcontract or delegate in whole or in part any of its rights or obligations under this Agreement without the prior written consent of Donor.

D. Sole Agreement. This Agreement, including recitals, sets forth the entire agreement and understanding of the parties relating to this subject matter, and supersedes and merges all prior and contemporaneous agreements, negotiations and understandings between the parties, both oral and written. No party shall be bound by any oral agreement or representation irrespective of by whom or when made. No change or modification to this Agreement will be binding unless it is in writing and signed by an authorized representative of each of the parties.

E. Severability. In the event that any provision of the Agreement is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable under the applicable laws and/or regulations, either such provision shall be deemed amended to conform to such laws and/or regulations without materially altering the intention of the parties or shall be deleted and the parties agree to negotiate in good faith to replace such provision while the remainder of this Agreement shall continue in full force and effect.

F. Waiver. Any waiver of any right or default hereunder shall be effective only in the instance given and shall not operate as or imply a waiver of any similar right or default on any other occasion. Any party may elect to continue performance notwithstanding such breach by any other party, but such performance shall not constitute a waiver of such breach nor otherwise limit the non-breaching party's remedies. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is sought to be enforced.

G. Choice of Law and Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.  
HENRY SCHEIN, INC.

DONOR

DONEE

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

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

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

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

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

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

(To be signed upon application approval)

(To be signed with submitted application)