

# COMPREHENSIVE MEDICAL SUPPLY GROUP LLC

## PARTICIPANT AGREEMENT

### Appointment of Oncology Medical Supply Group LLC as Group Purchasing Agent

THIS AGREEMENT is entered into between the undersigned (“Participant”) and Comprehensive Medical Supply Group LLC (“Company”). The Agreement shall be effective as of the date of Participant’s signature, as set forth on the signature page of this Agreement.

#### 1. Group Purchasing Organization; Services; Annual Fee; Approval of Participant.

1.1 (a) Company serves as a group purchasing organization (“GPO”) for private practice medical groups and other for-profit healthcare providers and makes available to participants in its GPO program a portfolio of contracts for goods and services which Company has bid, negotiated, or approved (with or without the assistance of one or more third parties) and related opportunities, on a voluntary basis, to purchase goods or services at discounted rates from approved manufacturers or suppliers (the “GPO Program”).

(b) As a party to this Agreement, Participant may participate in and have access to the GPO Program and related purchasing opportunities in accordance with this Agreement. Company shall have the right, in its sole discretion, to select and approve vendors under the GPO program. Company shall use commercially reasonable efforts to negotiate, with the assistance of VHA Southeast or other designated entities as Company may determine from time to time (collectively, the “Other Agents”), on behalf if Participant with specified vendors which are approved by the Company (collectively, the “Sellers”) for preferred pricing and other group purchasing benefits. Company shall notify Participant of all Company-approved Sellers and the potential corresponding benefits of utilizing such Sellers, so that Participant may determine for itself whether or not to purchase goods or services from each such Seller.

(c) Participant acknowledges and agrees that, if it is accepted as an enrollee in the GPO Program, it may purchase goods or services, directly or indirectly, from Sellers or from vendors through a group purchasing organization affiliated with the GPO Program. Participant shall be solely responsible for determining whether to do business with any Seller. Participant may negotiate the terms of any agreements between a Seller and Participant with respect to the purchase and sale of goods or services which have not previously been determined by the GPO Program and shall perform each agreement with a Seller, including, without limitation, paying any amounts due a Seller. Participant shall contact a Seller directly to order goods or services, consummate sales, and establish delivery schedules. Participant shall be solely responsible for inspecting all invoices to ensure that appropriate pricing is in effect. Participant shall, at its own cost and expense, deliver to Company, promptly following Company’s written request, copies of all documents relating to a transaction between Participant and a Seller.

(d) Participant’s enrollment in the GPO Program is subject to Participant meeting the credit and payment criteria of the GPO Program, and Participant shall comply with such credit and payment criteria which are in effect from time to time and is subject to approval and acceptance by Company. Company reserves the right to decline enrollment for any reason. If Participant is accepted as an enrollee in the GPO Program, such enrollment shall become effective as of the date of Participant’s signature to this Agreement. Participant hereby authorizes Company and VHA Southeast or any Other Agent to use information regarding Participant to verify Participant’s eligibility for contract pricing with participating vendors. Participant hereby represents and warrants that all goods or services purchased through the GPO Program or through a group purchasing organization which is affiliated with the GPO Program are solely for Participant’s own use and all such goods or services will not be sold by Participant or distributed to any third party for re-sale or otherwise made available to any third-party, except in compliance with applicable law.

1.2 To remain in good standing under the terms of this Agreement, Participant shall purchase the quantity of goods or services described on **Schedule 1** attached hereto and incorporated in this Agreement in each calendar quarter, unless Participant has given Company the advance written notice and taken the other actions described on **Schedule 1** to this Agreement to identify specific purchases by Participant as “Exempt Purchases” (as defined in this Agreement). Company shall give Participant written notice if Participant is not in good standing under this Agreement and shall permit Participant [**forty-five (45)**] days to return to good standing status. In the event that Participant does not return to good standing status within such period, Company shall terminate this Agreement and give each Seller, and any other appropriate third party, notice of such termination and Participant may not become a participant in the GPO program for a period of at least six (6) months thereafter.

1.3 Company also shall provide administrative services to Participant, including without limitation, determining Participant’s level of satisfaction with Sellers, developing additions or deletions to Company’s formularies of supplies or services, adding or removing Sellers, and implementing any related actions. Company shall disclose to Participant (and if requested by the Secretary of the United States Department of Health and Human Services (“HHS”), to such Department) the amounts which Company has received from each Seller or VHA Southeast (or any Other Agent) with respect to purchases made on behalf of each participant in the GPO program. [**Within [sixty (60)] days following the end of each calendar year, Company shall distribute to the participants in the GPO program, pro rata based on volume of purchases by each such participant during the immediately preceding calendar year, all amounts Company has received from each Seller or VHA Southeast (or any Other Agent) during such calendar year which are in excess of the aggregate amount of Company’s operating costs for such calendar year plus a commercially reasonable reserve (as determined by Company) which shall be retained for Company’s operations during the calendar year in which such distribution occurs. ]**

1.5 Participant understands that Company may offer an expanded portfolio of good or services from vendors that participate in the GPO Program or that participate in the GPO Program through affiliation agreements with other group purchasing organizations and that such affiliated group purchasing organizations may receive part of the administrative services fees paid by such vendors. Each group purchasing organization with which Company forms an affiliation to provide participants in the GPO Program with an expanded portfolio of qualified goods or services will meet the definition of a “group purchasing organization” under 42 C.F.R. § 1001.952(j) and will agree to comply with all requirements of that regulation and other applicable law.

2. **Designation of VHA Southeast as Purchasing Agent; Relationships with Company.**

2.1 Participant hereby appoints Company and authorizes Company to appoint VHA Southeast (or any Other Agents) as a non-exclusive purchasing agent of Participant for the GPO program and Company shall make available to Participant on a non-exclusive, voluntary basis the opportunity to acquire goods or services at discounted rates through group purchasing arrangements negotiated by Company using the services of VHA Southeast (or any Other Agent) with approved Sellers. Neither Company nor VHA Southeast (or any Other Agent) shall have the authority to purchase any goods or services on behalf of Participant or to bind Participant to purchase any goods or services from any third party, including, without limitation, any Seller. Contracts to acquire goods or services shall be solely between Participant and the applicable Seller, and each purchase order issued by Participant to a Seller for goods or services shall constitute Participant’s agreement to the terms, conditions, and pricing of the applicable Seller’s contract and Participant’s sole obligation to perform such purchase order and related agreement.

2.2 Participant is not, and shall not be, owned by Company or VHA Southeast (or any Other Agent) and is not a subsidiary or affiliate of a parent corporation that wholly owns Company or VHA Southeast, either directly or indirectly.

3. **Safe Harbor Compliance**

3.1 A principal purpose of this Agreement is to comply with the terms and conditions of the “group purchasing organization” safe harbor under the Medicare anti-kickback statute (42 C.F.R. § 1001.952(j)) (the “GPO Safe Harbor”). Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the arrangements contemplated by this Agreement to quality to the fullest extent allowed for the GPO Safe Harbor under such regulation.

3.2 By signing this Agreement, Participant: (a) authorizes Company and VHA Southeast or any Other Agent (and the agents of VHA Southeast or any Other Agent) to act as Participant’s purchasing agent; and (b) agrees that Company and VHA Southeast or any Other Agent (and the agents of VHA Southeast or any Other Agent) may (i) receive fees of varying amounts, either directly or indirectly, from Sellers (or with respect to Company, from VHA Southeast or any Other Agent) based on Participant’s purchases under the GPO Program (or with respect to Company, Company’s arrangements with VHA Southeast or any Other Agent); and (ii) furnish various administrative and promotional services to Participant and to such Sellers.

3.3 In accordance with the provisions of the GPO Safe Harbor, Company and VHA Southeast (or any Other Agent), each, agree that, unless Company or VHA Southeast (or any Other Agent), as appropriate, provides Participant with prior written notice as described in this **Section 3.3**, any fees to be paid by a Seller to Company or VHA (or any Other Agent) shall not exceed three percent (3%) of the purchase price of the goods or services purchased by Participant. If a fee to be paid by a Seller to Company or VHA (or any Other Agent) is greater than three percent (3%) of the purchase price of the goods or services purchased by Participant, Company and VHA Southeast (or any Other Agent) shall, prior to offering Participant access to the GPO Program activity to which such fee pertains, send written notice to Participant identifying the amount of the fee (expressed either as a fixed sum or a fixed percentage of the value of the purchases from such Seller by all participants in the GPO Program) and the name of such Seller; and in such event, such notice shall become a part of this Agreement. If the amount of any fee to be paid by a Seller to Company or VHA Southeast (or any Other Agent) is not known at the time of such notice, such notice will state the maximum amount to be paid to Company or VHA Southeast (or any Other Agent) by such Seller.

3.4 Company and VHA Southeast (or any Other Agent), each, agree to disclose, annually and upon request by Participant, the amounts received from each Seller with respect to purchases made by or on behalf of Participant. Company and VHA Southeast (or any Other Agent), each, agree to disclose the same information to the Secretary of HHS upon request or to other federal or state health care regulatory agencies, if required by law or requested by Participant.

3.5 Participant acknowledges that it may be required to disclose any discounts, rebate, incentives, or other remuneration that it receives through any group purchasing arrangement (including, without limitation, the GPO Program) to federal or state health care programs or other payers. To the extent required by applicable law, Participant agrees to properly disclose and reflect any such remuneration on any costs claimed or charges made to Medicare and Medicaid or to provide such information upon request to the Secretary of HHS or to state health care regulatory agencies.

#### 4. **Limited Warranties; Limitation of Liability.**

4.1 Except for willful misconduct or gross negligence, neither Company or VHA Southeast, (or any Other Agent) or their respective subsidiaries or affiliates, nor the directors, managers, officers, members, agents, or employees of Company, VHA Southeast (or any Other Agent), or their respective subsidiaries or affiliates shall be liable to Participant for any act or failure to act with respect to the activities contemplated by, or otherwise in connection with, this Agreement. Neither Company nor VHA Southeast (or any Other Agent) shall have any liability to Participant or to any third party for any defect in a product or service or for any failure of a Seller to perform any contract with Participant, and Participant shall be solely responsible and liable to a Seller for any and all payments for goods, services, and taxes which may become due under any contract with such Seller.

4.2 NEITHER COMPANY NOR VHA SOUTHEAST (OR ANY OTHER AGENT) MAKE ANY WARRANTIES IN CONNECTION WITH GOODS OR SERVICES PURCHASED OR PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER COMPANY NOR VHA SOUTHEAST (OR ANY OTHER AGENT) MAKES ANY GUARANTEE AS TO PRICE, DISCOUNTS, COST SAVINGS, FORMULARY LISTINGS, OR LEVEL OF SATISFACTION WITH ANY SELLER.

4.3 NEITHER COMPANY NOR VHA SOUTHEAST (OR ANY OTHER AGENT) SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RESULTING FROM, OR ARISING IN CONNECTION WITH, PERFORMING OR FAILING TO PERFORM THIS AGREEMENT OR ANY CONTRACT OR CONTRACT TERMS AVAILABLE UNDER THE GPO PROGRAM, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE.

## 5. General Terms.

5.1 This Agreement may be terminated at any time by either Company or Participant by giving at least sixty (60) days prior written notice to the other and to VHA Southeast (or any Other Agent). Termination of this Agreement for any reason shall not affect the obligations of Company, Participant, or VHA Southeast (or any Other Agent) which arise prior or subsequent to the effective date of termination.

5.2 Participant shall not assign this Agreement, whether by operation of law or otherwise, without the express prior written consent of Company. Whenever used in this Agreement and when required by the context, the singular number shall include the plural and the plural the singular. Pronouns of one gender shall include all genders, masculine, feminine, and neuter. The headings used in this Agreement are for convenience only and shall not be construed to limit or expand the terms of this Agreement.

5.3 Participant provides services for which payment may be made in whole or in part under Medicare or a state healthcare program. Company and Participant recognize and agree that each will perform this Agreement in a manner that complies with applicable federal and state laws, including, without limitation, applicable health care laws.

5.4 Participant recognizes and agrees that all information it receives from Company, VHA Southeast (or any Other Agent), or a Seller regarding the GPO Program or group purchasing arrangements is the proprietary information and property of Company, VHA Southeast (or any Other Agent), or such Seller, as appropriate; and Participant agrees that it shall treat all information that it receives from Company, VHA Southeast (or any Other Agent), or a Seller that is related to the GPO Program or group purchasing arrangements (including, without limitation, the pricing and terms and conditions of such arrangements) as proprietary and confidential information and that it shall not disclose any such proprietary and confidential information to third parties either while this Agreement is in effect or during a period of five (5) years following the expiration or earlier termination of this Agreement. Participant also agrees that it shall give its employees, agents, representatives, consultants, and independent contractors written instruction to treat all such information as proprietary and confidential and to not disclose any such proprietary and confidential information for such five-year period. Participant further agrees that disclosure of any information regarding the GPO Program or group purchasing arrangements to Participant or its officers, directors, members, employees, owners or affiliates does not constitute the grant of any express or implied rights or license to copy, use, disclose, or alter in any way such information without the prior written consent of the person or entity providing such information.

5.5 Company, VHA Southeast (or any Other Agent), and Participant, each, are independent contractors, and neither shall have nor exercise any control or direction over the methods by which the other party to this Agreement or VHA Southeast (or any Other Agent) shall perform its duties and obligations under this Agreement. The relationship between and among Company, Participant, and VHA

Southeast (or any Other Party) is not and shall not be deemed to be that of an employer-employee, a joint venture, or a partnership, and neither Company nor Participant shall make any representation that any such relationship exists.

5.6 Any notice or other communication which is permitted or required by this Agreement shall be in writing and shall be effective (i) on the fifth day following deposit in the US Mail, certified mail return receipt requested, first class postage pre-paid, (ii) on the third day following deposit with a nationally-recognized private courier (e.g., FedEx, UPS) with all "next day" delivery charges pre-paid, and (iii) on the second day following a facsimile transmission that is confirmed by a writing stating the date and time of and facsimile number to which such transmission was sent, which writing is produced by the facsimile machine from which such transmission originated. All notices shall be sent to the address or facsimile number appearing below the signature of the party to this Agreement or to such other address or facsimile number which a party may give notice of from time to time.

5.7 This Agreement shall be construed and interpreted in accordance with the laws of the state of Alabama (without regard to choice of law principles). This Agreement may be signed in one or more counterparts, all of which taken together shall constitute one and the same instrument. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cannot be modified, altered, or otherwise changed except by the written agreement of the parties hereto. Each party shall provide the other with all such documents and information as the other shall reasonably request in order to perform its obligations under this Agreement. The parties agree that, among other relief that may be afforded, specific performance and injunctive relief may be available, without the posting of any bond or similar amount, to prohibit breach of the obligations set forth herein, since money damages are inadequate to compensate fully for such breach. In the event any provision or portion of this Agreement is deemed to be invalid or unenforceable, in whole or in part, for any reason, the remainder thereof shall not be invalidated or rendered unenforceable or otherwise adversely affected. Without limiting the generality of the foregoing, if the provisions of the preceding sections shall be deemed to create a restriction which is unreasonable as to scope, duration, or geographical area, any or all of the time, the parties agree that the provision of this Agreement shall be enforceable with respect to such activities, in such scope, for such duration or in such geographical area as any court of competent jurisdiction may determine to be reasonable.

5.8 This Agreement is expressly not intended for the benefit of any creditor of Company or Participant. Except and only to the extent provided by applicable law, no such creditor or third party shall have any rights under this Agreement or any other agreement between Company and Participant with respect to the activities contemplated by this Agreement or otherwise. This Agreement supersedes and cancels any and all prior agreements between the parties, whether express or implied, with respect to group purchasing arrangements or the GPO Program. All previous negotiations, statements, and preliminary instruments by the parties or their representatives are merged with and into this Agreement. This Agreement shall be construed as in its entirety according to its plain meaning and shall be construed as the product of negotiation at arms' length between equally sophisticated business persons advised by counsel; this Agreement shall not be construed against the party who provided and drafted it. Each party hereby acknowledges that, in executing this Agreement, such party has not been induced, persuaded, or motivated by any promise or representation made by any other party, unless expressly set forth herein.

5.9 COMPANY AND PARTICIPANT, EACH, HEREBY ACKNOWLEDGE THAT IT HAS THOROUGHLY REVIEWED THIS AGREEMENT; THAT IT HAS HAD ACCESS TO LEGAL COUNSEL OR OTHER PROFESSIONAL ADVISORS OF ITS OWN CHOICE; THAT IT HAS REVIEWED THIS AGREEMENT WITH SUCH COUNSEL AND/OR ADVISORS TO THE EXTENT IT HAS DEEMED NECESSARY OR APPROPRIATE; AND THAT IT HAS NOT RELIED UPON THE ADVICE (INCLUDING, WITHOUT LIMITATION, MATTERS RELATING TO HEALTH CARE LAW) OF COUNSEL TO COMPANY WHO HAS PREPARED THIS AGREEMENT AT COMPANY'S REQUEST.

**PARTICIPANT ACKNOWLEDGMENT**

Participant has reviewed the Agreement (including the attached **Schedule I**) and agrees to the terms and conditions of the Agreement (including **Schedule I**) and acknowledges that it may terminate the Agreement by giving at least 60 day prior written notice.

\_\_\_\_\_  
Participant Name/DBA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Title

Address : \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile no. \_\_\_\_\_

\_\_\_\_\_  
Contact Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Telephone no.

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Participant's Federal Tax I.D. #

APPROVED:

**COMPREHENSIVE MEDICAL SUPPLY GROUP LLC**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile no. \_\_\_\_\_

**SCHEDULE 1**  
**To**  
**Participant Agreement**

**I. Quarterly Goals for Initial Year:**

**A. First Quarter of participation (exclusive of Exempt Purchases):**

At least thirty percent (30%) of all purchases of [XXXX] through Company GPO

**B. Second Quarter of participation (exclusive of Exempt Purchases):**

At least forty-five percent (45%) of all purchases of [XXXX] through Company GPO

**C. Third Quarter of participation (exclusive of Exempt Purchases):**

At least sixty percent (60%) of all purchases of [XXXX] through Company GPO

**D. Fourth Quarter of participation (exclusive of Exempt Purchases):**

At least eighty percent (80%) of all purchases of [XXXX] through Company GPO

**II. Quarterly Goals for All Subsequent Years (exclusive of Exempt Purchases):**

At least eighty percent (80%) of all purchases of [XXXX] through Company GPO

**An “Exempt Purchase” is either:**

1. Item (or substantially the same item) which is not available in formulary; or
2. Item which does not meet written regulatory, safety, or quality requirements or reasonable delivery schedule; or
3. Item (or substantially the same item) which is available from another vendor at lower price on a reasonable delivery schedule

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**Exempt Purchase Transactions:**

1. Participant will give Company at least ten (10) days prior written notice that Participant will make an “Exempt Purchase” and the reason for the “Exempt Purchase” (that is, one of the reasons indicated above).
2. Participant will deliver appropriate documentation to Company of the items purchased under an Exempt Purchase Transaction (including name of vendor, description of item, volume of purchase, and delivery schedule) and the price paid, as requested by Company.
3. Where an Exempt Purchase is based on a lower price for the same (or substantially the same) item, Participant will cooperate with Company to obtain, for all participants in the GPO Program, from the Exempt Purchase vendor the same price (or lower) as that paid by Participant for such Exempt Purchase item.

Participant Initials: \_\_\_\_\_

COMPREHENSIVE MEDICAL GROUP SERVICES LLC

GROUP PURCHASING PROGRAMS

- A. Voluntary Program Contracts: This program is comprised of contracts that have **no purchase volume commitment**. To access this Program, Participant calls the vendor directly and identifies itself as a Participant in the Comprehensive Medical Supply Group LLC GPO Program and places its order itself, as a Participant in the Comprehensive Medical Supply Group LLC GPO Program.
  
- B. Required Program Contracts: This program is comprised of contracts that have **required purchase volume commitments** as appear in this **Schedule I**. To access this Program, Participant calls the vendor directly and identifies itself as a Participant in the Comprehensive Medical Supply Group LLC GPO Program and places its order itself, as a Participant in the Comprehensive Medical Supply Group LLC GPO Program.
  
- C. Manufacturing Partners Contracts: These contracts are for manufacturer product lines purchased through a distributor. To access the Comprehensive Medical Supply Group LLC pricing, Participant identifies itself to the distributor as a Participant in the Comprehensive Medical Supply Group LLC GPO Program and requests access to the Comprehensive Medical Supply Group LLC (“CMSG”) pricing. The distributor then contacts the manufacturer and loads the CMSG pricing into the Participant’s formulary. Distributors do not have be part of the Comprehensive Medical Supply Group LLC GPO Program in order to make the CMSG pricing available to the Participant.
  
- D. Distributor/Service Contracts: Participation in these programs requires the Participant to sign an additional enrollment agreement which covers the specific program it wishes to use. These enrollment forms are available from Comprehensive Medical Supply Group LLC Supply Group LLC or the appropriate vendor.

Participant Initials: \_\_\_\_\_