

US ENT PARTNERS GPO PARTICIPATION AGREEMENT

This US ENT PARTNERS GPO Participation Agreement (this “**Agreement**”) is entered into the ____ day of _____, ____ (the “**Effective Date**”), by and between Solutions for Otolaryngology, LLC . (“**US ENT PARTNERS**”), a Texas limited liability company, and _____ (“**Member**”).

Recitals:

- A. US ENT PARTNERS is a group purchasing organization that, directly and through its subsidiaries, affiliates and designated agents (the “**US ENT PARTNERS Parties**”), negotiates purchasing agreements (“**US ENT PARTNERS Supplier Agreements**”) with manufacturers and distributors of goods and services (“**Suppliers**”) for the benefit of its members;
- B. Member is an organization that desires to obtain access to US ENT PARTNERS Supplier Agreements in accordance with the terms and conditions set forth herein.

In consideration of t the mutual agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is agreed as follows:

I. US ENT PARTNERS Supplier Agreements.

- A. Authorization. Member hereby authorizes US ENT PARTNERS, directly and through the US ENT PARTNERS Parties, as its non-exclusive group purchasing agent to negotiate and enter into US ENT PARTNERS Supplier Agreements. This authorization is contingent on Member’s proper and timely completion of any necessary enrollment forms or declaration documents. Nothing in any US ENT PARTNERS Supplier Agreement in any way, obligates Member to purchase, license or lease any goods, services, or intangible rights (“**Covered Items**”) thereunder.
- B. Supplier Agreement Terms. Member acknowledges and agrees that before it may purchase through US ENT PARTNERS Supplier Agreements, US ENT PARTNERS may need to ensure that its Suppliers have no objection to granting Member access to US ENT PARTNERS Supplier Agreements. Member further acknowledges and agrees that, in the event that Member purchases Covered Items pursuant to US ENT PARTNERS Supplier Agreement, Member will comply with all applicable terms and conditions set forth in such US ENT PARTNERS Supplier Agreement.
- C. Own Use; Not For Resale. If Member is a nonprofit organization, Member represents and warrants that all goods purchased through US ENT

PARTNERS Supplier Agreements will be for Member's "own use," within the meaning of the Nonprofit Institutions Act as interpreted by the U.S. Supreme Court in Abbott Laboratories v. Portland Retail Druggist Association Inc., 425 U.S. 1 (1976), and following cases. In no event may Member sell, resell, lease or otherwise transfer goods purchased through US ENT PARTNERS Supplier Agreements to a third party unless expressly permitted by the terms of the applicable US ENT PARTNERS Supplier Agreement. Any breach of the foregoing representation and warranty may result in immediate termination of this Agreement.

- D. Standard Terms and Conditions. The parties agree that the STANDARD TERMS AND CONDITIONS ("STANDARD TERMS") adopted and published from time to time by US ENT PARTNERS shall govern the rights and obligation of the parties except when they are inconsistent with a US ENT Supplier Agreement.

US ENT PARTNERS MAY AMEND THE STANDARD TERMS BY PROVIDING 30 DAYS' NOTICE TO ITS MEMBERS AND PUBLISHING THE AMENDMENTS ON ITS WEBSITE AT www.usent.com

II. Administrative Fees and Disclosure Reports

- A. In General. Member acknowledges and agrees that, pursuant to the terms of US ENT PARTNERS Supplier Agreements, US ENT PARTNERS will receive fees from Suppliers ("**Administrative Fees**"), which are based upon purchases made by Member. Except as noted below, each US ENT PARTNERS Supplier Agreement provides for Administrative Fees that are fixed at three percent or less of the purchase price of the Covered Items.
- B. Transaction Fees. Member shall compensate US ENT PARTNERS for all products and services purchased hereunder at a rate equal to two percent (2%) of the total dollar amount of the Products and Services purchased by Company from Vendor upon implementation of order management process ("Transaction Fees"). Company will be billed monthly and pay upon receipt of bill. US ENT PARTNERS reserves the right for annual fee increases.
- C. Disclosure Report. US ENT PARTNERS will provide Member (or its authorized agent or designee) with, or provide Member with access to, an annual report listing Member's purchases under US ENT PARTNERS Supplier Agreements and the associated Administrative Fees received by US ENT PARTNERS based on such purchases.

III. Term and Termination

- A. Term. The initial term of this Agreement commences on the Effective Date and continues for one (1) year (the “**Initial Term**”). The Initial Term shall renew automatically from year to year until terminated in accordance with the terms set forth herein.
- B. Termination Without Cause. Either party may terminate this Agreement at will and without cause on sixty (60) days’ written notice to the other party.
- C. Termination For Cause. Either party may serve written notice of material breach of this Agreement to the other party, which notice shall specify the nature of the breach. If the material breach is not cured within thirty (30) days of the notice, or such additional time as is reasonably required and agreed to by both parties, the non-breaching party may terminate this Agreement on ten (10) days written notice thereafter.

IV. Miscellaneous

- A. Confidentiality. Neither party shall, during the term of this Agreement and for a period of one (1) years after the expiration or termination thereof, disclose to any third party, other than its employees or agents with a need to know who have been advised of the confidentiality restrictions contained in this Agreement, or use for any purpose other than compliance with this Agreement, any of the Confidential Information of the other party. Notwithstanding anything in this Agreement to the contrary, US ENT PARTNERS shall have the right to disclose the terms and conditions of this Agreement to Channel Partner, Suppliers with whom US ENT PARTNERS has Supplier Agreements, and federal, state, and local governmental regulatory entities.

For purposes of this Agreement, the term “Confidential Information” includes: (i) any information that refers or relates to this Agreement, any agreements between US ENT PARTNERS and its members, and any Supplier Agreement, including but not limited to any information relating to Supplier pricing, member data, member lists, financial analyses, benchmarking, and comparative reports of any kind prepared by the other party; (ii) any information that a party marks as “Confidential,” “Proprietary” or with a similar legend prior to disclosure; (iii) any information which is orally identified as confidential at the time of disclosure and confirmed as confidential in writing within three (3) business days following such disclosure; and (iv) all information generated by a party that contains, reflects, or is derived from Confidential Information.

Confidential Information does not include any information that is: (i) publicly available through no fault of the receiving party; (ii) received from a third

party who is not under an obligation of confidentiality to the disclosing party; (iii) known by the receiving party prior to disclosure by owner; (iv) developed by the receiving party independently from the Confidential Information of the owner; or (v) required to be disclosed by law or legal process, as determined by the receiving party based on the advice of legal counsel, so long as the party uses reasonable efforts to notify the disclosing party prior to such disclosure.

The parties agree that money damages will not be a sufficient remedy for any breach of the confidentiality provisions of this Agreement. The non-breaching party shall be entitled to seek specific performance and/or injunctive relief, in addition to any other remedies available at law or in equity, upon the breach or threatened breach of the confidentiality provisions of this agreement. The parties waive any right to require the posting of a bond or other security if injunctive relief is entered by a court.

- B. Agency. Member understands that in addition to execution of this Agreement, individual Suppliers may require that a Member execute letters of commitment, tier assignments, or other documentation (collectively "**Implementation Documents**") in order to provide a Member access to individual Supplier Agreements. Member hereby designates US ENT PARTNERS as its agent and attorney-in-fact for the purpose of completing and executing Implementation Documents as may be necessary to provide Member with access to Supplier Agreements as contemplated in this Agreement. US ENT PARTNERS shall follow any applicable written or verbal instructions provided by Member when completing such documentation.
- C. Assignment. This Agreement may not be transferred or assigned without the prior written consent of the non-assigning party; provided, however, that US ENT PARTNERS may, without the consent of Member, assign this Agreement to a US ENT PARTNERS Party or to the successor in interest in the event of a merger or sale of substantially all of its assets. Any attempt to assign this Agreement without the required consent shall be void.
- D. Reporting Price Reductions; Compliance with Law. Member represents, warrants and guarantees that at all times during the Term of this Agreement, Member shall 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 US ENT PARTNERS Supplier Agreement, or any other remuneration under this Agreement or any US ENT PARTNERS Supplier Agreement, Member may have an obligation under federal or state law to disclose such price reductions or remuneration to federal or state health

care programs or other payors, and Member agrees to comply with all such laws.

- E. Attorneys' Fees and Costs. In the event that either party resorts to legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover the costs and expenses of such action so incurred, including, without limitation, reasonable attorneys' fees.
- F. Exclusion. Each party represents and warrants that it has never been, and shall never be, during the term of this Agreement, excluded from participation in any federal health care program (as such term is defined in 42 U.S.C. § 1320a-7b(f)) ("**Federal Health Care Program**"), or been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency. Each party represents and warrants that it has not been the subject of an actual, pending or threatened formal adverse action, as that term is defined in 42 U.S.C. § 1320a-7e(g). Each party agrees that it will notify the other party immediately in the event it is excluded from any Federal Health Care Program, or debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency, during the term of this Agreement.
- G. Limitation of Liability. Neither party shall be liable for special, incidental or consequential damages under this Agreement, even if advised of the possibility thereof. All remedies available to an aggrieved party herein under this Agreement, at law, or in equity, are cumulative and not mutually exclusive. US ENT PARTNERS and its parent, subsidiaries, affiliates, directors, officers, agents and employees shall not be liable to Member for any act, or failure to act, in connection with any US ENT PARTNERS Supplier Agreement (or US ENT PARTNERS program), including, but not limited to, any failure of a Supplier to furnish the Covered Items that the Supplier has agreed to furnish under any US ENT PARTNERS Supplier Agreement. Without limiting the generality of the foregoing, US ENT PARTNERS hereby disclaims and excludes any express or implied representation or warranty regarding any Covered Items under any US ENT PARTNERS Supplier Agreement (or US ENT PARTNERS program).
- H. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the transactions contemplated hereby. This Agreement supersedes all written or oral prior agreements or understandings with respect to the subject matter hereof. This Agreement may not be amended or modified, and no provision of this Agreement may be discharged or waived, except by a writing signed by US ENT PARTNERS and Member. A waiver of any particular provision will not be deemed a waiver of any other provision,

nor will a waiver given on one occasion be deemed to apply to any other occasion.

- I. Severability. In the event any provision of this Agreement is for any reason deemed to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement, and this Agreement will be construed by limiting or invalidating such provision to the minimum extent necessary to make such provision valid, legal and enforceable.
- J. Notice. Any notice required by this Agreement will be deemed to be properly given if sent by (1) certified or registered mail, return receipt requested, or (2) national courier service, such as federal express, at the addresses set forth below or at any other address of which notice has been properly given pursuant to the provisions of this Section IV.J.:

If to US ENT:

US ENT
PO Box 147125
Edgewater, CO
80214
- K. Governing Law. This Agreement will be construed under and governed by the laws of the State of Texas.
- L. Independent Contractors. The parties to this Agreement are independent contractors and are solely responsible for the conduct of their respective employees, agents, and representative in connection with the performance of their obligations under this Agreement. Neither party will, by entering into this Agreement, become liable for any of the existing or future obligations, liabilities or debts of the other party. Nothing in this Agreement will be construed as creating a partnership or joint venture between US ENT PARTNERS and Member.
- M. Agency Authority. The person or entity signing this Agreement on behalf of Member hereby represents and warrants to US ENT PARTNERS that it is the duly authorized agent of Member with full authority to execute this Agreement on the Member's behalf.

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

US ENT PARTNERS, _____ (“MEMBER”)

By: _____ By: _____
 Printed Name: Keith Matheny _____ Printed Name: _____
 Title: CEO _____ Title: _____
 Date: 2/3/22 _____ Date: _____

US ENT COMMITTED CATEGORIES

Committed Categories are the Products and Services listed in the below which are subject to the Compliance Level obligations. The Compliance Level shall be at least eighty percent (80%) of such purchases from Vendors (as measured in dollars spent by the combined business operations of Member and the Locations).

Category	INDICATE X HERE	Supplier
Med/Surg <i>*choose 1 primary*</i>		Medline
		McKesson
		Henry Schein
Other Med/Surg		Intersect ENT (Sinus Stents)
		Stryker (Cryotherapy, Nasal Valve Repair Implants, Balloons)
Allergy		ALK (Allergy Testing and Immunotherapy Supplies)
Sleep		Itamar (Home Sleep Diagnostics)
		SomnoMed (Dental Sleep Appliances)
Equipment		Xoran (CT Scanner)
		Carl Zeiss (Microscope)
		Carestream (Intraoral Laser Scanner)
Hearing Instruments		JED MED (ENT Equipment, exam chairs, cabinets)
		Oticon, Phonak, Widex, Starkey, ReSound, Unitron, Signia
Non Clinical		Earlens
		Staples (Office Supplies)
		CBRE (Real Estate)
		Doximity/Curative (Online Medical Networking)
		FedEx (Shipping)
EHR		Verizon (Wireless Devices)
Marketing		Modernizing Medicine (EHR)
Nasal Rinse Kit		TrackableMed (Digital Marketing)
Telemedicine		NeoSinus (Nasal Rinse Kit)
		Sleep Vigil (Remote Sleep Apnea Monitoring Software Services)