

# PROCURE

BY CAREPATHRX

## ProCure Group Purchasing Agreement

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This Agreement is entered into as of [MONTH/DAY/YEAR], between ProCure Consulting, LLC., a group purchasing organization organized under the laws of Florida and having its chief executive office at 500 Winderley Place, Suite 324, Maitland, Florida 32751 (“GPO”) and \_\_\_\_\_ (“Participant”).

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GPO and Participant wish to enter into an agreement whereby GPO shall serve as a source of purchasing agreements for pharmaceuticals, medical supplies, and auxiliary supplies and whereby Participant, in turn, shall be able to access discounted pricing and services from vendors or suppliers with whom GPO has executed, or will execute in the future, purchasing agreements (“Vendors”). Participant desires to designate GPO as a group purchasing organization for those facilities or entities that Participant owns and manages (“Participant Facilities”) pursuant to the terms and conditions provided herein.

In consideration of the mutual agreements herein contained and the promises herein expressed and for other good and valuable consideration the receipt of which is hereby acknowledged and intending to be legally bound hereby, the parties hereby agree as follows:

### TERMS AND CONDITIONS

- 1. TERM AND RENEWAL.** Subject to Paragraph 2 below, this Agreement shall be for a period of one year, commencing on the execution date above, and renewing year-to-year.
- 2. TERMINATION.** Either party may terminate this Agreement for any reason upon thirty days written notice to the other party. Notwithstanding the foregoing, (i) if a Participant ceases to be eligible for participation; or (ii) if a Participant willfully obstructs the purposes and proper activities of GPO, GPO may terminate this Agreement by written notice to Participant and this Agreement shall terminate as of the date set forth in the notice.
- 3. EFFECT OF TERMINATION.** On the termination of this Agreement, all the rights and the interest of Participant in the GPO and under this Agreement shall immediately cease.
- 4. AGREEMENTS WITH VENDORS.** In connection with its Vendor agreements, GPO shall disclose to Vendor its roster of Participants and corresponding Participant Facilities (as listed in Exhibit A hereto). Vendor and Participant may establish an account or similar arrangement, and, upon establishing its account or similar arrangement, Participant may thereafter purchase specified pharmaceutical and medical supplies from the Vendor or Vendor’s distributor(s) pursuant to the pricing scheduled negotiated by GPO and the Vendor and subject to any terms or conditions specified by Vendor. Participant shall be solely responsible for all payments due for purchase from Vendors or distributors and GPO shall have no liability to Participant or any Vendor or distributor whatsoever resulting from such purchases or Participant’s related payment obligations. Participants and Participant Facilities are not obligated to purchase supplies from a Vendor and retain the right to purchase supplies from any source, irrespective of whether GPO has an agreement with that source or not. Vendor agreements may specify or limit discounts to particular classes of trade, which in turn may limit Participant’s or Participant’s Facilities’ ability to access discounts. Absent express written authorization from both GPO and the Vendor, Participant shall not resell any product or service acquired from a Vendor in connection with this agreement.

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5. **SCOPE OF RELATIONSHIP.** GPO and Participant are separate legal entities and this Agreement shall not be construed to infer or create the existence of a joint venture, partnership, or any other relationship between the parties other than that of group purchasing organization and participant. GPO may, in its sole discretion, enter into this form of agreement with any otherwise qualified participant.

6. **FEES.** Under its Vendor agreements, GPO typically earns administrative fees based on the volume of purchases by Participants. The terms of those fees are established in writing at either a fixed rate, not to exceed three percent of the purchase price of supplies or services actually purchased, or are otherwise specified in those agreements and fixed at the time of the first sale.

7. **REPORTS.** No less frequently than annually, GPO will provide reports to Participant that include the purchasing activities of Participant, the administrative fees that GPO has received as a result of such purchases, and any rebates that GPO or Participant receives in connection with this Agreement. GPO shall make these records available to the federal Secretary of Health and Human Services upon request. All such reports, and all information contained therein, shall be limited to the information received by GPO from the applicable Vendor. To the extent that Participant earns rebates or other cost reductions from a Vendor or if administrative fees received by GPO are passed on to Participant, Participant expressly acknowledges that such amounts received are “discounts or other reductions in price” under Section 1128B(b)(3)(A) of the federal Social Security Act, and that Participant shall disclose such discounts received on all reports filed with state and federal agencies providing cost-based reimbursement.

8. **CONFIDENTIALITY.** Participant acknowledges that GPO’s activities and reputation depend on the protection of certain “proprietary information” (including, without limitation, pricing, technology, research and development, experimental work, and rebate policies and procedures) and hereby agrees that Participant shall not, at any time or in any manner, except as authorized by the GPO, either directly or indirectly, divulge, disclose or communicate to any person, firm, company, association, partnership or other entity, any such information that is either designated by GPO as confidential or proprietary or which, by its nature, Participant knows or should know is confidential or proprietary.

9. **INDEMNIFICATION.** Participant hereby agrees to defend, indemnify, and hold GPO, its officers, directors, agents, employees, parents and subsidiaries, harmless against all costs, expenses, and losses (including reasonable attorney’s fees and costs) incurred through claims of third parties against GPO based on any breach by Participant of its obligations under this Agreement, or resulting from transactions with Vendors.

10. **MISCELLANEOUS.**

a. This Agreement constitutes the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated herein.

b. Any modification of this Agreement shall be binding only if evidenced by a writing signed by each party.

c. The invalidity of any provision of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect.

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d. This Agreement shall be construed under Florida law. Any action brought to enforce the terms of this Agreement shall be brought in the appropriate court in Orange County, Florida. THE PARTIES HERETO WAIVE TRIAL BY JURY OF ANY ACTION WHATSOEVER BROUGHT PURSUANT TO THIS AGREEMENT.

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**IN WITNESSES WHEREOF**, the parties, intending to be bound by the terms of this Agreement and having the authority to bind their respective corporation, hereby execute this Agreement by placing their signatures below:

**ProCure Consulting, LLC**

**Participant:**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

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

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

<b><u>Participant Contact Information</u></b>
Participant Name:
Address:
Phone:
Fax:
Primary Contact:
Primary Contact Email Address:

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### Exhibit A: Participant Facilities