

NOTE: Below are the Terms and Conditions that were referenced in agreements signed prior to 2/15/2012. These Terms and Conditions are applicable to all National Assembly program participants.

Terms and Conditions

The following are the terms and conditions for Participant and its Locations to participate in the AdvantageTrust group purchasing program offered by **HealthTrust Purchasing Group, L.P.** (“HPG”), a Delaware limited partnership, with headquarters at 155 Franklin Road, Suite 400, Brentwood, TN 37027.

1. Definitions.

As used herein, the following terms have the following meanings:

- 1.1 “AdvantageTrust Portal” means the website accessed by Participant and its Locations. Specific website address and/or access instructions will be provided by AdvantageTrust. All references to “AdvantageTrust Portal” shall include subsequent versions thereof.
- 1.2 “Agreement” and “Participation Agreement” means the GPOAC and all attachments, including the Terms and Conditions attached as Attachment B.
- 1.3 “Effective Date” means the Effective Date listed on the GPOAC.
- 1.4 “GPO Affiliation Certificate” and “GPOAC” means the certificate on the front page of this Agreement, including Attachment A.
- 1.5 “HPG Vendor Lists” means the following lists: (i) HPG Vendor Contract list, (ii) the list of HPG Vendor Contracts where the Vendors have agreed to pay GPO Fees of three percent (3%) or less, (iii) the list of HPG Vendor Contracts with distributors listing the GPO Fee to be paid to HPG, and (iv) the list of HPG Vendor Contracts where the Vendors have agreed to pay GPO Fees to HPG greater than three percent (3%), including the specific percentage of the GPO Fee or the maximum GPO Fee, as updated by HPG from time to time.
- 1.6 “Location” or “Locations” means Participant and any Participant facilities and offices listed on Attachment A, which will participate in the Program.
- 1.7 “Participant” means the entity identified as the “Participant” in this Agreement.
- 1.8 “Products and Services” means the products and services, including distribution services, available under the Program pursuant to the Vendor Contracts.
- 1.9 “Program” means the AdvantageTrust group purchasing program conducted by HPG, pursuant to which Participant and its Locations are provided access to Vendor Contracts.
- 1.10 “Vendor Contracts” means those purchasing agreements between Vendors and HPG for the purchase of Products and Services, made available to Participant and the Locations under the Program. The definition for Vendor Contracts also includes Business Associate Agreements under HIPAA and which are entered into by HPG with Vendors for the benefit of its participants. A list of the Vendor Contracts pursuant to which Participant can obtain Products and Services under this Program shall be provided by HPG from time to time, and also posted on the AdvantageTrust Portal.
- 1.11 “Vendor” or “Vendors” means the supplier of Products and Services under the Vendor Contracts available under the Program.

2. Purchase of Products and Services.

- 2.1 HPG is a “group purchasing organization” that is structured to comply with the requirements of the “safe harbor” regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. §1001.952(j). If Participant indicates in Section 4.6 that it is a healthcare provider, the parties agree: (i) it is their intent to establish a business relationship that complies with the Medicare and Medicaid anti-kickback statute, set forth in 42 U.S.C. §1320a-7b(b) and (ii) to comply with the requirements of the “safe harbor” regulations regarding payments to group purchasing organizations set forth in 42 C.F.R. §1001.952(j) and the parties believe that this Agreement satisfies those requirements.
- 2.2 Subject to the terms and conditions set forth in this Agreement, Participant, on behalf of itself and each Location, hereby engages HPG to act as its exclusive group purchasing organization, and is hereby granted access to the Vendor Contracts, pursuant to which Participant and its Locations will purchase Products and Services available thereunder for use by Participant and its Locations to provide charitable services. Participant hereby authorizes HPG, as its agent for such purposes, to (i) negotiate the terms of and enter into Vendor Contracts, and to cancel or modify any Vendor Contracts as it deems necessary, advisable or appropriate; (ii) receive rebates from Vendors based on Participant’s purchases under Vendor Contracts, for payment by HPG to Participant pursuant to Section 6.2, (iii) and to receive from Vendors, distributors, and e-commerce companies, data relating to purchases of Products and Services under Vendor Contracts by Participant and its Locations. HPG shall have the right to update its list of Vendor Contracts by providing written notice thereof to Participant or notice on the AdvantageTrust Portal.
- 2.3 It is understood by the parties that execution of this Agreement does not give rise to any obligation whatsoever, either expressed or implied, on the part of Participant or any of its Locations to provide any business or referrals to HPG, any partner or member of HPG, or any Affiliates thereof.

3. Term.

Subject to termination under Section 7 hereof, the term of this Agreement shall be for a period of one (1) years commencing on the Effective Date, with automatic renewals thereafter for terms of one (1) year.

4. Representations, Warranties and Indemnity by Participant.

Participant, for itself and for each of its Locations, whether or not set forth on Attachment A, hereby covenants with HPG as follows:

- 4.1 **Indemnity.** Participant and its Locations shall indemnify and hold HPG, the partners in HPG, and their respective affiliates, agents, officers, directors and employees (the “**Indemnitees**”) harmless from and against any and all losses, liabilities, damages, costs and expenses (whatsoever, including, without limitation, reasonable attorneys’ fees,) relating to acts or omissions of Participant and/or Locations which relate in any way to this Agreement or any Vendor Contract, including, without limitation, any claims resulting from a failure to pay for any Products and Services purchased by Participant or any Locations, or use by Participant or any Locations of Products and Services under Vendor Contracts.
- 4.2 **Exclusivity.** During the term of this Agreement, neither Participant nor any of its Locations shall utilize, participate in or maintain membership in any other group purchasing organization, or other similar agreement or arrangement. This requirement does not prohibit Participant or any of its Locations from purchasing products and services from sources other than HPG Vendors, even if the products and/or services are available from HPG Vendors, when necessary for patient care considerations, if Participant and its Locations indicate in Section 4.6 that they are a healthcare provider.
- 4.3 **Compliance.** Participant agrees, and agrees to cause each of its Locations (i) to comply with all terms of this Agreement as if a party hereto, (ii) to comply with all terms of the Vendor Contracts, including without limitation, payment terms, own use requirements, and arbitration of dispute requirements, and (iii) to execute separate agreements or acknowledgements as requested by HPG or any particular Vendor

evidencing such Location's agreement to comply with the terms of the relevant Vendor Contracts.

- 4.4 **Compliance Level.** Participant agrees that, of the Products and Services available under Vendor Contracts to it and its Locations, Participant and each Location shall purchase at least eighty percent (80%) of their requirements for such Products and Services, under the Vendor Contracts.
- 4.5 **Own Use Statement.** Participant warrants that all products purchased by it or its Locations under the Vendor Contracts will be for their "own use" in the provision of charitable services provided by Participant at the Locations listed in Attachment A.
- 4.6 **Healthcare Provider Statement.** Participant hereby represents that it and its Locations do not provide products and services for which Participant or any Locations are reimbursed by the Federal Government under any Federal Healthcare Program as defined in 42 USC § 1320a-7b(f), such as, but not limited to, Medicare and Medicaid or any state healthcare program.
- 4.7 **Warranty of Non-exclusion.** Participant hereby represents that, to its knowledge, it and its Locations are not currently excluded, debarred, or otherwise ineligible to participate in Federal Healthcare Programs as defined in 42 USC § 1320a-7b(f) (the "Federal Healthcare Programs") or any state healthcare program and to Facility's knowledge, is not under investigation or otherwise aware of any circumstances which may result in Facility or any of its affiliates, as applicable, being excluded from participation in the Federal Healthcare Programs or any state healthcare program. This representation shall be ongoing during the Term, and Participant shall immediately notify HPG of any change in the status of the representations and warranties set forth in this Section 4.7.

5. HPG Disclaimer and Participant Release.

HPG DOES NOT MAKE, AND EXPRESSLY DISCLAIMS, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, AS TO ANY PRODUCTS AND SERVICES SOLD BY ANY VENDOR; AND PARTICIPANT AND ITS LOCATIONS HEREBY EXPRESSLY RELEASE HPG FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THE PRODUCTS AND SERVICES, AND ANY BREACH OR ALLEGED BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS AND SERVICES.

6. GPO Fees, Rebates, and Global Sourcing Fees.

- 6.1 **GPO Fees.** Participant acknowledges (i) that HPG will receive payment of fees for administrative and other services provided by HPG from Vendors based on Products and Services purchased, licensed or leased by Participant and its Locations ("**GPO Fees**") during the Term of this Agreement, (ii) that the percentage of the GPO Fees will generally be three percent (3%) or less from each Vendor if a GPO Fee is paid, but may in some cases be higher, and (iii) HPG will receive GPO Fees from some Vendors that are distributors of Products in amounts that are one percent (1%) or less but resulting in an aggregate GPO Fee from both the Vendor manufacturer and the Vendor distributor that may exceed three percent (3%) of the purchase price paid by a Location, but which shall not exceed four percent (4%) of the purchase price paid by a Location. With respect to the Vendor Contract between AT&T and HPG for long distance telephone services, HPG receives a GPO Fee of four and one half percent (4.5%). The HPG Vendor Lists on the AdvantageTrust Portal include (a) HPG Vendor Contract list, (b) the list of HPG Vendor Contracts where the Vendors have agreed to pay GPO Fees of three percent (3%) or less, (c) the list of HPG Vendor Contracts with distributors listing the GPO Fee to be paid to HPG by each distributor, and (d) the list of HPG Vendor Contracts where the Vendors have agreed to pay GPO Fees to HPG greater than three percent (3%), including the specific percentage of the GPO Fee or the maximum GPO Fee. HPG shall disclose to Participant on an annual basis, in writing, with respect to purchases of Products and Services by each Participant and by each of the Locations, the names of the Vendors and the specific amount of GPO Fees received from each of such Vendors for Products and Services purchased by Participant and its Locations. HPG shall disclose to the Secretary of the United States Department of Health and Human Services, upon request, the amount of GPO Fees received by HPG from each Vendor

with respect to Products and Services which are purchased, licensed or leased by Participant and its Locations. Participant agrees to disclose the applicable GPO Fee information provided by HPG regarding such GPO Fees to each of its Locations.

- 6.2 **Rebates.** HPG agrees to pay to Participant any funds received from Vendors designated as Vendor rebates based on purchases of Products and Services by Participant and its Locations. Participant acknowledges that any such rebates received from HPG in respect to purchases made under the Vendor Contracts will be allocated among all Locations participating in the Program in amounts proportionate to the dollar amount of Products and Services giving rise to such rebate purchased by each Location participating in the Program and as otherwise required by law and/or regulation. The amount of any rebate distributed to Participant shall be treated as a discount to Participant's and/or Location's cost for the applicable Products and Services, as required by any laws or regulations. The Participant is responsible for allocating any such rebate so received, as well as any rebate received directly from any Vendor, among its Locations and for providing all required information regarding such rebate amounts and allocations to its Locations as required by law and/or regulation. If Participant and its Locations indicate in Section 4.6 they are a healthcare provider, Participant and its Locations intend to comply with the following: (i) it is the intent of the parties hereto to establish a business relationship, which complies with the Medicare and Medicaid anti-kickback statutes set forth at 42 U.S.C. §1320a-7b(b); (ii) in certain instances, invoices from Vendors may not accurately reflect the net cost of Products and Services to the Participant and/or its Locations; (iii) where a discount or other reduction in price is applicable, the parties also intend to comply with the requirements of 42 U.S.C. §1320a-7b(b)(3)(A) and the "safe harbor" regulations regarding discounts or other reductions in price set forth in 42 C.F.R. §1001.952(h); (iv) in regard to iii above, the parties hereto acknowledge that Participant will satisfy, and ensure that its Locations satisfy any and all legal and regulatory requirements imposed on buyers; and (v) Participant will accurately report when requested, under any state or federal program that provides for reimbursement for the Products and Services covered by this Agreement, the net cost actually paid by the Participant and/or its Locations, pursuant to such Vendor Contracts.
- 6.3 **HPG Vendor Lists.** HPG maintains on the AdvantageTrust Portal the HPG Vendor Lists, which are hereby incorporated as part of this Agreement. The parties hereby expressly agree that updated HPG Vendor Lists shall be deemed to be an amendment to this Agreement for the purpose of incorporating such list to be included in this Agreement. Participant agrees to periodically (at least annually) check the AdvantageTrust Portal to obtain a copy of the updated HPG Vendor Lists.
- 6.4 **Global Products.** Participant acknowledges that HPG is engaged in a program to achieve savings on products ("**Global Products**") by sourcing them internationally through a coordinated arrangement with Cardinal Health. Due to the investment of HPG in this program, as well as the services and clinical expertise that HPG will dedicate to sourcing products globally, pricing for Global Products made available to Participants and Locations for purchase may include a fee payable to HPG (a "Global Sourcing Fee"). While the Global Sourcing Fee is not calculated based on a specific formula related to sourcing costs, the amount of the Global Sourcing Fee will range from 0% up to a maximum of 5% of the sourcing costs. As used in this paragraph, "sourcing costs" includes costs for purchasing Global Products from the manufacturer and transportation and logistics costs for delivery to the Cardinal Health warehouse.

7. Termination.

- 7.1 **Termination Without Cause.** Either party shall have the right to terminate this Agreement for any reason effective upon ninety (90) days prior written notice.
- 7.2 **Termination for Breach.** HPG shall also have the right to terminate this Agreement upon thirty (30) days prior notice (i) upon the transfer, directly or indirectly, by sale, merger or otherwise, of substantially all of the assets of Participant or its ultimate parent or any permitted assignee (upon assignment to such assignee) or (ii) in the event that more than forty-nine percent (49%) of Participant equity interest or the

equity interest of its ultimate parent or any such permitted assignee is transferred to an independent third party entity. Additionally, HPG shall have the right to immediately terminate this Agreement and Participant's access to the Program if Participant fails to purchase a minimum of one thousand dollars (\$1,000.00) or more annually through the Program, due to administrative costs.

8. Confidentiality.

The terms and attachments of this Agreement, all information, documents and instruments (including, without limitation, all information regarding the pricing, rebates, discounts, shipping terms and other terms and conditions of the Vendor Contracts) delivered or otherwise provided to Participant or its Locations, or any of their agents, directors, officers or employees as well as information relating to quantities of Products and Services purchased by Participant and/or its Locations, is confidential (hereinafter, "**Confidential Information**"). Participant agrees that throughout the term of this Agreement and for a period of five (5) years thereafter it and its Locations shall maintain all Confidential Information in strict confidence, and may disclose such Confidential Information only on a "need to know" basis to its duly authorized officers, directors, representatives, accountants, attorneys and agents and to the duly authorized officers, directors, representatives and agents of its Locations. Participant agrees to obtain signed confidentiality agreements with any such non-employed third parties receiving Confidential Information, with terms consistent with the terms of this Section 8. Any disclosure of Confidential Information to independent third party consultants of Participant or any Locations shall be made only after such consultants have signed a confidentiality agreement provided by HPG.

9. Notices.

All notices or other communications required or permitted under this Agreement shall be in writing and sufficient if sent by registered or certified mail, postage prepaid, or by reputable express delivery service, or delivered personally, by private courier or fax, and followed by such mailing. Notices shall be addressed to each party as set forth below or as otherwise designated by a party:

HPG: HealthTrust Purchasing Group, L.P
155 Franklin Road, Suite 400
Brentwood, Tennessee 37027
Fax No. (615) 344-3361
Attn: Assistant Vice President, AdvantageTrust Membership
Email: atlegal@advantagetrustpg.com

With a copy to:

HealthTrust Purchasing Group, L.P.
155 Franklin Road, Suite 400
Brentwood, TN 37027
Attn: HPG Membership Legal Administrator
Phone: 615-344-3044
Fax: 866-849-4443
Email: corp.atlegal@healthtrustpg.com

Participant: see address on the GPOAC

10. Assignment.

Participant may not assign this Agreement or any of its rights or duties set forth herein, without the prior written consent of HPG; no assignment in violation of the provisions of this Agreement, shall vest any rights in any purported assignee unless approved by HPG. Participant hereby consents to assignment by HPG of its rights and obligations under this Agreement without any consent from Participant to (i) any entity wholly owned (directly or

indirectly) by HCA Holdings, Inc., and any successor thereto; or (ii) a successor entity of HPG as part of a reorganization of HPG which results in HPG being organized in a different legal entity or corporate form, whether through conversion or merger.

11. Severability.

This Agreement shall be construed to be in accordance with any and all applicable federal and state laws and regulations. In the event there is a change in such laws and regulation, whether by statute, regulation, agency or judicial decision that has any material effect on the legality of any provision of this Agreement ("**Affected Provision**"), then the Affected Provision shall be deemed ineffective to the extent of such change in law or holding without invalidating the remaining provisions hereof or affecting the validity or enforceability of such Affected Provision in any other jurisdiction.

12. Governing Law and Consent to Venue and Jurisdiction.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee without regard to the conflict of laws and principles thereof. The parties hereby consent to venue and jurisdiction of any Tennessee state court and United States District Court in Nashville, Tennessee with respect to any legal proceedings arising out of or relating to this Agreement.

13. Entire Agreement; Amendment.

This Agreement (including the Participation Agreement), together with the attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the transactions contemplated hereby, and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof. Except as otherwise provided herein, this Agreement may be amended, modified, superseded or supplemented only by a written instrument expressly stating an intent to amend, modify, supersede, or supplement this Agreement, executed and delivered by each of the parties hereto. The parties agree that changes to Participant's and any Location's DEA number, contact information, address correction and other such information that do not change the terms and conditions of this Agreement, may be completed in the HPG databases without requiring any amendment to this Agreement.

14. Counterparts; Methods of Execution.

This Agreement and any amendments hereto may be executed by the Parties hereto individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the Parties shall be legally valid and effective through (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the document by facsimile transmission, or electronic mail in "portable document format" (".pdf") or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process associated with this Agreement, and executed or adopted by a Party with the intent to execute this Agreement (i.e., "electronic signature" through a process such as DocuSign[®]).

15. Data.

HPG shall be the exclusive owner of the compilation of pricing data related to Vendor Products and Services. All purchasing transaction data (other than pricing data related to Vendor Products and Services) resulting from purchase of Vendor Products and Services by Participant shall be owned by Participant. Participant hereby authorizes HPG to have access to Participant's purchasing transaction data, whether through Vendors, distributors, or any business-to-business e-commerce companies through which orders for Vendor Products and Services are placed by Participant and its Locations. Participant further authorizes HPG to aggregate Participant purchasing transaction data with purchasing transaction data from other Participants of HPG for statistical analysis and other similar purposes, and to provide such aggregate data to third parties provided no portion of the data contains any patient identification information or information that can be specifically traced to Participant.

16. Participant Name and Logos.

Participant hereby authorizes HPG to use Participant's names and logos, as provided by Participant to HPG, on HPG's proprietary website and other HPG publications listing Participant among other entities that are members of HPG.

17. Drug Enforcement Administration Registration Numbers.

If Participant and its Locations indicated in Section 4.6 they are a healthcare provider, Participant hereby consents to HPG providing "DEA" numbers for itself and all Locations, to HPG Vendors, including authorized HPG distributors; and to HPG receiving such DEA numbers from HPG Vendors, authorized HPG distributors, and any other appropriate sources.

End of Attachment B