



200 Cumberland Bend
Nashville, Tennessee 37228

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PARTICIPATION AGREEMENT

This Participation Agreement (“Participation Agreement”) is made and entered into by and between Bellwether Oncology Alliance (“Bellwether”) and _____ (“Participant”).

WHEREAS, Bellwether is a group purchasing organization engaged in negotiating favorable pricing and contract terms with manufacturers on behalf of individual physicians and physician group practices, such as Participant, who specialize in oncology and hematology services;

WHEREAS, Bellwether desires to procure certain agreements/contracts for oncology and hematology pharmaceuticals and supplies (the “Products”) for Participant;

WHEREAS, Bellwether will negotiate and enter into purchase contracts (the “Purchase Contracts”) with various manufacturers, vendors, wholesalers and distributors (the “Suppliers”) with respect to the Products with the goal of obtaining favorable pricing for Products;

WHEREAS, Participant desires to authorize Bellwether to act on its behalf as a group contracting agent, to the extent set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Authorization to Act as Contracting Agent. Each Participant hereby authorizes Bellwether to act as, and Bellwether hereby agrees to act as, Participant’s contracting agent for Products utilized by Participant. In such capacity, Bellwether shall negotiate the terms of, as well as manage, the Purchase Contracts.
2. Non-Exclusivity. Nothing contained herein shall be construed to require Participant to use Bellwether as its exclusive contracting agent or to purchase Products under a Purchase Contract.
3. Representations of Participant. Participant represents and warrants that:
 - (a) Participant shall identify itself as a member of Bellwether when ordering the Products pursuant to the Purchase Contracts;
 - (b) Participant shall be responsible for the payment due on any Product purchased by Participant pursuant to the terms of the Purchase Contract between Bellwether and the Supplier;
 - (c) All participation eligibility information submitted to Bellwether by Participant is complete and accurate, and such participation does not violate any agreement to which Participant is currently a party;

FAX BACK TO: 615-301-5963

(d) Participant shall not purchase, sell, transfer or use any of the Products purchased pursuant to a Purchase Contract in any manner that is contrary to the requirements of the Prescription Drug Marketing Act of 1987;

(e) Participant will indemnify and hold Bellwether, the officers, directors, employees and agents of Bellwether and any Supplier harmless from any liability as a result of Participant's breach of its representations and warranties contained herein.

4. Representations of Bellwether.

(a) The price and other terms of sale for the Products that have been negotiated by Bellwether shall be provided to Participant in writing following execution of each Purchase Agreement and updated from time to time as necessary.

(b) Bellwether and its employees shall comply with all laws, ordinances, rules, regulations and agency standards that are applicable to Bellwether's performance under this Participation Agreement.

5. Own Use. Participant acknowledges and agrees that the Products purchased by Participant pursuant to the Purchase Contracts shall, unless otherwise allowed by the Supplier, be purchased by Participant solely for Participant's "own use" and not for resale, in which case Participant shall not authorize or allow any retail, over the counter, walk-in trade or any other prescribed behavior that could be classified as other than "own use" as that term would be applicable to a closed pharmacy. Participant acknowledges and agrees that Bellwether shall have no responsibility or liability for the resale or transfer of any Product by Participant, and Participant shall indemnify and hold Bellwether and its officers, directors, employees and agents harmless from any liability resulting from Participant's sale, resale, transfer, trade, contribution or donation of any Product purchased by Participant pursuant to a Purchase Contract or otherwise.

6. Warranties. With respect to the Products purchased by Participant through the Purchase Contracts, Bellwether, not being the manufacturer, wholesaler or distributor of the Products, MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, NOR SHALL IT BE DEEMED TO HAVE MADE ANY SUCH WARRANTIES OR REPRESENTATIONS, AS TO THE MERCHANTABILITY, FITNESS, AND DESIGN FOR ANY PARTICULAR PURPOSE, THE CONDITION OF, OR THE QUALITY OR CAPACITY OF ANY OF THE PRODUCTS. PARTICIPANT AGREES NOT TO LOOK TO BELLWETHER FOR ANY REMEDIES OR TO HOLD BELLWETHER OR ANY OF ITS AGENTS OR EMPLOYEES RESPONSIBLE FOR ANY FAULTS OR DEFECTS IN ANY OF THE PRODUCTS OR IN THE DESIGN OF ANY OF THE PRODUCTS. Bellwether is not responsible for any defects or damages to the Products, any delays in delivery, or any other act or omission of any Supplier.

7. Disclosure of Administrative Fees and Discounts. Bellwether may enter into Purchase Contracts with selected Suppliers in its sole discretion. In exchange for the services provided by Bellwether in negotiating and facilitating execution of the Purchase Contracts, Suppliers may pay Bellwether an administrative fee equal to not more than three percent (3%) of the purchase price of the Products provided to Participants by such Supplier. Bellwether shall provide a written disclosure to Participant annually, and to the Secretary of the United States Department of Health and Human Services upon request, of the amount of payment received by it from each Supplier in connection with the purchases made by Participant. Participant also acknowledges that Bellwether and Suppliers shall disclose any discounts and rebates applicable to Participant's purchases so that Suppliers and Participant may comply with applicable discount safe harbor regulations under state and federal law. Participant

FAX BACK TO: 615-301-5963

agrees to provide, upon request by the U.S. Department of Health and Human Services or a state agency, any and all information concerning the value of such discounts and rebates.

8. Confidentiality.

(a) Confidential Information. For purposes of this Participation Agreement, the term “Confidential Information” shall include, without limitation, any information or data, whether printed, written, oral or electronically stored or reproduced, and whether provided in response to a specific inquiry or voluntarily, including, without limitation, marketing data, financial or business information, information regarding trade secrets, the management and operations of Bellwether, the identity of the Suppliers with which Bellwether is negotiating, pricing information, and any and all terms of any Purchase Contracts being negotiated by Bellwether or entered into by Bellwether.

(b) Confidential Obligations. Participant agrees to retain in strict confidence and not to market, sell, or disclose, and to require any and all of its employees, consultants, representatives or agents to retain in strict confidence and not to market, sell or disclose any and all Confidential Information transmitted to it by Bellwether. If Participant is requested or required by legal process to disclose any Confidential Information, Participant promptly shall give notice of such request or requirement to Bellwether so that Bellwether may, at its own cost and expense, seek an appropriate protective order or, in the alternative, waive compliance with this Section 8 to the extent necessary to comply with the request or order. Upon termination of the Term of this Participation Agreement, for whatever reason, Participant shall promptly return or destroy all Confidential Information, including all copies, extracts or reproductions thereof, to Bellwether. The return of the Confidential Information shall not relieve Participant of its obligations of confidentiality with respect to the Confidential Information. It is expressly understood and agreed that the parties’ obligations pursuant to this Section 8 shall survive termination of the Term of this Participation Agreement. Participant shall not use the Confidential Information for any purpose which might be directly or indirectly detrimental to Bellwether or any of its affiliates or subsidiaries.

9. Term. This Participation Agreement shall commence on _____ (the “Effective Date”), for a term of one (1) year(s), and shall automatically renew for additional terms of one (1) year(s) unless earlier terminated in accordance with the provisions of Section 10 of this Agreement.

10. Termination.

(a) Either party may terminate this Participation Agreement at any time, with or without cause, by providing thirty (30) days advance written notice to the other party.

(b) This Participation Agreement shall immediately terminate upon either (i) the mutual agreement of the parties or (ii) Participant’s breach of Section 8 of this Participation Agreement.

11. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing, shall be addressed to the party at its last known address of record and shall be deemed given: (i) when received, if personally delivered; or (ii) on the date of receipt if sent by facsimile transmission, certified or registered mail, or by overnight mail or courier.

12. Amendments. No changes to this Participation Agreement shall be valid or binding unless made by written instrument duly executed by both Bellwether and Participant.

FAX BACK TO: 615-301-5963

13. Waiver. The failure of a party hereto to enforce any of the rights provided to it pursuant to this Participation Agreement shall not operate as, nor be construed as, a waiver of such right or any other provision or right contained in this Participation Agreement.

14. Successors. Neither Bellwether nor Participant shall assign its rights under this Participation Agreement without the written consent of the other party. This Participation Agreement shall be binding on, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of the parties hereto.

15. Severability. In the event any provision of this Participation Agreement is rendered unenforceable or invalid, the parties hereby agree that the remainder of this Participation Agreement shall remain in full force and effect.

16. Governing Law. This Participation Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to such state's choice of law provisions, and any suit in law to enforce this Participation Agreement shall be filed in the County of Davidson, Nashville, Tennessee. It is agreed that the non-prevailing party shall pay reasonable attorney's fees and costs to the prevailing party.

17. Counterparts. This Participation Agreement may be executed in one or more counterparts, all of which together shall constitute one (1) agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement as of the Effective Date, Section 9.

<p>BELLWETHER ONCOLOGY ALLIANCE</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Participant (Printed Facility Name)</p> <p>_____</p> <p>_____</p> <p>By: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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PLEASE PRINT * Required Participant Practice Information**

Street Address _____ City _____

State: ____ Zip: _____ Phone# (_____) _____ Fax# (_____) _____

Primary Contact Name: _____ email: _____

Physician Name / DEA # _____ / _____

Physician Name / DEA # _____ / _____

Physician Name / DEA # _____ / _____

Physician Name / DEA # _____ / _____

Attach additional sheets as required for alternate locations and additional physicians.

FAX BACK TO: 615-301-5963

Bellwether Participation Agreement.DOC0609