



TERMS AND CONDITIONS OF MEMBERSHIP

The following Terms and Conditions (“Terms”) shall govern the contractual relationship (“Agreement”) between OMNIA PARTNERS, PRIVATE SECTOR, INC., a Delaware corporation (“OPPS”), NON-HEALTHCARE HOLDINGS, LLC, a Delaware limited liability company (“OMNIA B&I”), VALUE FOUR, LLC, a Delaware limited liability company (“VALUE FOUR” and collectively with OPPS and OMNIA B&I, herein “OMNIA”), on the one hand, and the company and its subsidiaries and affiliates registering as a member (together, “Member”), on the other hand (each, a “Party” and, collectively, the “Parties”).

WHEREAS, OMNIA and its subsidiaries and affiliates have developed various group purchasing programs (each, and collectively, “Program”) and organized a group of industry companies as a group purchasing organization (“GPOs”) that leverage value-added services and favorable pricing from certain suppliers participating in the Program (“Suppliers”); and

WHEREAS, Member desires to participate as a member in the Program and to utilize the services, skills and know-how of OMNIA and its GPOs for the procurement of various goods and services provided by Suppliers (collectively, “Products/Services”).

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **Membership; Term.** Member is hereby admitted as a member of the Program and engages OMNIA and its GPOs as its group facilitator to negotiate standard terms, conditions and pricing as part of the agreements for Products/Services with its Suppliers (“OMNIA Supplier Agreements”), provided that Member shall participate on OMNIA Supplier Agreements at its sole discretion. Member further agrees that OMNIA may directly or indirectly provide access to such agreements with its GPOs by enrolling Member in another GPO’s purchasing program and other programs that OMNIA has access to from time to time, whether through affiliation or as a channel partner, provided that Member shall participate in such programs at its sole discretion. Any access to contracts of Premier Inc. shall be through Value Four and OMNIA B&I. Member further acknowledges and agrees that by becoming a member of OMNIA, Member receives no ownership interest in equity, stock or any similar rights and interest in OMNIA or any of its affiliates and subsidiaries. OMNIA agrees that Member may add any wholly owned subsidiary of Member as a participating member in the Program by notice to OMNIA with documentation reasonably acceptable to OMNIA. Upon such acceptance by OMNIA, any such subsidiary shall be deemed a “Member” under this Agreement and bound by the terms hereof. The term of this Agreement shall commence on the Effective Date and shall continue until either Party terminates this Agreement in accordance with the terms hereof (the “Term”). Either Party may terminate this Agreement for any reason upon not less than thirty

(30) days' advance written notice to the other Party. If any purchase or purchase order between Member and a Supplier is executed prior to the termination of this Agreement and would otherwise extend beyond the end of the Term, the Term of this Agreement will be extended through the fulfillment of such purchase or purchase order. Member represents and warrants that: (i) Member is not a Health Care Provider and is not purchasing Products/Services on behalf of a Health Care Provider; and (ii) Member does not own a hospital and is not purchasing Products/Services on behalf of a hospital. As used herein, Health Care Provider means a provider of health care goods and services or any entity enrolled in Medicare, any Medicare program or any federal healthcare program (as defined at 42 USC §1320a-7b(f)) as a provider of services or a provider or supplier of medical or health services.

2. **Member-Supplier Relationships; Administrative Fees.** Member will have the opportunity to purchase Products/Services from one or more Suppliers through the OMNIA Supplier Agreements, the general terms and conditions of which will have been negotiated and coordinated by OMNIA. In certain instances, a Supplier may as a condition to participation require that Member enter into a direct participation or joinder agreement with such Supplier with respect to specific terms applicable to Member (each such agreement, a "Member-Supplier Joinder Agreement"). Any such Member-Supplier Joinder Agreement must be approved by OMNIA and Member. Member acknowledges that Suppliers pay OMNIA fees and other payments, usually in the form of an "administrative fee," which may be based on a percentage of gross revenues received by the Supplier from the sale of Products/Services to Members. Member shall be solely responsible for the purchase and ordering of Products/Services from Suppliers, and OMNIA shall not be liable in any fashion for any violation by Member of an OMNIA Supplier Agreement, a Member-Supplier Joinder Agreement or for payment for any Products/Services. Payment for Products/Services ordered from any Supplier by Member and inspections and acceptance of such Products/Services shall be the exclusive obligation of Member, and Member shall make timely payments to the Supplier in accordance with the terms of the OMNIA Supplier Agreement and/or any Member-Supplier Joinder Agreement. Member acknowledges that delays in payment by Member could jeopardize any rebate, discount or other earned incentive payable under an OMNIA Supplier Agreement. Payment of all such earned incentives, enhancements, rebates, allowances and/or discounts are the sole responsibility of Suppliers.

3. **Confidentiality.** Both Parties understand that the business of the other is a highly competitive business and that each Party shall be provided or exposed to confidential supplier pricing, pricing terms, incentive information, contract terms, Program information and benefits, the terms of OMNIA Supplier Agreements, contact information for Suppliers, the names and contact information of other members, and other trade secret and proprietary information generally made available only to each other (all of which is hereinafter collectively referred to as "Confidential Information"). Each Party agrees not to disclose or release such Confidential Information to any third-party including, but not limited to, those who may be in competition, directly or indirectly, with either Party, during the Term of this Agreement or at any time after termination of this Agreement.

a. Confidential Information does not include information that: (i) becomes generally available to the public through no fault of the receiving Party; (ii) is, prior to its initial disclosure hereunder, in the possession of the receiving Party without any wrongdoing by the receiving Party, its employees or agents; (iii) is acquired by the receiving Party from any third-party without any restrictions on its use or disclosure (but with respect to Member, specifically excluding any OMNIA Supplier Agreements); (iv) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information; or (v) is disclosed by the receiving Party pursuant to any law, court order or valid request by governmental agency.

b. Any Confidential Information disclosed pursuant to this Agreement shall be retained in confidence by the receiving Party and used only for the purpose of carrying out the intentions of this Agreement. Such Confidential Information may be disclosed only to employees or consultants of the receiving Party who have a need to know such Confidential Information for the purposes contemplated under this Agreement. Any consultant of the receiving Party who receives such Confidential Information under this Agreement shall be similarly bound in writing to obligations of confidentiality no less restrictive than the confidentiality obligations set forth in this Agreement. The receiving Party shall be responsible

for any breach of this Agreement by an employee or consultant of such receiving Party. The receiving Party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, dissemination or publication of the disclosing Party's Confidential Information.

c. If any law or an order of a court of competent jurisdiction requires that the receiving Party disclose any of the Confidential Information of the disclosing Party, such receiving Party shall give to the disclosing Party prompt written notice of the demand prior to furnishing the Confidential Information demanded, and, at the expense of the disclosing Party, shall obtain or cooperate with the disclosing Party in seeking reasonable arrangements to protect the confidential and proprietary nature of such Confidential Information.

d. All Confidential Information disclosed under this Agreement shall remain the exclusive property of the disclosing Party and nothing contained herein shall be construed as a grant, express or implied or by estoppel, of a transfer, assignment, license, lease of any right, title or interest in such Confidential Information.

e. No warranty or representation is made by either Party hereto with respect to the Confidential Information disclosed by such Party, including, without limitation, that any Confidential Information disclosed hereunder is true and correct, patentable or copyrightable, or that any such Confidential Information involves concepts or embodiments that are free of infringement of other third-party rights.

f. Upon the termination of this Agreement, or at any time within fourteen (14) days of receipt of a written request of the disclosing Party, the receiving Party shall (i) promptly return to the disclosing Party all Confidential Information disclosed in tangible form and copies thereof in the receiving Party's possession; or (ii) promptly destroy such Confidential Information (including all copies thereof) in the receiving Party's possession and certify such destruction to the disclosing Party. Notwithstanding the foregoing, backup tapes or other media made pursuant to automated archival processes in the ordinary course of business shall not be required to be destroyed, deleted, modified or returned, but shall remain subject to the confidentiality, non-disclosure, and non-use obligations of this Agreement until such retained Confidential Information is (i) returned or destroyed; or (ii) ceases to be Confidential Information as defined herein.

g. In addition to all other remedies available at law or in equity, the disclosing Party shall be permitted to equitable relief, including specific performance, against the receiving Party in the event of a breach or threatened breach by the receiving Party or its representatives in this Section 3.

h. The obligations under this Section 3 shall remain in place during the Term of this Agreement and for three (3) years from the date of termination of this Agreement; notwithstanding the foregoing, Confidential Information that constitutes trade secrets shall be kept confidential for so long as such Confidential Information is deemed a trade secret under applicable law.

i. The Parties agree that the terms and conditions of this Section 3 shall supersede and replace any confidentiality agreement, nondisclosure agreement or similar agreement between the Parties that is in existence as of the Effective Date and the Parties shall look to this Agreement to govern the terms of confidentiality and the exchange and handling of Confidential Information between the Parties.

4. **Disclaimers.** OMNIA EXPRESSLY DISCLAIMS AND MEMBER HEREBY WAIVES ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING THE PROGRAM, GPOS, PRODUCTS/SERVICES, SUPPLIERS, OMNIA SUPPLIER AGREEMENTS, AND MEMBER-SUPPLIER JOINDER AGREEMENTS, AND MEMBER SHALL HAVE NO CLAIM AGAINST OMNIA FOR ANY PRODUCTS/SERVICES THAT MAY BE DAMAGED, DEFECTIVE, NOT IN ACCORDANCE WITH SPECIFICATIONS OR OTHERWISE NOT SUITABLE FOR INTENDED USE. NEITHER PARTY SHALL BE LIABLE IN ANY WAY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR RELIANCE DAMAGES. FURTHER, MEMBER

ACKNOWLEDGES AND AGREES THAT OMNIA SHALL HAVE NO LIABILITY, AND MEMBER HEREBY RELEASES OMNIA AND ITS SUBSIDIARIES AND AFFILIATES, FOR ANY ACT OR OMISSION BY A SUPPLIER OR OTHER PARTY UNDER ANY OMNIA SUPPLIER AGREEMENT OR MEMBER-SUPPLIER JOINDER AGREEMENT.

5. **Compliance with Laws.** The Parties shall procure Products/Services in accordance with and subject to relevant federal, state and local statutes, ordinances, rules and regulations. The Parties agree that it is the intent of the Parties that all provisions of this Agreement and that Member's participation in the Program shall comply with all applicable laws. Member further acknowledges and agrees that it is solely responsible for its compliance with all applicable "safe harbor" regulations, including but not limited to any and all obligations to fully and accurately report discounts and incentives, if applicable.

6. **Notices.** All notices in connection with this Agreement shall be deemed given: (a) on the day they are deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; (b) on the day they are sent by air express courier, charges prepaid; or (c) on the day of transmittal if sent by facsimile, e-mail, modem or other means of mutually acceptable electronic communication (accompanied by verifiable documentation of transmission); and addressed as follows or to such other address as such Party may have fixed by like notice similarly given:

Member:

The address provided in the registration process.

OMNIA:

OMNIA Partners
5001 Aspen Grove Drive, Suite 600
Franklin, TN 37067
Attention: Member Services
E-mail: info@OMNIApartners.com

7. **Other Terms.**

a. **Ambiguities.** The Parties acknowledge that this Agreement is entered into in the context of free and understanding negotiations, is not adhesive and is the product of individual bargaining among parties enjoying equal bargaining strength in a competitive market. In the event that a court is called upon to interpret any ambiguous provision in this Agreement, the Parties agree that the ambiguity shall not be construed against any Party simply because such Party may have drafted such provision.

b. **Amendment; Waiver.** This Agreement may only be modified by written amendment or agreement signed by the Parties. No amendment to any provision of this Agreement shall be effective unless in writing and signed by Member and OMNIA. All waivers of any right(s) provided by this Agreement or by law, or of breach or default by a Party shall be in writing. The failure to demand specific performance shall not constitute a waiver of any provision of this Agreement, or a waiver of any other default. The waiver by either Party of a specific breach of, or default under, this Agreement by the other shall not be deemed a waiver of any subsequent breach or default.

c. **Assignment.** Neither Party shall assign this Agreement or any rights hereunder without the other Party's prior written consent. Notwithstanding the foregoing, either Party may assign this Agreement in whole or in part in connection with a sale of its assets, merger, change of control, reorganization or consolidation, or to any affiliate or subsidiary of such Party, in each case without the prior written consent of the other Party.

d. **Survival.** Sections 3-7 shall survive any expiration or termination of this Agreement.

e. **Choice of Law.** The validity, interpretation and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without regard to its choice of law provisions. Jurisdiction and venue for any dispute between Member and OMNIA concerning this Agreement shall rest exclusively with the state and federal courts of Davidson County, Tennessee. The Parties waive all defenses of lack of personal jurisdiction and *forum non conveniens* related thereto.

f. **Construction.** All paragraph headings herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of agreement or as a limitation of the scope of the particular section to which they refer. In the event of a conflict between the terms or conditions of this Agreement and those of any other document, the terms and conditions of this Agreement shall control.

g. **Indemnification.**

i. **By Member.** Member agrees to indemnify, defend and hold harmless OMNIA and OMNIA's officers, directors, affiliates, subsidiaries, trustees, employees, representatives, agents, successors and assigns from and against any and all claims, losses, damages and/or expenses, including, but not limited to, attorneys' fees, expert witness fees and costs of settlement that arise out of or are made in connection with: (i) the sale to or use by any person or entity, of any product sold by Member, manufactured from raw materials or component parts or otherwise comprising Products purchased through or from a Supplier; (ii) the negligent acts or omissions of Member in connection with the Program; or (iii) any breach by Member of any OMNIA Supplier Agreement on which it has participated.

ii. **By OMNIA.** OMNIA agrees to indemnify, defend and hold harmless Member and Member's officers, directors, affiliates, subsidiaries, trustees, employees, representatives, agents, successors and assigns from and against any and all claims, losses, damages and/or expenses, including, but not limited to, attorneys' fees, expert witness fees and costs of settlement that arise out of or are made in connection with the negligent acts or omissions of OMNIA in connection with the Program.

h. **Trademarks.** Each Party shall be in breach of this Agreement if it uses any logo, trademark(s), or copyright(s) of the other Party without advance consent of such other Party.

i. **Severability.** If any section, subsection, paragraph or portion of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement and further agree to substitute for the invalid provision a valid provision that most closely approximates the economic effect and intent of the invalid provision.

j. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and their subsidiaries with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter. Without limiting the foregoing, this Agreement supersedes and replaces any agreement for membership in Buyers Access LLC, Apartment Services Network, Inc. d/b/a Professional Apartment Services, Prime Advantage Corporation, Corporate United Inc., Corporate United Purchasing Consortium, Inc. and/or Insight GPO.

k. **Independent Contractors.** The relationship between the Parties created by this Agreement is that of independent contractors and not agents, employees, partners or joint ventures and neither Party shall have the power or authority to obligate or bind the other Party; provided, however, to the extent that Member makes purchases under any OMNIA Supplier Agreement, Member agrees to be bound by the terms thereof and Member may be a third-party beneficiary of the terms therein applicable to Members.