

COLA REFRACTIVE LASER SURGERY  
PARTICIPATING CO-MANAGER AGREEMENT

THIS AGREEMENT, effective \_\_\_\_\_, 20 \_\_\_\_, is entered into by and between CALIFORNIA OPHTHALMIC LASER ASSOCIATES MEDICAL CORPORATION (“COLA Medical Corporation”), a California professional medical Corporation, and \_\_\_\_\_, a licensed California optometrist or ophthalmologist (“Co-manager”).

WITNESSETH:

WHEREAS, COLA Medical Corporation provides refractive laser surgery services to patients in California and desires to have a panel of qualified optometrists and ophthalmologists to provide co-management services to such patients; and

WHEREAS, Co-manager wishes to participate in the COLA Medical Corporation network and provide co-management of refractive laser surgery services to patients under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants provided herein, it is agreed as follows:

1. Definitions.

“Contract Offer” means an offer by a Plan to purchase refractive laser services for eligible Plan Members under specified terms and conditions.

“Plan Member” means an individual who meets the eligibility requirements of the Payor’s Plan who is entitled to receive refractive laser services pursuant to the Plan benefits.

“Plan” means the health benefit plan sponsored by an employer, multi-employer trust, vision plan, insurer or other third party payor (the “Payor”) which provides benefits for enrolled members (“Plan Members”)

2. Obligations of Co-manager.

(a) Provision of Covered Services. Co-manager agrees to provide co-management services for refractive laser services (“Services”)

(b) Licensure. Co-manager shall possess at all times during the term of this agreement an unrestricted license to practice optometry with certification to use therapeutic pharmaceutical agents (“TPA”) or to practice medicine with board certification in ophthalmology.

(c) Standard of Care, Quality Assurance and Vision Services Plan (“VSP”) Membership. Co-manager agrees to maintain his/her status as a participating provider with VSP throughout the term of this Agreement and to maintain adherence to the credentialing and other qualification requirements established by VSP. Co-manager further agrees to provide Services in conformity with the community standards of practice. Co-manager shall cooperate with all quality assurance and other programs established by COLA Medical Corporation. If Co-manager is not a VSP participating provider, Co-manager shall provide COLA Medical Corporation with verification of Co-manager’s qualifications and credentials to provide Co-management Services pursuant to request by COLA Medical Corporation.

(d) Claims Submission. Co-manager agrees to submit all claims for Services to COLA, Inc., the administrative services company engaged by COLA Medical Corporation to handle scheduling, claims processing, complaints and other business aspects of its operations, pursuant to instructions received from COLA, Inc.

(e) Confidentiality. Co-manager agrees to maintain all patient records in accordance with state and federal laws relating to confidentiality of medical information.

(f) Complaints and Arbitration. Co-manager agrees to notify COLA, Inc. immediately in the event of a complaint regarding Co-manager or COLA Medical Corporation. Co-manager agrees to cooperate in resolving any patient complaints related to provision of Services, including complaints and grievances from Plan Members. In the event of a dispute with a Payor, Co-manager agrees to submit the dispute first to COLA, Inc. for investigation. COLA shall make its findings and recommendations which shall be reported to both Co-manager and Payor. In the event that the Plan requires arbitration of disputes between Co-managers and Plan Members of the Payor, Co-manager agrees to be bound by the decision of such arbitration.

(g) Government Regulation and Compliance. Co-manager agrees to comply with the requirements of the Knox-Keene Health Care Service Plan Act. Co-manager shall provide Services to all patients, including patients that may be members of licensed Knox-Keene Act plans, in the same manner as such services are provided to all other patients and shall not discriminate on the basis of race, color, creed, sex, sexual preference, national origin, health status, or on the basis that the patient is a member of a prepaid health plan. Co-manager agrees to permit authorized representatives of COLA Medical Corporation, Payors, and California regulatory agencies to review records maintained by Co-manager pertaining to services provided the Plan Members under this Agreement during normal business hours upon reasonable prior notification.

(h) Member Hold Harmless. In the event that Payor shall fail to pay for Services provided by Co-manager to an eligible Plan Member, Co-manager shall look solely to the Plan for payment and shall not attempt to collect any sum from Plan Members, except for copayments and deductibles and for non-covered services.

3. Contract Offers.

(a) COLA Medical Corporation Responsibility. COLA Medical Corporation shall cause COLA, Inc. to solicit Contract Offers from Payors to purchase Services on behalf of Plan Members from Co-managers who participate in the COLA Medical Corporation network.

(b) Acceptance or Rejection. COLA, Inc. will forward the terms of the Contract Offers from Payors to Co-manager for acceptance or rejection. If Co-manager does not reply within fifteen (15) days of receipt, it shall be deemed acceptance of the Contract Offer. COLA, Inc. agrees to act as Co-manager's attorney-in-fact and will notify the Payor that a Contract Offer has been accepted by Co-manager and Co-manager will become a participating Co-manager under the terms thereof. Co-manager hereby agrees that COLA, Inc. may serve as Co-manager's attorney-in-fact solely for purposes of accepting or rejecting Contract Offers.

4. Payment Terms.

(a) Compensation. The compensation to Co-manager for providing Services is established by Co-manager or by the Contract Offer from each Plan. Co-manager shall set forth his/her fee for co-management services on Attachment A hereto and COLA Medical Corporation shall cause COLA, Inc. to bill patient for the surgical fee, the facility fee and Co-manager's co-management fee. Each Payor will pay the co-management fee to Co-manager pursuant to the Payor's Contract Offer which may be accepted or rejected as set forth in Section 3(b).

(b) Collection of Co-payments and Deductibles. Co-manager shall collect any co-payment or deductible and other charges required by the Plan to be paid by Plan Members for Services. Co-manager shall not discount or waive any required Plan co-payments or deductibles or any other charges for covered Services.

(c) Payment for Co-management Services. COLA Medical Corporation shall cause COLA, Inc. to pay Co-manager his/her fee for co-management services from collections received from patients. Each Payor shall pay Co-manager for Services under a Plan. Co-manager recognizes that COLA, Inc. serves as an intermediary between Co-manager and Payors and/or patients and does not guarantee the performance of Payors or patients. In the event that a Payor, or a patient who is not a Plan Member, fails to pay amounts due for Services provided, Co-manager shall have a direct remedy against the Payor or the patient, but shall

have no remedy against COLA Medical Corporation or COLA, Inc. for failure of the patient or the Payor to pay. COLA, Inc. shall use all reasonable, good faith efforts to collect amounts due for Services from Payors or patients on behalf of Co-manager.

5. Insurance.

Co-manager shall maintain professional liability insurance in amounts adequate to cover any claims that may arise related to services provided under this Agreement and any accepted Contract Offers. Co-manager shall provide a Certificate of Insurance as proof of such insurance to COLA Medical Corporation upon request.

6. Indemnity.

Co-manager agrees to hold COLA Medical Corporation and COLA, Inc. and their respective shareholders, directors and employees harmless against any and all claims, liabilities, suits, demands and expenses (including but not limited to reasonable attorneys' fees) which may arise out of Co-manager's negligent acts or omissions in performing services under this Agreement. COLA Medical Corporation agrees to hold Co-manager harmless against any and all claims, liabilities, suits, demands and expenses (including but not limited to reasonable attorneys' fees) which may arise out of negligent acts or omissions of COLA Medical Corporation in performing services under this Agreement. COLA, Inc. agrees to hold Co-manager harmless against any and all claims, liabilities, suits, demands and expenses (including but not limited to reasonable attorneys' fees) which may arise out of negligent acts or omissions of COLA, Inc. in performing services under this Agreement.

7. Dispute Resolution.

If any claim, dispute or controversy shall arise between the parties with respect to the terms of this Agreement or any breach thereof, the dispute shall be submitted to mandatory binding arbitration within 120 days of receipt of written demand by either party under the rules of the American Arbitration Association in Santa Clara County.

8. Terms and Termination

(a) Term. This Agreement shall have an initial term of one (1) year. This Agreement shall thereafter automatically be renewed for successive one-year terms, unless either party chooses to terminate by giving the other party ninety (90) days' written notice prior to the end of the term of such party's intent to terminate the Agreement.

(b) Failure To Meet Obligations. In the event that either defaults in the performance of any duties or obligations hereunder, and the default or breach has not been cured within thirty (30) days of written notice of default, the non-defaulting party may terminate this Agreement on the last day of the month in which the notice of intent to terminate is received. COLA Medical Corporation may terminate at its sole discretion and upon written notice if Co-manager fails to provide Services of acceptable quality, for acts or omissions that constitute unprofessional conduct or acts of moral turpitude.

(c) Restriction of License or Loss of VSP Co-manager Status. This Agreement shall immediately terminate if Co-manager's license is suspended or restricted in any way or if the agreement between VSP and Co-manager is terminated.

9. General Provisions.

(a) Entire Agreement and Amendment. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior agreements, and no changes, amendments or alterations shall be effective unless agreed to in writing by both parties.

(b) Assignment. Neither party may assign this Agreement without the written consent of the other party, provided, however, this Agreement may be assigned by COLA Medical Corporation in the event of a merger, sale of stock, sale of all or substantially all of its assets or other change of control of the corporation.

(c) Severability. In the event any term or provision of this Agreement is determined to be invalid, void or illegal, such term or provision shall, to the extent possible, be modified to make such term or provision valid, legal and enforceable. If such modification is not possible, such term or provision shall be deleted from this Agreement and the remainder of the Agreement shall remain in full force and effect, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed herein.

(d) Notice. Any notice given pursuant to this Agreement shall be in writing and shall be deemed effective (1) when delivered in person or (2) upon the date of receipt of certified or registered mail receipt requested and as delivered to the other party at the address set forth on the signature page of this Agreement.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed to take effect as of the date first written above.

PARTICIPATING  
COMANAGER

COLA MEDICAL  
CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
Phone# (    ) \_\_\_\_\_

Fax# (    ) \_\_\_\_\_

COLA, Inc. as to rights and obligations set forth in Sections 3, 4, and 6