

GPO Participation Agreement

This Group Purchasing Organization (“GPO”) Participation Agreement (this “Agreement”), is entered into by and between US Physicians’ Purchasing Group LLC (USPPG) and the undersigned physician, physician practice, health care organization, or health system (“Participant”). USPPG and Participant may hereinafter be referred to individually as a “Party” and collectively as the “Parties.”

The Parties hereby agree as follows:

- 1. Engagement.** Participant hereby retains USPPG as a GPO as of the Effective Date and is hereby granted access to the USPPG group purchasing programs and contracts with suppliers (“Vendors”) of products and services (“Products”) under the programs (“Vendor Contracts”), under which Participant will be eligible to obtain discounts on its purchases of Products from the Vendors (“Discounted Pricing Arrangements”). Participant hereby authorizes USPPG, 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) if applicable, receive administration service fees and/or rebates from Vendors based on Participant's purchases under Vendor Contracts; and (iii) receive from Vendors data relating to Participant’s purchases of Products under Vendor Contracts. USPPG will make reasonable efforts to establish Participant’s entitlement to participate in a Vendor’s Discounted Pricing Arrangement, but USPPG does not guarantee Participant’s acceptance in any such arrangement under a Vendor Contract. Participant agrees to hold USPPG harmless as a result of Participant’s failure to qualify for any Discounted Pricing Arrangement.
- 2. Term.** This Agreement shall be effective upon execution by Participant and USPPG (the “Effective Date”) and shall continue in force unless terminated pursuant to Section 5.
- 3. Scope of Services.** The services to be provided by USPPG under this Agreement are limited to those described in Section 1 herein. Participant shall be responsible for placing all orders for purchases of Products directly with Vendors and arranging for all deliveries of said Products directly to Participant. Under no circumstances will USPPG be considered a purchaser or seller of vaccines or other Products under this Agreement.
- 4. Eligibility.** Participant acknowledges that its eligibility for and access to any Discounted Pricing Arrangement with a Vendor shall not be effective until Participant has been approved by the respective Vendor and provided any information, including tax identification numbers, requested by USPPG or a Vendor. USPPG will provide official notification to Participant when this approval has been received from each Vendor and Participant may begin participating in the Discounted Pricing Arrangement with that respective Vendor. Participant also acknowledges that if its purchases of Products are not in accordance with the terms of a Vendor Contract, USPPG may, at its option, remove Participant from the Discounted Pricing Arrangement or switch Participant to another such arrangement under the Vendor Contract that corresponds to Participant’s purchasing history.
- 5. Termination.** This Agreement may be terminated: (i) by Participant at any time without cause with written notice provided to USPPG at least thirty (30) days before the effective date of termination; (ii) by mutual consent of the Parties; or (iii) by USPPG if Participant fails to comply with the terms and conditions of this Agreement or any Vendor Contract, provided, however, that USPPG will provide Participant fifteen (15) days

advance notice to cure such breach prior to termination. USPPG may also terminate this Agreement without cause on sixty (60) days advance notice to Participant.

6. **Confidentiality.** During the term of this Agreement, and for a period of 5 years thereafter, USPPG and Participant shall keep confidential the terms and conditions of this Agreement and Vendor Contracts (including, without limitation, all information regarding the Discounted Pricing Arrangements, Rebates, and ordering details), provided, however, that (i) USPPG is hereby authorized to provide copies of this Agreement and the contents herein to Vendors; (ii) USPPG may disclose certain information to its affiliates for the purpose of facilitating the delivery of services and fulfilling its legal obligations under this Agreement; (iii) the Parties may disclose such confidential information on a “need to know” basis to their duly authorized officers, directors, representatives, accountants, attorneys and agents; and (iv) the Parties may disclose such confidential information as required by, or to demonstrate compliance with, applicable law.
7. **Representations, Warranties, and Indemnity by Participant.** Participant hereby covenants with USPPG as follows:
 - 7.1. Participant shall indemnify and hold USPPG, and its 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 which relate in any way to this Agreement, including, without limitation, any claims resulting from a failure to pay for any Products purchased by Participant, or any use of Products by Participant.
 - 7.2. Participant agrees (i) to comply with all terms of this Agreement; (ii) to comply with all terms of the Vendor Contracts, including without limitation, payment terms, requirements that purchases be for Participant's own use, and arbitration of dispute requirements; and (iii) to remain duly licensed under applicable state law to engage in Participant's medical practice, and eligible to participate in the Medicare and Medicaid programs; and (iv) to comply with all laws and regulations applicable to its performance under this Agreement.
 - 7.3. Participant warrants that (i) all Products purchased by it under the Vendor Contracts will be for its own use in the provision of healthcare services, and not for resale or distribution to third Parties other than in the course of furnishing healthcare services; and (ii) it has not been excluded from participation from a federal health care program or received a notice of proposed exclusion from such program. Participant shall immediately notify USPPG in writing if it receives notice of proposed exclusion, which shall be grounds for immediate termination of this Agreement by USPPG.
8. **Compliance.** USPPG is a GPO that is structured to comply with the requirements of the "safe harbor" regulations regarding payments to GPOs set forth in 42 C.F.R. §1001.952(j). It is the intent of the Parties 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). The Parties intend 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 discounts offered to buyers set forth in 42 C.F.R. §1001.952(h), and the Parties believe that this Agreement satisfies those requirements.

9. **Disclaimer and Release.** USPPG does not make, and expressly disclaims, any warranty of merchantability or fitness for a particular purpose, or any other warranty, express or implied, as to any Products purchased by Participant from any Vendor. Participant hereby expressly releases USPPG from any and all liability and claims relating to the Products and Participant's purchases of the Products, and any breach or alleged breach of warranty in connection with the Products.
10. **GPO Fees and Rebates.**
- 10.1. Participant acknowledges (i) that USPPG will receive payments of fees for administrative and other services provided by USPPG from one or more Vendors based on Products purchased by Participant (collectively "GPO Fees", also referred to as administrative service fees or "ASF"s), and (ii) that any ASFs that exceed 3% are detailed in Exhibit A. Exhibit A is subject to change as the covered Vendor Contracts are modified or added to this agreement. Updates to Exhibit A are available upon request.
- 10.2. In addition to Vendor provided discounts and rebates, USPPG may enhance Participant savings by returning a portion of its ASFs to Participant, in the form of rebates paid in accordance with a schedule communicated from time to time by USPPG ("Rebates"), unless Participant chooses not to receive Rebates from USPPG.
- 10.3. USPPG shall disclose or cause to be disclosed to Participant, on at least an annual basis, in writing, with respect to purchases of Products by Participant, the names of the Vendors, and the amount of ASFs received from each of such Vendors as well as Rebates paid to Participant by USPPG. Participant acknowledges that the amount of any Rebate or portion of any ASFs distributed to Participant shall be treated as a discount to Participant's cost for the applicable Products. Participant is responsible for allocating any such Rebate from USPPG, as well as any rebate received directly from any Vendor(s), as required by law and/or regulation. In certain instances, invoices from Vendors may not accurately reflect the net cost of Products to Participant. 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). In this regard, Participant agrees to comply with any and all legal and regulatory requirements imposed on buyers. For example, Participant will accurately report when requested, under any state or federal program that provides for reimbursement for the Products covered by this Agreement, the net cost actually paid by Participant under Vendor Contracts.
11. **Change in Law.** The Parties intend that this Agreement shall comply with applicable state and federal law. In the event of any amendment to or replacement of the applicable laws or regulations, USPPG may, at its option: (i) provide an amendment to this Agreement which brings this Agreement into compliance with the amended law or regulation in USPPG's reasonable judgment or, (ii) if such an amendment is not feasible, as determined by USPPG in its sole discretion, terminate this Agreement on notice to Participant as of the effective date of the relevant amendment to applicable law or regulation. In the event of any amendment, the amendment will be effective as of the date stated therein provided that if the amendment is not acceptable to Practice, this Agreement may be terminated by Practice upon notice given to USPPG prior to the effective date of the amendment.

12. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, or by express delivery service, or delivered personally, sent by email, by private courier or fax. Notice shall be deemed to have been given upon receipt. Notices shall be addressed to each Party as set forth at the end of this agreement:

13. **Assignment.** Neither Party may assign this Agreement, nor any of its rights or duties set forth herein, without the prior written consent of the other Party. Participant hereby consents, however, to assignment by USPPG of its rights and obligations under this Agreement to any entity wholly owned (directly or indirectly) by USPPG, and any successor thereto.

14. **Miscellaneous.** This Agreement may not be modified or altered except by a written instrument executed by both Parties. The failure of either Party to exercise in any respect any right provided for herein shall not be deemed a waiver of any rights. This Agreement is enforceable by, and inures to the benefit of, the Parties and their respective successors, heirs, and assigns. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes and merges all prior proposals, understandings, and all other agreements, oral and written between the Parties relating to such subject matter. It is the intent of the Parties hereto that the validity, interpretation and construction of this Agreement shall be governed by the laws of the State of New Jersey, and the Parties agree that any action or proceeding relating to the Agreement shall be brought in Monmouth County, New Jersey. This Agreement may be executed in any number of separate counterparts. Participant acknowledges that USPPG has not furnished legal or regulatory advice to Participant in connection with this Agreement.

15. **Survival.** The Parties' obligations under Sections 6, 7, 8, 9, 14 and 15 shall survive termination or expiration of this Agreement.

The Parties hereby agree to have caused this Agreement to be executed:

Participant

Name: _____
 Address: _____

 E-mail: _____

US Physicians Purchasing Group, LLC

US PHYSICIANS PURCHASING GROUP, LLC
 2417 Jericho Turnpike, Suite 371
 Garden City Park, NY 11040
 Email: usppg@usppg.org

 Signature

 Signature

 Print Name

 Print Name

 Title

 Title

 Date

 Date

Exhibit A

USPPG does not have any Vendor Contracts that exceed a 3% administrative service fee.