

GPO Participation Agreement

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

The Parties hereby agree as follows:

- 1. Engagement.** The Participant hereby retains PBG as a group purchasing organization as of the Effective Date and is hereby granted access to the PBG group purchasing programs and contracts with suppliers (“Vendors”) of products and services (“Products”) under the programs (“Vendor Contracts”). Participant hereby authorizes PBG, 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 fees and/or rebates from Vendors based on Participant's purchases under Vendor Contracts, for payment by PBG to Participant, (iii) and to receive from Vendors data relating to purchases of Products under Vendor Contracts by Participant. PBG will make reasonable efforts to establish Participant's entitlement to participate in discount contracts, but PBG does not guarantee Participant's acceptance in any Vendor Contract program. Participant agrees to hold PBG harmless as a result of PBG's failure to obtain any discounted pricing for Participant.
- 2. Term.** This Agreement shall be effective upon execution by the Participant and PBG (the “Effective Date”) and shall continue in force unless terminated pursuant to Section 5.
- 3. Scope of Services.** The Participant shall be responsible for placing all orders and arranging all deliveries through the contracted Vendors directly to Participant. Under no circumstances will PBG be considered a purchaser or seller of vaccines or products under this Agreement.
- 4. Eligibility.** The Participant acknowledges that its affiliation with PBG shall not be effective until it has been approved by the respective Vendors. PBG will provide official notification to the Participant when this approval has been received from each Vendor and the Participant may begin receiving discounts from the respective Vendors under this Agreement.
- 5. Termination.** This Agreement may be terminated by Participant at any time without cause with written notice provided to PBG at least thirty (30) days before the effective date of termination, by mutual consent of both Parties, or by PBG if Participant fails to comply with the terms and conditions of this Agreement or any Vendor Contract, provided, however, that PBG will provide Participant 30 days advance written notice to cure such breach prior to termination. PBG may also terminate this Agreement without cause on sixty (60) days advance written notice to Participant.
- 6. Confidentiality.** COUNTY is a public agency subject to the disclosure requirements of the CPRA. This Agreement and any amendment to this Agreement are public records subject to disclosure pursuant to the CPRA. If COUNTY receives a CPRA request for public records (as defined by the CPRA) regarding the services provided pursuant to this Agreement, other than this Agreement or amendments to the Agreement, COUNTY

will notify PracticeWell of the request and confer with PBG regarding an appropriate response to said request. If PracticeWell reasonably concludes that any records are PBG's proprietary/trade secret information, not subject to the CPRA, and/or exempt from the CPRA, and PracticeWell wishes to prevent disclosure of said records, PBG shall inform COUNTY of the legal basis for its conclusion, and may instruct COUNTY to withhold said records. If PBG fails to respond to COUNTY in writing prior to COUNTY's deadline for responding to the CPRA request, COUNTY may disclose the requested information under the CPRA without liability to COUNTY. PBG shall defend, indemnify and hold COUNTY harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney fees) that may result from denial of a CPRA request made at PBG's instruction.

7. Representations, Warranties, and Indemnity by Participant.

Participant hereby covenants with PBG as follows:

7.1 Indemnification. Each Party agrees to indemnify, defend, and hold the other harmless against any and all claims, liability or losses (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) resulting from any action brought by a third party in connection with any act, omission, or breach of warranty or obligation under this Agreement by the indemnifying Party or any of such Party's employees, officers, or agents. Neither Party shall be responsible for losses incurred by reason of the other Party's negligence or willful misconduct.

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, "own use" requirements, and arbitration of dispute requirements, (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 Agreements.

7.3 Participant Warrants that (i) all products purchased by it under the Vendor Contracts will be for 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 PBG in writing if it receives notice of proposed exclusion, which shall be grounds for immediate termination of this Agreement by PBG.

7.4 Warranties of PBG. PBG warrants it has not been excluded, nor have any of its employees been excluded, from payment for Federal healthcare programs, nor do they appear on the List of Excluded Individuals/Entities of the Office of the Inspector General of the Department of Health and Human Services. PBG further represents that it has not been sanctioned, excluded or debarred under Medicare, Medicaid, or any other state or federal program. PBG agrees to report immediately, with relevant factual detail, to Participant any sanction, exclusion or debarment of PBG or of any its officers, directors, or employers under Medicare, Medicaid, or any other state or federal program. PBG further represents and warrants its performance under this Agreement shall at all times comply with all applicable federal, state, and local laws and regulations.

8. Compliance. PBG is a "group purchasing organization" ("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.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, PBG 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 SOLD BY ANY VENDOR. PARTICIPANT HEREBY EXPRESSLY RELEASES PBG FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THE PRODUCTS, AND ANY BREACH OR ALLEGED BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS.
10. **GPO Fees and Rebates.** Participant acknowledges (i) that PBG will receive payments of fees for administrative and other services provided by PBG from one or more Vendors based on Products purchased by Participant ("GPO Fees"), and (ii) that GPO Fees 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. Exhibit A is located at <https://practicewell.org/pbg-GPO-permalink/safe-harbor-fees> or available upon request. PBG maximizes Participant savings by returning the bulk of these GPO Fees to Participants. PBG retains fees sufficient to cover operations and ancillary materials. PBG shall disclose 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 GPO Fees received from each of such Vendors as well as the amounts returned to Participants by PBG. The amount of any rebates or portion of any GPO Fees distributed to Participant shall be treated as a discount to Participant's cost for the applicable Products. The Participant is responsible for allocating any such amounts so received, as well as any rebate received directly from any Vendor, as required by law and/or regulation. In certain instances, invoices from Vendors may not accurately reflect the net cost of Products to the 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, the Parties acknowledge that Participant will satisfy any and all legal and regulatory requirements imposed on buyers. Thus, 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 the Participant, under such Vendor Contracts.
11. **Change in Law.** The Parties intend that this Agreement shall comply with applicable California and federal law. In the event of any amendment to or replacement of the applicable laws or regulations, PBG may, at its option: (i) provide an amendment to this Agreement which brings this Agreement into compliance with the amended law or regulation in PBG's reasonable judgment or, (ii) if such an amendment is not feasible, as determined by PBG 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 PBG 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, by private courier or fax, and followed by such mailing. Notice shall be deemed to have been given upon receipt. Notices shall be addressed to each Party as set forth below:

Monterey County Health Department
Director of Health
1270 Natividad Road
Salinas, CA 93906

PracticeWell PBG
37 Commercial Blvd.
Suite 107
Novato, CA 94949

- 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 PBG of its rights and obligations under this Agreement to any entity wholly owned (directly or indirectly) by PBG, 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 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 California. Provider and Participant agree that any action or proceeding relating to this Agreement must be brought in Monterey County, California. This Agreement may be executed in any number of separate counterparts. Each party acknowledges that it has had the opportunity to be represented by the counsel of its choice with respect to this Agreement. In view of the foregoing, this Agreement, in the event of ambiguity, shall not be construed or interpreted against either party.
- 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:

Monterey County
Participant
[Signature]
Signature
Ezequiel Vega
Print Name
Assistant Director of Health
Title
12/07/2018
Date

PracticeWell Pro Inc., dba Physician Buying Group "PBG"
Kathleen Chebib
Signature
KATHLEEN CHEBIB
Print Name
Vice President
Title
October 27, 2018
Date

APPROVED AS TO FORM
[Signature]
DEPUTY COUNTY COUNSEL
COUNTY OF MONTEREY

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey

11-6-18

ADDENDUM

to Group Purchasing Organization Participation Agreement
by and between PracticeWell Pro Inc. dba PracticeWell PBG and County of Monterey, on
behalf of its Health Department

This Addendum, dated as of the date of execution of the Agreement by both parties, amends, modifies, and supplements the Group Purchasing Organization Participation Agreement ("Agreement") by and between PracticeWell Pro Inc. dba PracticeWell PBG ("PBG") and County of Monterey, on behalf of its Health Department ("Participant" and/or "County"). This Addendum has the full force and effect as if set forth within the Agreement. To the extent that any of the terms or conditions contained in this Addendum may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, PBG and Participant agree that the Agreement terms and conditions shall be amended, modified, and supplemented as follows:

16. Insurance Requirements,

16.1 Evidence of Coverage. Prior to commencement of this Agreement, PBG shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, PBG upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Office, unless otherwise directed. PBG shall not receive approval for services for work under this Agreement until all insurance has been obtained as required and approved by the County. This approval of insurance shall neither relieve nor decrease the liability of PBG.

16.2 Qualifying Insurers. All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Contracts/Purchasing Officer.

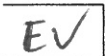
16.3 Insurance Coverage Requirements. Without limiting PBG's duty to indemnify, PBG shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including ~~owned, leased,~~ non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers Compensation Insurance, if PBG employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease. PBG does not have employees. It has a management agreement with Duck Ranch to run all of PBG's operations in connection with the Services under this agreement ("Operations"). PBG shall provide evidence of the workers' compensation coverage required by this provision of Duck Ranch or any other entity with which PBG contracts in the future to conduct PBG's Operations


PBG initials


Participant
initials

16.4 Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date PBG completes its performance of services under this Agreement.

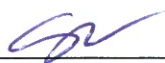
Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) calendar days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for PBG and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insured with respect to liability arising out of PBG's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by PBG's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, PBG shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Office, showing that PBG has in effect the insurance required by this Agreement. PBG shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

PBG shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Office. If the certificate is not received by the expiration date, PBG shall have five (5) calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by PBG to maintain such insurance coverage is a breach of this Agreement, which entitles County, at its sole and absolute discretion, to terminate this Agreement immediately.

Monterey County
Participant


Signature

PracticeWell Pro Inc, dba Physician Buying Group "PBG"


Signature



Exhibit A: GPO Fees and Rebates Details

Vendor Contracts that are above the GPO Safe Harbor threshold of 3%:

As of September 18th, 2017:

1. Sanofi Pasteur's General Vaccine GPO Contract may be up to and not exceed 5.75% of the dollar amount of certain Products purchased.
2. GoCheckKids GPO Service Contract may be up to and not exceed 5.00% of the dollar amount of certain Products purchased.