

## MHA-PPEX Participation Agreement

This Participation Agreement (the “Agreement”), effective \_\_\_\_\_ 2020 (“Effective Date”), is entered into by [entity/individual] (“Participant”) and Massachusetts Health & Hospital Association (“MHA”).

1. Background; Purpose. Via a Public Purchasing Exchange Participation and Services Agreement (“PPEX Agreement”), PPEX, LLC (“PPE”), granted MHA, its members and other Massachusetts healthcare entities and healthcare providers (herein “Members”) the right to access and use the online PPE marketplace (“PPE Exchange”) to place orders for, and to acquire, various products and services (“Products”) as may be available from vendors on the PPE Exchange. MHA is permitted, via the PPEX Agreement, to provide Members access to the PPE Exchange and to coordinate, consolidate and facilitate Product purchase orders, including Bulk Orders, on behalf of Members (“Services”). As used herein a “Bulk Order” refers to MHA’s consolidation of Product orders from various Members into one purchase order. By entering into this Agreement and utilizing the Services, Participant hereby agrees to comply with the terms herein, authorizes MHA to perform the Services and authorizes MHA to act as its agent in the coordination, facilitation and placement of Bulk Orders.

2. Services; Orders. Participation in and use of the PPE Exchange is voluntary and nothing herein obligates Participant to use the PPE Exchange. Participant may cancel its participation in a Bulk Order prior to placement of the order; Participant may not cancel participation in an executed or placed Bulk Order, unless otherwise provided under PPE Exchange Terms of Use. Should Participant desire to participate in any Bulk Order, it will be required to submit to MHA such information, and take such actions, reasonably required by MHA to facilitate and place the Bulk Order, including, but not limited to, accessing the PPE Exchange and complying with instructions from PPE on use of the PPE Exchange. In providing Services and in its coordination and placing of Bulk Order, MHA is acting as a facilitator only and will neither take title to, nor be obligated to pay for any Products whatsoever by virtue of this Agreement, or by virtue of any order placed by Participant (including a Bulk Order), or for any Products received by Participant. All purchasing by Participant via the PPE Exchange shall be in the name of Participant, with purchased Products being shipped directly to Participant.

2.1 Participant expressly agrees that it shall comply with, and shall be solely responsible for its compliance with (i) the terms herein; (ii) the terms of use for the PPE Exchange (found at <https://ppe.exchange/?s=terms+of+agreement>); (iii) the terms and conditions of sale and purchase imposed by any vendor from whom Products are acquired on the PPE Exchange. Participant further expressly agrees that when using PPE Exchange, placing a Product order, and for any Bulk Orders in which it is included, Participant alone shall be responsible for the prices, fees, costs and other liabilities relating to that specific order. Participant acknowledges, recognizes and agrees, with respect to any Product purchases and Participant’s use of the PPE Exchange, Participant and MHA are not, and will not be, jointly liable for Participant’s actions or omissions thereunder. Participant agrees to enforce the fact that Participant and MHA are separate legal entities, and agrees that none of the liabilities of Participant arising under the PPE Exchange or any Product vendor terms of sale shall be treated as a joint liability of MHA or any of its affiliates. Participant shall look solely to the particular Product vendor and not to MHA for any issue relating to the Products including, but not limited to, payment disputes, exchanges, returns, and refunds. Nothing in this Agreement shall create any liability on the part of MHA for the Products furnished by a vendor via the PPE Exchange.

3. No Participation Fee. There is no participation fee or other fees or amounts due to MHA by Participant for the Services or participation in any Bulk Order. PPE receives a fee from vendors of 3% of the total amount listed on a Product invoice issued by the vendor. In consideration of MHA’s performance of Services, PPE pays MHA a service fee.

4. Own Risk. PARTICIPANT EXPRESSLY AGREES AND ACKNOWLEDGES THAT IT’S USE OF THE SERVICES AND THE PPE EXCHANGE, AND ITS ORDER, PURCHASE, USE OF AND RECEIPT OF ANY PRODUCTS AND SERVICES ARE AT ITS SOLE RISK. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN OR ACTION TAKEN BY MHA OR ITS OFFICERS, AGENTS, OR AUTHORIZED REPRESENTATIVES SHALL CREATE ANY WARRANTIES, PRODUCT ENDORSEMENTS OR MEDICAL ADVICE. MHA IS NOT THE MANUFACTURER, SELLER OR DISTRIBUTOR OF THE PRODUCTS OR THE AGENT OF ANY MANUFACTURER OR VENDOR. THE PLACEMENT OF BULK ORDERS FOR PRODUCTS BY MHA IN NO WAY CONSTITUTES AN ENDORSEMENT OF SUCH BY MHA, NOR ANY REPRESENTATION OR WARRANTY AS TO THE SAFETY, EFFICACY OR APPROPRIATENESS OF THE PRODUCTS IN THE BULK ORDER. Participant shall look solely to any terms, representations and warranties given by applicable Product vendor.

4.1 Participant expressly agrees that in no event shall MHA or any of its affiliates, subsidiaries, partners, officers, employees, members, or agents (collectively herein the “MHA Entities”), be responsible or liable, directly or indirectly, under any theory of law (UCC, contract, tort, negligence, strict liability or otherwise), to Participant, third party or anyone else, for any and all claims, actions, penalties, fines, liabilities, losses and/or damages (including without limitation, any direct, indirect special, incidental, punitive or consequential damages), relating to, arising or resulting from or related to this Agreement, the PPEX Agreement, Participant’s use of the PPE Exchange and/or acquisition of any Products therefrom and/or relating to any Products. THE MHA ENTITIES WILL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), PRODUCT LIABILITY,

OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO THE PRODUCTS SOLD ON THE PPE EXCHNAGE, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO OR FROM MHA'S ACTIVITES HEREUNDER. Without limiting the generality of the foregoing, MHA specifically disclaims any and all liability for damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute goods, or for any other types of economic loss, or for claims of Participant or any third party for any such damages, costs or losses. MHA WILL NOT BE LIABLE FOR, AND DISCLAIMS, ALL CONSEQUENTIAL, INCIDENTAL, PUNITIVE, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER. PARTICIPANT HEREBY EXPRESSLY RELEASES THE MHA ENTITIES FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THIS AGREEMENT, THE SERVICES, THE PPE EXCHNAGE, THE PPEX AGREEMENT, AND/OR THE PRODCUTS PURCHASED.

5. Term and Termination. The term of this Agreement shall be in effect for a period of one (1) year commencing on the Effective Date with automatic renewals thereafter for periods of one (1) year. Either party may terminate this Agreement upon thirty (30) days' prior written notice to the other. This Agreement shall automatically terminate upon termination or expiration of the PPEX Agreement.

6. Confidentiality. The terms of this Agreement, all nonpublic information, documents and instruments delivered or otherwise provided to Participant or its agents, directors, officers or employees by MHA pursuant to this Agreement, that are marked as confidential, or if not so marked are of a nature that the recipient, under the circumstances of disclosure should know the information to be confidential, are confidential to MHA (hereinafter, "Confidential Information"). Participant shall maintain all Confidential Information in strict confidence, use Confidential Information only in connection with participation in a Bulk Order, and disclose Confidential Information only on a "need-to-know" basis to its duly authorized employees, officers, and directors.

7. Miscellaneous. MHA and Participant shall each respectively comply with all applicable laws and regulations relating to its performance under this Agreement (and, with respect to Participant, related to its activities under the PPE Exchange), including, but not limited to, the federal fraud and abuse laws. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. This Agreement may be amended only by a written agreement bearing handwritten signatures of authorized agents of each of the parties and expressing an intent to be bound by the terms of such an amendment. This Agreement constitutes the entire understanding and agreement between the parties concerning the subject matter hereof, and supersedes all prior negotiations, agreements and understandings between the parties, whether oral or in writing, concerning the subject matter hereof. Any waiver of a breach of any provision(s) of this Agreement shall not be deemed effective unless in writing and signed by the party against whom enforcement of the waiver is sought. Neither party may assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, without the other party's prior written consent. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any part of this Agreement shall be determined to be invalid, illegal or unenforceable by any valid act of Congress or act of any state legislature or by any regulation duly promulgated by the United States or a state acting in accordance with the law, or declared null and void by any court of competent jurisdiction, then such part shall be reformed, if possible, to conform to the law and, in any event, the remaining parts of this Agreement shall be fully effective and operative insofar as reasonably possible. Notices or other communications required or permitted under this Agreement shall be in writing and sent by express delivery service, with proof of delivery, electronic mail with receipt acknowledgement or delivered personally. Notices shall be deemed to have been given upon receipt. Notices shall be addressed to each party at the address in the signature block hereto.

IN WITNESS WHEREOF, each party has duly executed, or has caused this Agreement to be duly executed, as of the effective date.

Massachusetts Health & Hospital Association

[Participant]

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

E-mail: \_\_\_\_\_

E-mail: \_\_\_\_\_