

**RENALEDGE GPO, LLC
GROUP PURCHASING ORGANIZATION
PARTICIPATION AGREEMENT**

TERMS AND CONDITIONS

These Terms and Conditions ("Terms") govern participation in the RenalEdge Group Purchasing Organization ("GPO") and are incorporated by reference into the RenalEdge GPO Participation Agreement ("Participation Agreement"). These Terms, along with all policies and references shall constitute the entire agreement between the Parties (the "Agreement"), and are available at renaledge.com. Compliance with these Terms is required for GPO participation, and violation may result in termination of membership.

I. **Group Purchasing Organization.** RenalEdge 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). The Parties agree that (i) it is their intent to establish a business relationship that complies with the Anti-Kickback Statute, set forth in 42 U.S.C. 1320a-7b(b) and (ii) to comply with the requirements of the safe harbor regulations regarding payments to GPOs set forth in 42 C.F.R. 1001.952(j).

II. **Member Participation.**

- a. Authorization. By executing the Participation Agreement, Member hereby authorizes RenalEdge to act as its group purchasing agent for purposes of negotiating and entering into Vendor Agreements, and agrees to be bound by the terms and conditions of this Agreement. Member hereby further authorizes RenalEdge to (i) receive rebates from Vendors based on Member's purchases under Vendor Agreements, which shall be distributed to Member in accordance with this Agreement and (ii) to receive data relating to the purchases of Covered Products by Member from Vendors.
- b. Exclusivity. Member may participate in other GPOs and purchase Covered Products from sources other than Vendors, including when such products are available under Vendor Agreements. Notwithstanding the foregoing, RenalEdge shall serve as a preferred GPO for Member's purchasing needs.
- c. Vendor Agreements.
 - i. RenalEdge shall provide Member access to available Vendor Agreements and their terms and conditions. Prior to purchasing through any Vendor Agreement, Member must: (1) be a current RHA member in good standing; (2) meet the Vendor's participation requirements; and (3) agree to comply with all applicable terms of the Vendor Agreements.
 - ii. Member acknowledges and agrees that: (1) all ordering of Covered Products shall be conducted directly between Member and Vendor; (2) RenalEdge has no obligation regarding product distribution or receipt; (3) RenalEdge has no responsibility for credentialing or vendor qualification; and (4) RenalEdge shall not make or advance any payments on Member's behalf.
 - iii. Member shall maintain access to required technology platforms for accessing GPO services and contract information. Member shall promptly notify RenalEdge of any new facilities or locations that will participate under this Agreement.

III. Term and Termination.

- a. Term. The term of this Agreement shall be for a period of three (3) years commencing on the effective date of the Participation Agreement ("Effective Date") ("Initial Term"), after which time this Agreement shall automatically renew for additional one (1) year terms (each a "Renewal Term" and together with the Initial Term, the "Term").
- b. Termination Without Cause. Either party shall have the right to terminate this Agreement for any reason effective upon ninety (90) days prior written notice.
- c. Termination With Cause. RenalEdge may terminate this Agreement as to Member on sixty (60) days notice to Member if: (i) Member fails to comply with the material terms and conditions of any of the Vendor Agreements; (ii) Member otherwise breaches any provision of this Agreement; *provided, however*, that RenalEdge may so terminate this Agreement in the event of a breach described above only if RenalEdge shall have given Member written notice of the specifics of the breach and Member shall not have cured such breach or caused such breach to be cured within ninety (90) days thereafter

IV. RenalEdge Disclaimer and Member Release; Indemnity.

- a. RENALEDGE 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 COVERED PRODUCTS SOLD BY ANY VENDOR; AND BY EXECUTING THE PARTICIPATION AGREEMENT, MEMBER EXPRESSLY RELEASES RENALEDGE FROM ANY AND ALL LIABILITY AND CLAIMS RELATING TO THE COVERED PRODUCTS, AND ANY BREACH OR ALLEGED BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS AND SERVICES.
- b. Member shall indemnify and hold RenalEdge and its affiliates, agents, officers, directors and employees (the "Indemnitees") harmless from and against any and all losses, liabilities, damages, cost and expenses (including reasonable attorneys' fees), relating to acts or omissions of Members which related in any way to this Agreement or any Vendor Agreement, including, without limitation, any claims resulting from a failure to pay for any Covered Product purchased by Member, or use of Products under Vendor Agreements.

V. GPO Administrative Fees and Rebates

- a. Eligibility for Administrative Fees. Member acknowledges that (i) RenalEdge will receive fees for administrative services provided by RenalEdge from Vendors based on Covered Products purchased, licensed or leased by Members ("GPO Admin Fees") during the term of this Agreement.
- b. GPO Admin Fees. The Parties acknowledge and agree that the percentage of the GPO Admin Fees will generally be three percent (3%) or less from each Vendor if a GPO Admin Fee is paid, but may in some cases be higher. In the event GPO Admin Fees exceed three percent (3%), RenalEdge will provide notice to Member in accordance with 42 C.F.R. 1001.952(j). In addition, RenalEdge shall disclose to the Secretary of the United States Department of Health and Human Services, upon request, the amount of GPO Admin Fees received by RenalEdge from each Vendor with respect to Covered Products which are purchased, licensed or leased by

Member.

- c. Rebates. RenalEdge agrees to pay to Member any funds received from Vendors designated as Vendor rebates based on purchases of Covered Products by Member. Member acknowledges that any such rebates received from RenalEdge in respect to purchases made under the Vendor Agreements will be allocated among all GPO members in amounts proportionate to the dollar amount of Covered Products giving rise to such rebate purchased by GPO member and as otherwise required by law and/or regulation. The amount of any rebate distributed to Member shall be treated as a discount to Member's cost for the applicable Covered Products. Member shall at all times comply with the following: (i) it is the intent of the Parties hereto to establish a business relationship, which complies with the Anti-Kickback Statute set forth at 42 U.S.C. §1320a-7b(b); (ii) in certain instances, invoices from Vendors may not accurately reflect the net cost of Covered Products to the Member; (iii) 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); (iv) in regard to iii above, the Parties hereto acknowledge that Member will satisfy any and all legal and regulatory requirements imposed on buyers; and (v) Member will accurately report when requested, under any state or federal program that provides for reimbursement for the Covered Products, the net cost actually paid by the Member, pursuant to such Vendor Agreements.

VI. Confidentiality.

The terms and attachments of this Agreement, all information, documents and instruments (including, without limitation, all information regarding the pricing, rebates, discounts, shipping terms and other terms and conditions of the Vendor Agreements) delivered or otherwise provided to Member, or any of their agents, directors, officers or employees as well as information relating to quantities of Covered Products purchased by Member, is confidential (hereinafter, "Confidential Information"). Member agrees that throughout the term of this Agreement and for a period of five (5) years thereafter it shall maintain all Confidential Information in strict confidence, and may disclose such Confidential Information only on a "need to know" basis to its duly authorized officers, directors, representatives, accountants, attorneys and agents. Member agrees to obtain signed confidentiality agreements with any such non-employed third parties receiving Confidential Information, with terms consistent with the terms of this Section VI.

VII. Compliance.

- a. Each Party acknowledges and agrees that execution of this Agreement does not give rise to any obligation whatsoever, either expressed or implied, on the part of Member to provide any business or referrals to RenalEdge, or any affiliates thereof.
- b. Member agrees to comply with (i) all terms of this Agreement, (ii) all terms of the Vendor Agreements, including without limitation, payment terms, own use requirements, and arbitration of dispute requirements, and (iii) to execute separate agreements or acknowledgements as requested by RenalEdge or any particular Vendor evidencing agreement to comply with the terms of the relevant Vendor Agreement.
- c. Member hereby represents and warrants that it is not currently excluded, debarred, or otherwise ineligible to participate in federal healthcare programs or any state healthcare program and is not under investigation or otherwise which may result in Member being excluded from participation in any federal or state healthcare program.

VIII. Miscellaneous.

- a. **Notices.** All notices or other communications required or permitted under these Terms and Conditions shall be in writing and sufficient if sent by registered or certified mail, postage prepaid, or by reputable express delivery service, or delivered personally, by private courier or fax, and followed by such mailing. Notices shall be addressed to each party at the addresses set forth in the Participation Agreement or as otherwise designated by a party in writing:
- b. **Assignment.** Member may not assign this Agreement or any of its rights or duties set forth herein, without the prior written consent of RenalEdge; no assignment in violation of the provisions of this Agreement, shall vest any rights in any purported assignee unless approved by RenalEdge. Member hereby consents to assignment by RenalEdge of its rights and obligations under this Agreement without any consent from Member to: (i) any entity wholly owned (directly or indirectly) by RenalEdge, and any successor thereto; or (ii) a successor entity of RenalEdge as part of a reorganization of RenalEdge which results in RenalEdge being organized in a different legal entity or corporate form, whether through conversion or merger.
- c. **Severability.** This Agreement shall be construed to be in accordance with any and all applicable federal and state laws and regulations. In the event there is a change in such laws and regulation, whether by statute, regulation, agency or judicial decision that has any material effect on the legality of any provision of this Agreement (“Affected Provision”), then the Affected Provision shall be deemed ineffective to the extent of such change in law or holding without invalidating the remaining provisions hereof or affecting the validity or enforceability of such Affected Provision in any other jurisdiction.
- d. **Governing Law and Consent to Venue and Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the conflict of laws and principles thereof.
- e. **Entire Agreement; Amendment.** These Terms and Conditions, together with the Participation Agreement and any attachments thereto, set forth the entire agreement and understanding of the parties in respect of the transactions contemplated hereby, and supersede all prior agreements, arrangements and understandings relating to the subject matter hereof. Except as otherwise provided herein, this Agreement may be amended, modified, superseded or supplemented only by a written instrument expressly stating an intent to amend, modify, supersede, or supplement this Agreement, executed and delivered by each of the parties hereto.
- f. **Counterparts; Methods of Execution.** The Participation Agreement may be executed by the parties individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement. Execution and delivery of this Agreement and any amendments by the parties shall be legally valid and effective through: (i) executing and delivering the paper copy of the document, (ii) transmitting the executed paper copy of the document by facsimile transmission, or electronic mail in “portable document format” (“pdf”) or other electronically scanned format, or (iii) creating, generating, sending, receiving or storing by electronic means this Agreement and any amendments, the execution of which is accomplished through use of an electronic process associated with this Agreement, and executed or adopted by a Party with the intent to execute this Agreement (i.e., “electronic signature” through a process such as DocuSign®).
- g. **Data.** RenalEdge shall be the exclusive owner of the compilation of pricing data related to

Covered Products. All purchasing transaction data (other than pricing data related to Covered Products) resulting from purchase of Covered Products by Member shall be owned by Member. Member hereby authorizes RenalEdge to have access to Member's purchasing transaction data, whether through Vendors, distributors, or any business-to-business e-commerce companies through which orders for Covered Products are placed by Member. Member further authorizes RenalEdge to aggregate Member purchasing transaction data with purchasing transaction data from other Members of RenalEdge for statistical analysis and other similar purposes, and to provide such aggregate data to third parties provided no portion of the data contains any patient identification information or information that can be specifically traced to Member.

- h. **Member Name and Logos.** Member hereby authorizes RenalEdge to use Member's names and logos, as provided by Member to RenalEdge, on RenalEdge's proprietary website and other RenalEdge publications listing Member among other entities that are members of RenalEdge.