



## **PARTICIPATION AGREEMENT**

This Participation Agreement (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_ 2009 between RPG and \_\_\_\_\_ (Participant)

**WHEREAS**, RPG acts as a purchasing agent for individual physicians and physician group practices, such as Participant;

**WHEREAS**, RPG desires to procure certain agreements/contracts for medications and supplies (the “Products”) for such physicians and physician group practices that sign participation agreements with RPG (the “Members”);

**WHEREAS**, RPG will negotiate and seek to enter into purchase contracts (the “Purchase Contracts”) with various vendors, wholesalers and distributors (the “Suppliers”) with respect to the Products (the “Purchasing Program”) with the goal of obtaining exceptional pricing for Products;

**WHEREAS**, Participant desires to authorize RPG to act on its behalf as a group purchasing agent.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Authorization to Act as Purchasing Agent. Participant hereby authorizes RPG to act as, and RPG hereby agrees to act as, Participant’s purchasing agent for Products utilized by Participant. In such capacity, RPG shall negotiate the terms of, as well as manage, the Purchase Contracts.

2. Non-Exclusivity. Nothing contained herein shall be construed to require Participant to use RPG as its exclusive purchasing agent or to purchase Products under a Purchase Contract.

3. Representations of Participant. Participant represents and warrants that:

(a) Participant shall identify itself as a Member of RPG when ordering the Products pursuant to the Purchase Contracts;

(b) Participant shall be responsible for the payment due on any Product purchased by Participant pursuant to the terms of the Purchase Contract between RPG and the Supplier;

(c) Participant is eligible to participate in the Purchasing Program and that such participation does not violate any agreement to which Participant is currently a party;

(d) Participant shall not purchase, sell, transfer or use any of the Products purchased pursuant to a Purchase Contract in any manner that is contrary to the requirements of the Prescription Drug Marketing Act of 1987;

(e) Participant will indemnify and hold RPG, the officers, directors, employees and agents of RPG and any Supplier harmless from any liability as a result of Participant’s breach of its representations and warranties contained herein.

4. Representations of RPG.

(a) The price and other terms of sale for the Products that have been negotiated by

RPG shall be provided to Participant in writing following execution of this Agreement (the "Term Sheet") and updated from time to time as necessary.

(b) RPG represents and warrants that RPG and its employees shall comply with all laws, ordinances, rules, regulations and agency standards that are applicable to RPG's performance under this Agreement.

5. Own Use. Participant acknowledges and agrees that the Products purchased by Participant pursuant to the Purchase Contracts shall be purchased by Participant solely for Participant's "own use" and not for resale, and Participant shall not authorize or allow any retail, over the counter, walk-in trade or any other prescribed behavior that could be classified as other than, "own use" as that term would be applicable to a closed pharmacy; provided, however, that Participant may resell or transfer a Product to an affiliated dialysis facility of the Participant if such resale or transfer by the Participant is specifically authorized by the manufacturer of the Product and if such resale or transfer is consistent with applicable federal, state and local law. Participant acknowledges and agrees that RPG shall have no responsibility or liability for the resale or transfer of any Product by Participant, and Participant shall indemnify and hold RPG and its officers, directors, employees and agents harmless from any liability resulting from Participant's sale, resale, transfer, trade, contribution or donation of any Product purchased by Participant pursuant to a Purchase Contract or otherwise.

6. Warranties. With respect to the Products purchased by Participant through the Purchase Contracts, RPG, not being the manufacturer, wholesaler or distributor of the Products, MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, NOR SHALL IT BE DEEMED TO HAVE MADE ANY SUCH WARRANTIES OR REPRESENTATIONS, AS TO THE MERCHANTABILITY, FITNESS, AND DESIGN FOR ANY PARTICULAR PURPOSE, THE CONDITION OF, OR THE QUALITY OR CAPACITY OF ANY OF THE PRODUCTS. PARTICIPANT AGREES NOT TO LOOK TO RPG FOR ANY REMEDIES OR TO HOLD RPG OR ANY OF ITS AGENTS OR EMPLOYEES RESPONSIBLE FOR ANY FAULTS OR DEFECTS IN ANY OF THE PRODUCTS OR IN THE DESIGN OF ANY OF THE PRODUCTS. RPG is not responsible for any defects or damages to the Products, any delays in delivery, or any other act or omission of any Supplier.

7. Administrative Fee. RPG may enter into Purchase Contracts with selected Suppliers in its sole discretion. In exchange for the services provided by RPG in negotiating and facilitating execution of the Purchase Contracts, each Supplier will pay RPG an administrative fee equal to not more than three percent (3%) of the purchase price of the Products provided to Members by such Supplier. RPG shall provide a written disclosure to Participant annually, and to the Secretary of the United States Department of Health and Human Services upon request, of the amount of payment received by it from each Supplier in connection with the purchases made by Participant.

#### 8. Confidentiality.

(a) Confidential Information. For purposes of this Agreement, the term "Confidential Information" shall include, without limitation, any information or data, whether printed, written, oral or electronically stored or reproduced, and

whether provided in response to a specific inquiry or voluntarily, including, without limitation, marketing data, financial or business information, information regarding trade secrets, the management and operations of RPG, the identity of the Suppliers with which RPG is negotiating, pricing information, and any and all terms of any Purchase Contracts being negotiated by RPG or entered into by RPG.

(b) Confidential Obligations. Participant agrees to retain in strict confidence and not to market, sell, or disclose, and to require any and all of its employees, consultants, representatives or agents to retain in strict confidence and not to market, sell or disclose any and all Confidential Information transmitted to it by RPG. If Participant is requested or required by legal process to disclose any Confidential Information, Participant promptly shall give notice of such request or requirement to RPG so that RPG may, at its own cost and expense, seek an appropriate protective order or, in the alternative, waive compliance with this Section 8 to the extent necessary to comply with the request or order. Upon termination of the Term of this Agreement, for whatever reason, Participant shall promptly return or destroy all Confidential Information, including all copies, extracts or reproductions thereof, to RPG. The return of the Confidential Information shall not relieve Participant of its obligations of confidentiality with respect to the Confidential Information. It is expressly understood and agreed that the parties' obligations pursuant to this Section

8 shall survive termination of the Term of this Agreement. Participant shall not use the Confidential Information for any purpose, which might be directly or indirectly detrimental to RPG or any of its affiliates or subsidiaries.

9. Term. This Agreement shall commence on the Effective Date and shall remain in effect until it is terminated by either party in accordance with the provisions of Section 10 of the Agreement (the "Term").

10. Termination:

(a) Either party may terminate the Term of this Agreement at any time, with or without cause, by providing thirty (30) days advance written notice to the other party.

(b) The Term of this Agreement shall immediately terminate upon either (i) the mutual agreement of the parties or (ii) Participant's breach of Section 8 of this Agreement.

11. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing, shall be addressed to the party at its last known address of record and shall be deemed given: (i) when received, if personally delivered; or (ii) on the date of receipt if sent by facsimile transmission, certified or registered mail, or by overnight mail or courier.

12. Amendments. No changes to this Agreement shall be valid or binding unless made by written instrument duly executed by both RPG and Participant.

13. Waiver. The failure of a party hereto to enforce any of the rights provided to it pursuant to this Agreement shall not operate as, nor be construed as, a waiver of such right or any other provision or right contained in this Agreement.

14. Successors. Neither RPG nor Participant shall assign its rights under this Agreement without the written consent of the other party. This Agreement shall be binding on, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of the parties hereto.

15. Severability. In the event any provision of this Agreement is rendered unenforceable or invalid, the parties hereby agree that the remainder of this Agreement shall remain in full force and effect.

16. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to such state's choice of law provisions and any suit in law to enforce this Agreement shall be filed in the County of Davidson, Nashville, Tennessee. It is agreed that the losing party shall pay reasonable attorney's fees and costs to the prevailing party.

17. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one (1) agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**RENAL PURCHASING GROUP, LLC PARTICIPANT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Marketing Administration

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