I. Purpose

This Policy is to ensure that all Discounts or Rebates that Respironics, Inc. (“Company”) offers to its purchasers comply with U.S. competition laws, the U.S. federal Anti-Kickback Statute (“AKS”), False Claims Act, and related U.S. laws and regulations. Providing Discounts or Rebates on Company’s goods and services must be appropriate, and correctly documented and disclosed, or such Discounts or Rebates could be construed as improper inducements to actual or potential purchasers, referral sources, or others.

Under the AKS it is illegal for entities to:

- Offer, pay, solicit or receive remuneration
- in cash or in kind
- in return for goods or services (or for recommending the purchase, sale, or lease of goods or services) reimbursable under a government health care program such as, but not limited to, Medicare or Medicaid.

II. Scope

This Policy applies to Company, including both its business group and U.S. sales activities, and their officers, directors, and employees, and Company’s consultants, contract workers, and temporary workers who provide services to Company which relate to government reimbursed products or services.

III. Definitions

**Anti-Kickback Statute (“AKS”):** A criminal statute that prohibits the exchange (or offer to exchange) of anything of value, in an effort to induce (or reward) the purchase or referral of products or services reimbursable by a U.S. federal health care program. It establishes penalties for individuals and entities on both sides of a prohibited transaction. See 42 U.S.C. § 1320a-7b.

**Discount:** A reduction in the amount a buyer is charged for an item or service based on an arms-length transaction.

**False Claims Act (“FCA”):** A U.S. federal law that imposes liability on persons and companies who knowingly make or cause others to make false claims for reimbursement to the U.S. Government. See 31 U.S.C. §§ 3729-3733 (civil FCA) and 18 U.S.C. §287 (criminal FCA).

**Healthcare Professional or Provider (“HCP”) or Potential Referral Source:** The term “U.S. Healthcare Professional” is defined very broadly to cover any person or entity that is involved in the provision of health care services or items to patients, and that purchases, leases or recommends, uses or arranges for the purchase or lease, of Company Products in the U.S. Practically, this includes, among others:
Clinicians, such as physicians, nurses, PhDs, technologists, pharmacists, and medical staff, such as respiratory technologists or physician assistants, as well as clinicians in training.

Hospitals, medical schools affiliated with hospitals, medical group practices, medical clinics, nursing homes, sleep diagnostic clinics, surgical centers, emergency medical services and home healthcare organizations, as well as nonmedical personnel in these facilities who make purchasing decisions.

Medical device distributors and dealers, including Durable Medical Equipment (“DME”) suppliers, who sell to HCPs or bill Medicare and Medicaid for their items and services.

Healthcare-related trade associations which serve HCPs or have a significant number of HCPs on its board, such as the American Sleep Association.

Employees, administrators, officers and directors of HCPs are also considered HCPs, if involved in the decision to purchase or lease Company Products.

**Product:** Devices, software, and services offered for sale by Company which are reimbursed by the U.S. Government.

**Rebates:** Any Discount the terms of which are fixed and disclosed in writing to the purchaser at the time of the initial purchase to which the Discount applies, but which is not given at the time of sale.

**Robinson-Patman Act:** U.S. law concerning price discrimination that prohibits maintaining price differences between competing purchasers that will affect competition among these purchasers, unless with a valid justification. These are:

- Discount or Rebate is provided in good faith to meet (not beat) a competitor’s price (from reasonable information from the purchaser).
- Discount or Rebate is justified by the different costs associated with selling to the different purchasers.
- Discount or Rebate is a reasonable reward for non-promotional services (distribution, warehousing), sales effort commitments, or other obligations.

**Safe Harbor:** Certain payments and business practices that, although potentially prohibited by the AKS, the U.S. Government does not treat as an offense under the AKS. To be protected by a Safe Harbor, an arrangement must fit squarely in the requirements of the Safe Harbor. Examples are the discount and personal services Safe Harbors. Failure to comply with a Safe Harbor provision does not necessarily mean that an arrangement violates the AKS, but arrangements that do not comply with a Safe Harbor must be analyzed on a case-by-case basis for compliance with the AKS.

**IV. Policy**

All Discounts and Rebates must be provided to purchasers in a manner consistent with the “discount” Safe Harbor of the AKS and the Robinson-Patman Act as determined by the Legal Department.
Company sells its Products pursuant to written contracts or invoices that identify when a Discount or Rebate applies and notifies the recipient of its potential obligation to report the arrangements to the U.S. Government.

A. **Contracts**

Any contracts containing Discounts or Rebates must be reviewed and approved pursuant to this Policy and the Focused Arrangements and Promotional Functions Policy – RI-CP-002.

All Discounts or Rebates offered to a customer, must be in compliance with this policy.

B. **Free Items are not Permitted**

Except as permitted under the Demonstration, Evaluation, and Sample Policy, Company may not provide free Products or services even if considered supplemental to a Product. Other than permitted Samples, any Product or service provided to a customer must be included in a written contract.

C. **Invoices and Credit Memos**

Invoices must accurately reflect Discounts known at the time of sale (e.g., “up front” discounts).

Invoices must contain language notifying purchasers of their potential obligation to report all Discounts and other price concessions to the government.

If the Discount is provided as a Rebate, Company must provide credit memos that accurately explain the reason for the credit and reflect the true value of the credit.

D. **Discount or Rebate Disclosure Language**

This disclosure requirement and associated expectations must be documented in Company’s contract with the Healthcare Professional or referral source. The specific contract language is as follows:

_The Parties acknowledge that the prices under this Agreement may reflect discounts, rebates, or other reductions in price (collectively, “discounts”), and it is their intention that such discounts shall be administered consistent with the discount exception to the federal anti-kickback statute (42 USC 1320a-7b(B)(3)(A)) and the related regulatory discount safe harbor (42 CFR 1001.952(h)). [Seller] will reflect when a discount applies on invoices or alternative document, and [Buyer] may request additional documentation of purchases and discounts hereunder as necessary to facilitate appropriate reporting. To the extent and as required by applicable law, regulations, or other contractual obligations, it is [Buyer’s] responsibility to appropriately report or reflect such discounts, including any bundled discounts, on cost reports or claims submitted to third party payors, including but not limited to federal or state health care programs. Further, [Buyer] will retain documentation provided by [Seller] relating to purchases and discounts hereunder and make it available to federal or state health care program representatives upon request._

V. **Appendices**
VI. References

Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b)
42 C.F.R. §1001.952(d), the “Safe Harbor” to the U.S. Anti-Kickback Statute

Referenced Documents:

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<tr>
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<td>RI-CP-002</td>
<td>Focus Arrangements and Promotional Functions Policy</td>
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